



## **FLEXIBLE WORKING PROCEDURE**

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# Flexible Working Procedure

Staff covered by this procedure:	Teaching and support staff in schools
Prepared by:	Employee Relations in July 2014
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## 1.0 Introduction

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- 1.1 This procedure has been adopted by the governing body of Osborne Primary School to help manage requests from employees to work flexibly under the Employment Rights Act 1996, the Children and Families Act 2014 and associated regulations.
- 1.2 This procedure acknowledges that from 30 June 2014, every employee with at least 26 weeks' continuous service with the school has a statutory right to request to work flexibly. (This right is no longer limited to employees who are parents of children under 17, or 18 if disabled and certain other carers.) An employee may only make a statutory request once in any 12 month period.
- 1.3 The school will do all that it reasonably can to ensure that requests to work flexibly are dealt with reasonably, objectively and fairly and in accordance with the Acas statutory Code of Practice <http://www.acas.org.uk/index.aspx?articleid=1616>, employment law and good practice.
- 1.4 A request to work flexibly may include a request to change working hours (for example to job-share, to work part-time) or to change a place of work (for example to work from home for some or all of the working week or to change the times that the employee works e.g. starting and finishing earlier).
- 1.5 In accordance with the legislation surrounding requests to work flexibly, the school will ensure that **all requests, including appeals, made under this procedure are considered and decided on within three calendar months of first receipt**. However, these timescales may be extended by mutual written agreement between the parties.
- 1.6 Throughout this procedure, the word "should" is used to indicate what Acas considers to be good employment practice, rather than a legal requirement. The word "must" is used to indicate where something is a legal requirement.
- 1.7 References in this procedure to "school" include "academies" and references to "head teacher" include a principal of an academy. The employee's "chosen companion" is defined in employment law as a trade union representative or a co-worker at the same workplace chosen by the employee.

## 2.0 Requests to work flexibly

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- 2.1 The school will only consider requests under this formal procedure made by eligible employees. An eligible employee is someone who:
- a) Is an employee; and
  - b) Has worked for the school continuously for 26 weeks at the date the request is made; and
  - c) Has not made a formal request to work flexibly during the last 12 months (each 12-month period runs from the date when the most recent request was made).
- 2.2 An employee wishing to submit a request to work flexibly must make a request in writing to the head teacher which includes the following information:
- a) The date of the request and a statement that this is a statutory request under section 80F of the Employment Rights Act 1996
  - b) The change to terms and conditions being requested
  - c) When they would like the change to come into effect
  - d) What effect, if any, the employee thinks the requested change would have on the school and how, in their opinion, any such effect might be dealt with
  - e) If they have previously made a request to work flexibly, the date when this previous request was submitted; and
  - f) Whether there are any considerations under the Equality Act 2010 (e.g. reasonable adjustments)
- 2.3 Ideally, requests from employees should be submitted at least two months before they wish the changes they are requesting to take effect.
- 2.4 It is good practice for the school to allow employees to be accompanied at formal meetings under this procedure. This includes one single companion who is either a work colleague or trade union representative. They may address the meeting and confer with the employee during the meeting (but not answer questions on behalf of the employee). If the chosen companion will not be available at the time proposed for the meeting and the employee proposes an alternative time within 5 working days of the initial date

suggested, then the head teacher will postpone the meeting once to an alternative date.

- 2.5 The request shall be taken as made on the day it is received as defined in the Regulations, i.e. on the day on which an electronic communication is transmitted, or, if the request is sent by post, the day on which the application would be delivered in the ordinary course of post, or if the request is delivered personally, on the day of delivery.
- 2.6 On receipt of the request the head teacher should:
- a) acknowledge it in writing and provide the employee with a copy of this procedure
  - b) consider the request carefully by weighing up the benefits and limitations of the requested changes in working conditions for the employee and for the school; and
    - **either** agree to the request on behalf of the governing body and notify the employee in writing as soon as reasonably possible of the variation agreed and the date that it starts, **bearing in mind that the whole process, including any appeal and notification of that outcome needs to be finalised within 3 months of receipt of the initial request** (If the school is agreeing to a request, a meeting may take place but it is not obligatory).
    - **or** discuss the request with the employee in a private place as soon as possible after the request is received, **bearing in mind that the whole process including any appeal and notification of that outcome needs to be finalised within 3 months of receipt of the initial request.** If more convenient to the employee, the discussions may take place during a telephone conversation instead of in a meeting. The discussions should be recorded in writing, whether they take place by telephone or in a meeting.
- 2.7 If the head teacher arranges a meeting to discuss the request (including any appeal) and the employee fails to attend both this and the rearranged meeting without a good reason, the head teacher may, by law, consider the request to be withdrawn. In these circumstances, the head teacher must notify the employee in writing of this outcome.
- 2.8 Where a discussion or meeting is held under 2.6 the head teacher shall give the employee written confirmation of the decision as soon as possible and having regard to the timescales at 1.5. If the decision is to agree the request, the letter shall specify the contract variation agreed and the date on which the variation is to start.

- 2.9 Where the decision is to refuse the request, the letter must:
- a) State which of the following business grounds are being used to justify the refusal; and
  - b) Explain why those business grounds apply; and
  - c) Set out the appeal procedure.
- 2.10 A request to work flexibly may be turned down on one or more of the eight business grounds below:
- a) the burden of additional costs;
  - b) detrimental effect on ability to meet customer demand (pupils and/or parents in the case of schools);
  - c) inability to re-organise work amongst existing staff;
  - d) inability to recruit additional staff;
  - e) detrimental impact on quality;
  - f) detrimental impact on performance;
  - g) insufficiency of work during the periods the employee proposes to work; and
  - h) planned structural changes
- 2.11 If the school rejects the request, the employee must be allowed to appeal against this decision and should be notified in writing of the outcome and of the school's appeal process, namely to whom the employee should submit an appeal and a reasonable date by which it should be submitted.

### **3.0 Trial Periods**

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- 3.1 If the head teacher is unsure whether an employee's request to work flexibly is sustainable in the long term or is concerned about the impact that the arrangement could have on parents, colleagues and/or pupils, it may agree to vary an employee's contract on a temporary basis and for a fixed period. This will give both parties a trial period to test the suitability of the arrangement without commitment by either side to agree the arrangement on a permanent basis.



- 3.2 To avoid any misunderstanding, the head teacher must ensure that written confirmation is provided to the employee within the timescales set out at 1.5 above and that Schools HR Services are notified in good time of the temporary contract variation and timescales.
- 3.3 It is also good practice to hold regular review meetings with the employee during the trial period to assess whether or not the arrangement is working for the school. If the arrangement is working for the school, the head teacher may wish to make the contract variation permanent in consultation with the employee. Alternatively, if it is not working for the school, the head teacher should notify the employee of that fact in writing (with reasons) in good time before the end of the trial period in question, ensuring that Schools HR Services are kept up to date.

## 4.0 Appeals

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- 4.1 If the school turns down an employee's request to work flexibly, they are entitled to appeal against this decision. The appeal must be heard and a decision reached and communicated to the employee in writing **within the three months from the date that the initial request was received (unless the employee and the head teacher agree to an extension of the statutory period).**
- 4.2 Appeals will be heard by the appeals committee or such other committee as may be specified by the governing body.
- 4.3 The employee must lodge their appeal in writing within the period specified in the head teacher's outcome letter and must set out their specific grounds of appeal. The employee must date the letter and send it to the person who has been specified in the outcome letter provided by the head teacher.
- 4.4 The appeals committee shall hold an appeal meeting with the employee within a reasonable period from receiving the employee's appeal letter and within the timescales specified at 1.5 above. It is helpful for the clerk to agree a date with the employee's chosen companion, before sending the formal notice to attend the meeting. If the employee's chosen companion will not be available at the time proposed for the meeting and the companion proposes an alternative time within 5 working days of the date originally proposed, then the appeals committee will postpone the meeting to that alternative date.
- 4.5 The head teacher will need to provide written or oral submissions to the appeals committee so that the committee can properly understand why the request has been turned down.

- 4.6 Following the appeal meeting, the appeals committee shall confirm the decision to the employee in a dated written letter as soon as possible after the meeting, having regard to the timescales at 1.5 above. If the decision is to agree the appeal, the letter shall specify the contract variation agreed and the date on which it is to start. Where the decision is to turn down the appeal, the letter shall state the reasons for that decision ensuring that sufficient explanation is provided.
- 4.8 The decision of the appeals committee is final.

## **5.0 Contract variations**

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- 5.1 If a school agrees an employee's request to work flexibly, on a permanent or temporary basis, full details must be forwarded to Schools HR Services in good time through the HR Portal, so that no overpayment occurs.

## **6.0 Non-statutory contract variations**

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- 6.1 As well as an employee's statutory rights under this procedure, flexible working may arise in other contexts, such as discussions about an employee's health and/or under their right to request a reasonable adjustment on the grounds of a disability under the Equality Act 2010. In such cases, an employee may, but is not obliged to make a formal request under this procedure. However, the school should still ensure that a request to vary their contract is dealt with in a reasonable and consistent way in line with good HR practice. This includes confirming details of any variation agreed in writing to the employee and notifying Schools HR Services in good time through the HR Portal as per 5.1 above.

**FLOWCHART: DEALING WITH REQUESTS FOR FLEXIBLE WORKING**