

HR Guide

Flexible Working

Decision making

This document does not constitute a legal opinion or legal advice and is intended to be a guide only. To ensure you follow best practice (and, if applicable, do not compromise your insurance), you should contact the Alcumus HR Consultancy team before embarking on the process and at each subsequent stage.

Flexible Working - Decision Making

You have met with your employee to discuss and consider their flexible working application. The next step is for you, the employer, to consider the application and make your decision.

You should consider carefully whether or not the working pattern the employee is looking for can be reasonably accommodated in the business.

The flexible working process should be completed within 3 months of the original request thus you should be mindful of this when investigating the outcome and communicating the response to the employee. This is inclusive of an appeal.

Summary of your options

Accepting/agreeing to the employee's application

If you are able to accommodate the working pattern requested, you can agree to the employee's application. The change/new working pattern will be a permanent change to the employee's terms and conditions of employment.

You will need to confirm:

- the employee's new working pattern and any other changes to the employee's terms and conditions as a result of the variation, for example, changes to the employee's holiday entitlement; and
- when the new working pattern will come into effect.

Your decision should be confirmed in writing.

It is best practice to issue a new contract statement to the employee to reflect their new terms and conditions.

Rejecting the employee's application

It is recognised that you may have an entirely legitimate business reason why you cannot accommodate an employee's flexible working application. You can only reject a request based on one or more of the following business reasons:

- The burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to re-organise work among existing staff.

- Inability to recruit additional staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Insufficiency of work during the periods the employee proposes to work.
- Planned structural changes.

You must have reasons why the above ground(s) apply. Such reason can be challenged in an Employment Tribunal so this should be carefully considered.

Your decision should be confirmed in writing and should inform the employee of the business reason why you are rejecting their application and should give sufficient explanation as to why the chosen ground(s) apply. The right to appeal should be given.

Other options/considerations

Strictly, the legislation states that the employee's application should be accepted or rejected. However, the spirit of the legislation requires employers to be as proactive as possible.

With this in mind, if you are rejecting an employee's application (with a sound business reason), you may wish to consider offering the employee a different or alternative working pattern. If the employee has suggested a different working pattern or an alternative, you may wish to suggest or try this. You may be able to reach an agreement to a different working pattern which is mutually acceptable to you and your employee. Any such alternative agreement should be confirmed in writing and the employee should be given the right to appeal.

A further commercial option open to you is for you to consider accepting the employee's application "subject to a trial period". This can only work with the employee's agreement to a trial. Allowing a trial period will allow both parties to experience the working pattern in practice and this may allow you to assess whether or not this will work in the business. A trial period will need to be carefully managed and should be for an agreed duration.

If the trial period is successful for both parties, then the new working pattern can be confirmed as permanent (see above: "Accepting/agreeing to the employee's application"). If the trial period is unsuccessful, then you will need to formally reject the original application, with business reasons (see above "Rejecting the employee's application") and give the employee the right to appeal.