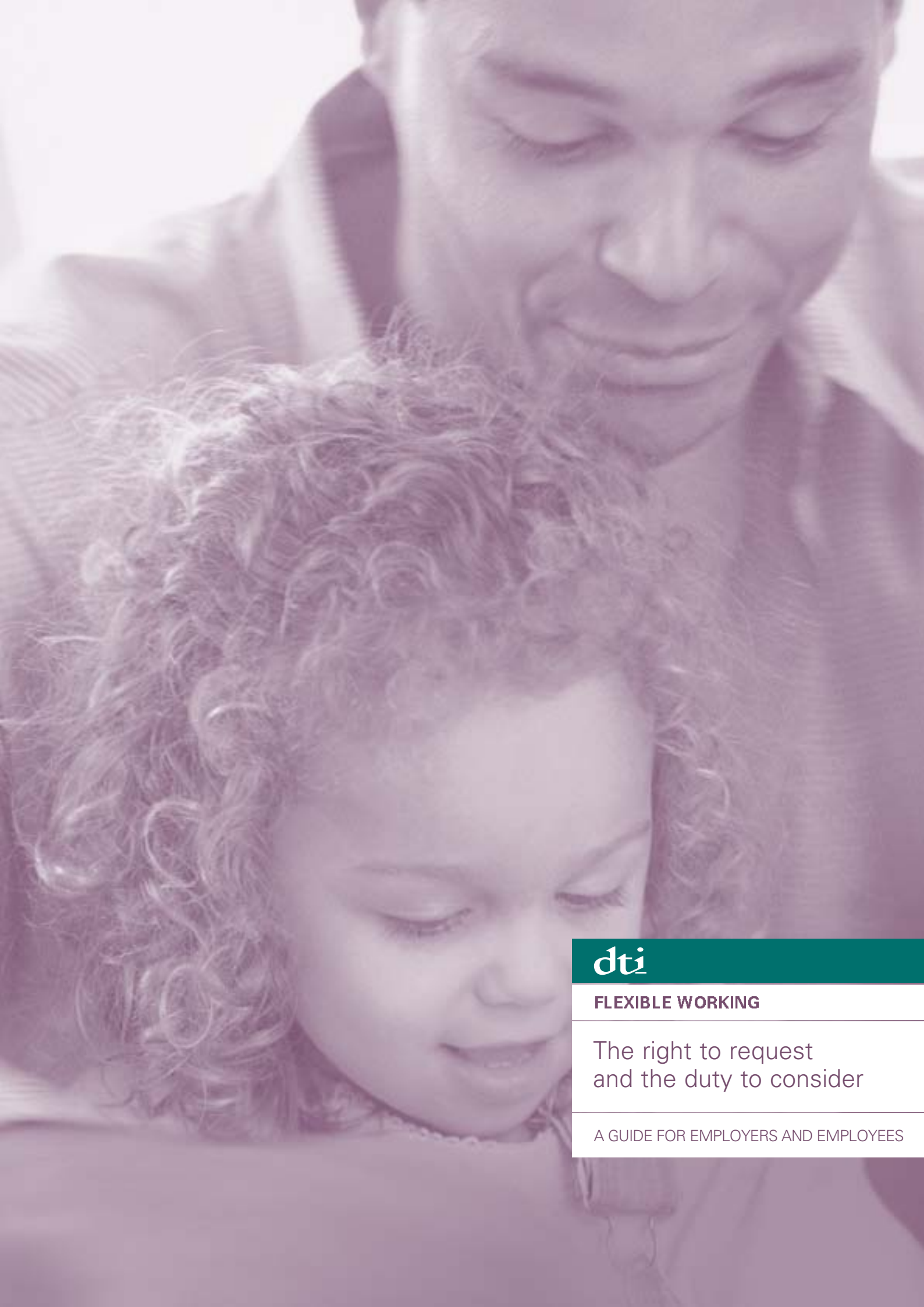

dti

FLEXIBLE WORKING

The right to request and the duty to consider

A GUIDE FOR EMPLOYERS AND EMPLOYEES

dti

The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

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Section 1: Introduction

Flexible working opportunities benefit everyone: employers, employees and their families. Many employers know that it makes good business sense to provide flexible working opportunities for their staff. These employers know flexible working arrangements enable them: to retain skilled staff and reduce recruitment costs; to raise their staff morale and decrease absenteeism; and, to react to changing market conditions more effectively. They are open to considering requests to work an alternative working pattern and may have an established procedure for handling requests. For individuals, the opportunity to work flexibly can greatly improve their ability to balance home and work responsibilities.

Anyone thinking about changing their work pattern should speak to their employer as early as possible in order to explore what opportunities are available. And no more so than parents of young and disabled children who can face particular challenges in juggling childcare with work.

Not all employers are aware of the different ways to arrange work and their employees are not always certain that their requests will be taken seriously. This booklet has been designed to provide advice for employers and employees about how the right to request flexible working operates and the duty on employers to consider requests seriously. It details the rights and responsibilities of all parties. In addition, through examples and case studies it shows the benefits flexible working can bring to employers and employees alike. A selection of forms based on best practice accompanies this guidance to aid the employee in making their application and the employer when considering their request. Copies of all the forms can be obtained from the DTI website (www.dti.gov.uk/er/individual/flexforms.htm).

The right provides eligible employees with children under six or disabled children under eighteen with the right to request a flexible working pattern and places a duty on employers to consider their requests seriously. The initial onus is on the employee to prepare a carefully thought-out application well in advance of when they would like the desired working pattern to take effect. The employer then follows a set procedure to help ensure a request is considered seriously, which seeks to facilitate discussion and enables both parties to gain a clear understanding of each other's thinking. An employer may only refuse a request where there is a recognised business ground for doing so. The basic rights and responsibilities under this legislation are set out opposite.

Rights and Responsibilities

Employees' rights

- To apply to work flexibly.
- To have their application considered properly in accordance with the set procedure and refused only where there is a clear business ground for doing so.
- To have a companion when meeting the employer to discuss the application.
- Where an application is refused to have a written explanation explaining why.
- To appeal against the employer's decision to refuse an application.
- To take a complaint to a tribunal in certain circumstances.

Employees' responsibilities and best practice

- To provide a carefully thought-out application.
- To ensure their application is valid by checking that all the eligibility criteria are met and that they have provided all the necessary information.
- To ensure the application is made well in advance of when they want it to take effect.
- To arrive at meetings on time and to be prepared to discuss their application in an open and constructive manner.
- If necessary, be prepared to be flexible themselves, to reach an agreement with the employer.

Employers' rights

- To reject an application when the desired working pattern cannot be accommodated within the needs of the business.
- To seek the employee's agreement to extend timescales where it is appropriate.
- To consider an application withdrawn in certain circumstances.

Employers' responsibilities and best practice

- To consider requests properly in accordance with the set procedure.
- To ensure they adhere to the time limits contained within the procedure.
- To provide the employee with appropriate support and information during the course of the application.
- To only decline a request where there is a recognised business ground and to explain to the employee in writing why it applies.
- To ensure that any variation with the procedure is agreed in advance with the employee and recorded in writing.

This right for employees to request flexible working and duty on employers to consider requests seriously is one of a package of rights designed to help parents balance their work responsibilities with child care to the benefit of employers, employees and children.

Business Benefits: Making Recruitment Easier

Automated Packaging Systems (UK) Ltd

Paul Hayden, Marketing and Commercial Manager at Automated Packaging Systems UK, believes that the provision of work-life balance practices has kept the company ahead of the game in terms of recruitment. He explains:

'For a rapidly growing business located in an area of minimal unemployment, you have to be good at attracting and retaining staff, especially since most of them have to be enticed away from other jobs.'

The company, based in Malvern, Worcestershire, previously had a number of ad hoc practices in place, but recognised that these practices had to be brought together as a coherent package and properly publicised amongst staff if they were to work effectively. The company drew together all of its flexible working patterns and introduced new practices such as banked hours, which enable staff to store up extra hours and then take the time off to meet domestic commitments. Paul believes the new scheme has improved their ability to recruit and retain staff. 'All the anecdotal evidence shows that recruitment is becoming easier and costing us less. We now have all the employment agencies calling us because they have people asking if we have vacancies.'

The company believes that flexible working practices are key to their absenteeism rate being as low as 1.5%, their high levels of staff retention and year-on-year turnover growth.

Section 2: Eligibility

To make an application under the statutory right the employee will have to meet certain criteria. This section explains those criteria and the types of flexible working for which an employee might apply. An employee who does not meet the criteria will not be able to make a request under the statutory right but may still approach their employer to work flexibly as many employers offer flexible working opportunities across their workforce.

Eligibility Checklist

A parent must meet the following criteria to be eligible to make a request under this right:

- Be an employee.
- Have a child aged under six, or under eighteen where disabled.
- Make the request no later than two weeks before the child's appropriate birthday.
- Have responsibility for the upbringing of the child and be making the application to enable them to care for the child.
- Be either:
  - the mother, father, adopter, guardian or foster parent of the child; or
  - married to or the partner of the child's mother, father, adopter, guardian or foster parent.
- Have worked for their employer continuously for 26 weeks at the date the application is made.
- Not be an agency worker or a member of the armed forces.
- Not have made another application to work flexibly under the right during the past 12 months.

Under what circumstances can an application be made?

An application can only be made in order to help the employee to care for the child. This may cover a range of circumstances. For example, it may enable the employee to spend more time with their children or help with dropping their child off at school. Applications cannot be made for any other purpose.

Compressed hours case study

Robert, a claims processor for an insurance company, asks to work a compressed working week. He requests to change his hours from 9am to 5pm Monday to Friday to 8am to 6pm Monday to Thursday in order to care for his child. In his application, he explains that he will still be working the same number of hours and will be able to continue to manage his existing caseload. He points out that most claims are received earlier in the week and that Friday is normally the quietest day.

His manager discusses the request with Robert and accepts the application. The manager notes that Robert will still be able to process the same number of cases as he does with his current working pattern.

Who can make requests under the right?

Both mothers and fathers, whether they are the biological parents or legal guardians, can make applications, as can adoptive and foster parents. Spouses or partners of these employees are also eligible, including spouses or partners of the same sex as long as they have or expect to have responsibility for the upbringing of the child.

What are the age limits of the child?

The employee's child must be under six, or under eighteen where the child is disabled, for the employee to be eligible to make an application. The application must be submitted no later than two weeks before the child's sixth or eighteenth birthday, as appropriate.

Which staff are covered?

The parent will have to be an employee and have worked for their employer continuously for 26 weeks at the date the application is made. Continuous employment generally means working for the same employer without a break, but this is not always the case.

Agency workers are not eligible. Neither are members of the armed forces. However, whether an employee is eligible or not, many employers offer flexible working opportunities and the employee can still approach their employer to find out what opportunities exist.

How often can an application be made?

One application a year can be made under the right. Each year runs from the date when the application was made.

Definitions

- 'Adopter' is someone who has been matched with the child for adoption;
- 'Agency worker' means any person who is supplied by a person ('the agent') to do work for another ('the principal') under a contract or other arrangement between the agent and the principal;
- 'Employee' means an individual who has entered into or works under a contract of employment;
- 'Disabled child' means a child who is entitled to a disability living allowance within the meaning of Section 71 of the Social Security Contributions and Benefits Act 1992;
- 'Employer' means the person by whom an employee is employed;
- 'Foster parent' means a foster parent within the meaning of Regulation 2(1) of the Fostering Servicing Regulations 2002 or Section 2(1) of the Fostering of Children (Scotland) Regulations 1996;
- 'Guardian' means a person appointed as a guardian under Section 5 of the Children Act 1989 or Sections 7 and 11 of the Children (Scotland) Act 1995;
- 'Partner' in relation to a child's mother, father, adopter, guardian or foster parent, means a person (whether of different sex or the same sex) who lives with the child and the mother, father, adopter, guardian or foster parent in an enduring family relationship but is not a relative.

What kind of changes can be applied for?

There is scope to apply for a wide variety of different types of working pattern. Eligible employees can request to:

- change the hours they work;
- change the times when they are required to work; or
- work from home (whether for all or part of the week).

A request may be as simple as asking to start half an hour later than usual to allow the employee to drop their child off at school. Or it may be a bigger change to their hours in order to better fit their work with their childcare requirements.

Reduced Hours Case Study

Mike, a tyre fitter, asks his manager if he can start an hour later each day. He accepts that this will mean a reduction in his pay.

In his application, he states that he has asked the other fitters working in the branch whether they would be able to manage, and they have no problems with this. Mornings are usually less busy than afternoons, and they believe they would be able to handle any eventualities that occur.

Mike's manager discusses the application with him and considers the circumstances carefully. He agrees the request.

Flexible working actually incorporates a wide variety of working practices. A flexible working arrangement can be any working pattern other than the normal working pattern in an organisation. Most people are familiar with working part-time for reduced pay or working different shift patterns. But other ways of working that employees may consider are outlined on the next page.

Ways of working

- *Annualised hours* describes working time organised on the basis of the number of hours to be worked over a year rather than a week; it is usually used to fit in with peaks and troughs of work. Pay will depend on the hours worked each pay period.
- *Compressed hours* allows individuals to work their total number of agreed hours over a shorter period. For example, employees might work their full weekly hours over four rather than five days. They would be paid for a full-time job but would not receive overtime payments for the agreed extra hours they work in any one day.
- *Flexitime* gives employees choice about their actual working hours, usually outside certain agreed core times. Individuals are paid for the hours that they work.
- *Homeworking* doesn't have to be on a full-time basis and it may suit an employee to divide their time between home and office. What individuals are paid for depends on the hours they work. Employers are required to carry out a risk assessment of the activities undertaken by homeworkers, identifying any hazards and deciding whether enough steps have been taken to prevent harm to them or anyone else who may be affected by their work. Further details are available from the Health and Safety Executive (www.hse.gov.uk).
- *Job-sharing* typically involves two people employed on a part-time basis, but working together to cover a full-time post. Both receive pay for the hours they work.
- *Shift working* gives employers the scope to have their business open for longer periods than an eight-hour day. Agreed flexible working arrangements may mean that a shift premium is not needed.
- *Staggered hours* allows employees to start and finish their day at different times. This is often useful in the retail sector, for example, where it is important to have a greater number of staff over the lunch period but less at the start and end of each day. Pay will depend on hours worked in total rather than the time at which they are worked.
- *Term-time working* allows employees to take unpaid leave of absence during the school holidays.

Business benefits: Reducing staff turnover

Kinderquest

With a staff turnover of 30%, Kinderquest, a nationwide workplace nursery provider, introduced work-life balance practices to help solve this difficult business problem. Denise Wren, Managing Director of the Northampton-based firm, explains: 'The problem is an increasingly tight labour market in an expanding business sector. In addition to this, the sector has traditionally always had a high rate of turnover, so recruitment and retention have always been major issues for us.'

Kinderquest set out to solve this problem by giving more flexibility, and ultimately more power of decision, to local nursery managers. Initially they ran a series of manager workshops to discuss the staffing issues and develop ownership and responsibility for solving these problems. At the centre of this was the concept of flexibility, as Denise explains: 'Many of our managers needed to shift their focus away from what potential recruits could not do – work full time for example – and concentrate of what skills and talents they could bring to the organisation.'

Nursery Manager Ginny Middleton says: 'We hadn't realised that senior management trusted us enough to let us go on and do things differently. None of this was forbidden before, but I guess too many assumptions were made about what was possible. The flexible options have given us the opportunity to recruit a more diverse workforce, for instance older people with different things to offer. And now even I am working four days a week – this was just not an option we had considered for nursery managers before.'

To date, Kinderquest has seen good results. 'It's too early to be conclusive' says Denise, 'but anecdotal evidence suggest that retention is much better, with turnover down to around 18-20%. The project has transformed the way nursery managers work; alongside reduced turnover, we are seeing more energy and enthusiasm which is fantastic.'

Section 3: Making an application

The main opportunity for the employee to set out their desired working pattern and arguments why it can be implemented is through their application when making a request. The initial onus is therefore on the employee to provide a written application to their employer well in advance of when the change is to take effect. This section explains the information that must be included for an application to be valid and the issues that the employee will want to consider in preparing their application.

Form FW(A): Flexible Working Application Form, which accompanies this guidance, may be used to make a request. Its use, however, is not mandatory. An application can be made in whatever form is most suitable to the employee. It may be through a letter to the employer, on a form provided by the employer, or via e-mail. **Form A**, though, will help the employee to ensure that all the necessary information is provided and avoids any delay. Irrespective of how an application is made, the following table lists all the points that must be covered in the application in order for it to be valid and for it to be considered by an employer:

Application checklist

An application under the right must:

- Be in writing (whether on paper, e-mail or fax).
- State the application is being made under the statutory right to request a flexible working pattern.
- Confirm the employee has responsibility for the upbringing of the child and is either: the mother, father, adopter, guardian or foster parent; or, married to or the partner of the child's mother, father, adopter, guardian or foster parent.
- Explain what effect, if any, the employee thinks the proposed change would have on the employer and how, in their opinion, any such effect might be dealt with.
- Specify the flexible working pattern applied for.
- State the date on which it is proposed the change should become effective.
- State whether a previous application has been made to the employer and, if so when it was made.
- Be dated.

What information should an application contain?

The level of detail required will depend on the desired changes to the existing working pattern. In all cases it is in the employee's interest to be as clear and explicit as possible.

The written application must state the date when the employee would like the new working pattern to start. The proposed date should allow time for the application to be considered and implemented. There is no set time but an employee can expect it to take around fourteen weeks or longer if a problem arises. The employee must also state their relationship to their child, e.g. they are the adoptive father of a child aged under six years old and should confirm that they have responsibility for their upbringing. They must also state if and when any previous application was made.

The application provides the employee with the opportunity to set out the reasons why their preferred working pattern is compatible with the needs of the business, as far as they are able to tell. It must therefore provide an explanation of what effect, if any, the employee thinks the proposed change would have on the employer and how they feel any such effect might be dealt with. For example, the employee may argue that arriving half an hour later will have minimal impact on the business as this is the quietest time of the day and they can make up the time during the lunch period when it is far busier. This does not mean that the employee is expected to know every factor that might influence the employer's decision. It simply means that they should show they have considered the factors that they are aware of that are likely to influence their employers decision. Evidence shows that applications for flexible working patterns succeed where they are soundly based on the business needs of the employer.

Altered hours case study

Emma, an assistant in a clothes shop asks the shop manager if she can change her working hours from 8am to 1pm to 10am to 3pm. In the application, the assistant states that early mornings in the shop tend to be the quietest time and the other two assistants who would be in at that time agree that they could cover this period. She also states that the lunch period is the busiest time and that her new working pattern would result in an increase in the number of customers who could be served.

After consideration, the shop manager agrees to the request and welcomes the fact that it will enable the business to better manage the busy lunch period.

Will the change of working pattern be permanent?

Any request that is made and accepted under the statutory right will be a permanent change to the employee's contractual terms and conditions (unless otherwise agreed). The employee has no right to revert back to the previous working pattern.

Points to bear in mind when making an application

The box below provides suggestions for employees of things to bear in mind when making an application.

How to help your employer consider your request

- A new working pattern will normally be a permanent change unless otherwise agreed. So think carefully about your request as you have no right to revert back to your former hours of work.
- Think about the date you when you would like your new working pattern to begin. Be aware that the process can take up to 14 weeks to complete, and sometimes longer where a problem arises.
- Clarify with your employer about how they like applications to be made. Your employer may have their own form. If you are unsure, use Form FW(A) accompanying this guidance.
- Remember, the more notice you provide your employer, the more likely they will be able to implement the change when it suits you. So once the application is complete immediately submit it to your employer.
- Remember, if you request a flexible working pattern that will result in you working fewer hours, your pay will reduce too.
- It is to your advantage to provide as much detail as possible about the pattern you would like to work.
- Take time to consider how your colleagues will manage if your working pattern is changed. If you have any colleagues or friends who are already working flexibly, ask them about their experiences.
- Think about what affect changing your working pattern will have on your job. You should aim to show in your application that your plans will not harm your employer's business and may in fact enhance it. It may mean that you are available to provide extra cover at peak hours, thereby improving customer service.

- Think about how any potential problems your plans may present to your employer could be overcome and ensure that you include these in your application. For example, it may mean that you will not be in work when the business opens. What effect will this have on the business, and how could it be managed?
- Check who will consider your application and ensure that you submit it to the appropriate person. If the person is absent it may be necessary to send it to an alternative manager.
- If you are due to go on maternity leave think carefully about when to make your request. You might wish to mention to your employer before you take leave that you are interested in applying to work flexibly on your return. Bear in mind that you may need to attend meetings with your employer so that your request can be properly considered. If you want the changes to start on your return from maternity leave, you should make your application in good time.

Section 4: Considering an application

The right places a legal duty on employers to consider all applications and establish whether the desired work pattern can be accommodated within the needs of the business. This is demonstrated through following a set procedure. A flowchart summarising the procedure is included on the inside cover to the guidance. This section explains the first step in the process, which is to arrange a meeting to discuss the request with the employee.

Summary

The meeting

- An employer must hold a meeting to consider the request within 28 days after the date an application is received.
- An employee can, if they wish, have another worker employed by the same employer to accompany them to the meeting.
- The employer must write to the employee informing them of their decision within 14 days after the date of the meeting.

The companion

- An employee has the right to bring a companion to the meeting.
- The companion must be a worker employed by the same employer.
- The companion can address the meeting or confer with the employee during it.
- The companion is not allowed to answer questions on the employee's behalf.
- If the companion is unable to attend the meeting, the employee should re-arrange the meeting for a date within seven days of the originally proposed time, ensuring the new time is convenient to all parties; or, consider an alternative companion.

How should an application be submitted and received?

An application will be considered to have been made on the day that it was received by the employer. For applications sent by e-mail or fax this is taken to be the day of transmission. For applications sent by post it means the day on which it would have been delivered in the ordinary course of post, unless shown to be otherwise.

How should an application be acknowledged?

It is best practice for the employer to acknowledge receipt of the request. An acknowledgement slip is included on the bottom of Form FW(A) which allows an employer to readily confirm the date on which the application was made. This is particularly important where there has been a delay in the application reaching the employer.

What happens if the application is incomplete?

If an employee fails to provide all the required information as set out in Section 3, the employer should inform the employee what they have omitted and ask them to re-submit the application when complete. The employer should also inform the employee that they are not obliged to consider the application until it is complete and re-submitted.

What happens at the meeting?

Experience shows that the best way for both parties to understand each other's position and identify a solution that suits them both is to hold a face-to-face meeting to discuss the request. The legislation requires the employer to arrange a meeting with the employee within 28 days after the application has been made. The meeting will provide both parties with the opportunity to discuss the desired work pattern in depth and consider how it might be accommodated. Both the employer and the employee should themselves be prepared to be flexible. If the original working pattern cannot be accommodated, the meeting also provides an opportunity to see if an alternative working arrangement may be appropriate. It may also be in the employer and employee's interests to agree that the new working pattern will take place for an agreed trial period in order to see how it would suit them both.

How to ensure you get the most from the meeting

Employer

You might want to:

- Make a list or draft an agenda of the issues you want to discuss at the meeting, e.g. if you are already aware that the request can be granted, you may want to discuss a suitable start date before formally accepting the request.
- Inform your employee of anyone you have asked to join the meeting.
- Ask your other workers if they would want to cover any extra hours that may be created as a result of granting the request.
- If you have a personnel section, speak to them so that you are clear about your options.
- Familiarise yourself with this guidance and the different types of flexible working.
- If it would be helpful to involve external expertise, be open to the proposition.

Employee

You should:

- Be prepared to expand on any points within your application.
- Prepare to be flexible. Your employer may ask if there are any other working patterns you would be willing to consider or if you would consider another start date or a trial period.
- If you are taking a companion along, make sure they are fully briefed on your request beforehand, provide them with a copy of your application, and inform your employer that a companion will be present. This will save time during the meeting.
- Familiarise yourself with this guidance and other sources of information on flexible working before the meeting.

The employer must ensure that the meeting is held at an appropriate time and place that is convenient to both parties. In most cases, this will probably be the usual place of work, but again, both parties should be prepared to be flexible about this. For example, if the employee is a mother who is about to return to work from maternity leave, it may be that she will find it difficult to travel to her workplace. In such circumstances, discuss the meeting place with her and consider whether there is an easier place to meet.

If it is difficult to arrange a meeting within 28 days after the application was made at a time and place convenient to all parties then the employer should seek the employee's agreement to extend the period. This is explained in detail in Section 6. Failure to hold a meeting within the 28-day period or any extension, without the employee's agreement, will be a breach of the procedure **(see Section 7 for more detail)**.

Home working case study

The manager of a company's sales department, who commutes to work each day, requests to work from home one day a week in order to care for her young child in the early evening. In the application, the manager states that she has asked other colleagues for their opinions, and they have no objections. She also explains that she has a computer with broadband Internet access at home, allowing her to readily stay in contact with the office.

Her employer weighs up the case against the business needs and agrees to accept the request. Both parties also agree to a trial period of twelve weeks after which they will decide whether the change should be permanent.

Can an employee bring a companion to the meeting?

The right allows an employee to be accompanied at the meeting by one companion if they feel this would help them. The companion must be a worker employed by the same employer. This can include a colleague or a trade union representative who works at any other premises which forms part of the business.

The role of the companion is to support the employee. For example, if the employee has not attended many meetings before, it is possible that they may be nervous. The presence of a colleague can therefore make the meeting more productive for the employer and the employee.

The companion may also have some expertise about different types of flexible working. Experience shows that the involvement of such an individual can be helpful to both parties. It can be valuable to allow the companion to be from outside of the organisation where their involvement would help reach an outcome acceptable to both parties, although there is no obligation for the employer to do this. The companion is able to address the meeting, and to confer with the employee during it, but they may not answer questions for the employee.

The employee should contact their companion as soon as they know the date of the meeting to ensure they are free. If the companion is unable to make the initial meeting, the employee must seek to rearrange the meeting for a time convenient to themselves, the employer and their companion. It should take place within seven days of the date of the initially proposed meeting. If this cannot be achieved, the employee should consider an alternative companion who can attend the meeting.

An employer must allow any of their workers to take time off during work hours to act as a companion. The employer must also continue to pay them for this time.

What happens if the employee fails to attend this meeting?

An employee who fails to attend the meeting without notification should contact the employer as soon as possible to explain their absence, and to allow the employer to rearrange the meeting at the next mutually convenient time. An employer whose employee fails to attend the meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the employer should write to the employee confirming that the application was now considered withdrawn. For further information about when an application may be taken as withdrawn see Section 6.

Business benefits: Boosting staff morale and commitment

Business GlaxoSmithKline, Slough

GlaxoSmithKline's base in Slough manufactures Horlicks powder for the UK and other global markets 24 hour a day, 7 days a week. The plant set about introducing flexibility throughout the factory not only to help with the work-life balance of individuals but also to ensure that the business is better placed to meet the challenges of the future.

GSK, Slough wanted to focus on ways to boost morale, reduce absenteeism and encourage individuals to take control of their work. Martin Swain, HR Manager at the site, says: 'The whole project has been about empowering employees and changing the whole culture of our organisation from top to bottom.'

One of the biggest changes at Slough has been the change in the way workers are paid. Previously, GSK Slough used a clocking-in system to determine people's pay and this caused problems with morale, as Martin explains: 'If you clocked on five minutes late, or clocked out five minutes early, you were automatically docked half an hour's pay. As clocking-off time approached, people who had finished all their work for the day would be standing around in reception waiting to leave. It took responsibility away from staff, undermined their personal pride and was driving the very culture we wanted to change.'

Now, when all work is finished the departmental manager is able to allow staff to go home early without losing pay. This change has established a new culture of 'give and take' at GSK Slough and enabled employees to take ownership of their working lives. For example, in one department the staff voluntarily worked till 4.30pm one evening, without asking for overtime, in order to get a job done. GSK Slough see this as a sign that their new approach is changing their working environment for the better.

Section 5: Considering a request – reaching a decision

Once the employer and the employee have discussed the request, the employer must notify the employee of the decision in writing. Notification must take place within 14 days following the date of the meeting. This section describes the steps that need to be taken whether the application has been accepted, remains unresolved or has been rejected. An application may only be refused where the employer has a clear business reason for doing so. Acceptable business reasons are listed in this section.

Summary

- The employer must inform the employee of their decision in writing within 14 days after the day of the meeting

If a request is accepted, the notification must:

- Include a description of the new working pattern.
- State the date from which the new working pattern is to take effect.
- Be dated.

If a request is rejected, the notification must:

- State the business ground(s) for refusing the application.
- Provide a sufficient explanation as to why the business ground(s) for refusal applies in the circumstances.
- Provide details of the employee's right to appeal.
- Be dated.

How should an application be accepted?

When accepting a request the employer must write to the employee:

- detailing the new working pattern;
- stating the date on which it will start, and
- ensuring the notice is dated.

Form FW(B): Application acceptance form can be used to confirm a new working pattern. The agreed new working pattern will be a permanent change to the employee's terms and conditions of employment, unless agreed otherwise. Where a trial period or time limited period has been agreed this should also be detailed in the written notice. When implementing the new working pattern other factors that the employer should bear in mind are detailed below.

How to action an accepted request

- Check whether you need to inform your personnel section, if present, of the new working pattern.
- Check to see if the employee's pay needs amending.
- Check if all health and safety requirements been satisfied. This might particularly be relevant where the employee is to work from home.
- Consider who else you need to inform, including other colleagues.

What happens if the employer needs more time to reach a final decision?

If the employer needs more time to come to a decision, they must obtain the agreement of their employee for an extension to the 14 days in which to inform them of the decision following the meeting. In these circumstances the proposal for an extension is likely to be in the employee's interests and the employee should be open to such requests. For example, following the meeting, the employer is willing to agree to the request in principle, but needs more time to look into certain aspects of the proposed new working pattern. This could occur where an alternative working pattern was identified during the meeting. In such circumstances, the employer will need to agree with the employee an extension of the time limit to deal with the request. This is covered more fully in Section 6.

How should an application be declined?

There will always be circumstances where, due to the needs of the business, the employer feels they are unable to accept a request. Form FW(C): Application rejection form is provided for refusing the request. In all such circumstances, the employer must in writing:

- state the business ground(s) why the request cannot be accepted;
- provide an explanation of why the business reasons apply in the circumstances;

- set out the appeal procedure; and
- ensure the written notice is dated.

What is a business ground?

An application can be refused only where there is a clear business reason. The business ground(s) for refusing an application must be from one of those listed below.

Business grounds for refusing a requets

- Burden of additional costs.
- Detrimental effect on ability to meet customer demand.
- Inability to reorganise 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.

How should the refusal be explained?

In addition to providing a specific business ground the employer must include an explanation about why the business ground applies in the circumstances. Experience shows that an employee who understands why a business reason is relevant will accept the outcome and be satisfied that their application has been considered seriously, despite being disappointed that their application has been refused. It also shows that the reverse is true, particularly if the explanation is not sufficient for understanding.

The explanation should include the key facts about why the business ground applies. These should be accurate and clearly relevant to the business ground. To prevent any uncertainty, the explanation should avoid the use of unfamiliar jargon and should be written in plain English.

An explanation of around two paragraphs will usually be sufficient, although the actual length of explanation necessary to demonstrate why the business ground applies will differ depending on each individual case. It is not a requirement for the

employer to have to provide a lengthy and complex explanation looking to cover each argument in fine detail, nor should the employee expect this. The aim is for the employer to explain to the employee, in terms that are relevant, why the requested working pattern cannot be accepted as a result of the business ground applying in the circumstances. If the argument does not look convincing to the employer it is unlikely to look convincing to the applicant. This is a vital stage in the constructive dialogue that maintains a good relationship between both parties.

How to ensure that the explanation accompanying the business grounds is sufficient

Double check that the explanation:

- Says why the business ground is relevant and why the request cannot be accepted.
- Keeps to plain English and avoids the use of unfamiliar jargon.
- Includes relevant and accurate facts.
- Is not overly complex or unnecessarily long.

An example might be a manager in a small firm manufacturing curtains who receives a request from an employee to not work Thursdays. The manager rejects the request, as the weekly fabric delivery is received on Thursday, and preparations begin for the following day's despatch of customer orders. The explanation might say:

'I am sorry that I cannot grant your request to change the days that you work, but to allow you to not work on a Thursday would have a detrimental effect on the performance of the business.'

Thursday is our busiest day of the week, when all staff are required to ensure that the machinists can continue making curtains while stock is received, and finished curtains are packaged ready to be despatched the following morning. You are aware that on a Thursday morning we receive our weekly delivery of fabric. This requires the involvement of all staff to help move the material from the delivery bay into the storeroom, before the newly made curtains can be prepared for despatch the following morning.'

As I indicated when we met to discuss the application, if you decide to change the day you would prefer not to work to one earlier in the week, then I would be happy to reconsider your application'.

Further examples of appropriate explanations can be found in Annex A.

Any facts quoted in the explanation must be accurate. It is not a necessity for the employer to provide the detail in the explanation, but they should ensure that they are able to back up any facts should they be subsequently disputed. A decision based on incorrect facts to reject an application would provide an employee with a basis to make a complaint to an employment tribunal.

A tribunal does not have the power to question the employer's business reasons for declining a request, but they will want to see evidence of any facts relied upon to reject the application and that the employer has provided the employee with sufficient explanation as to why the business ground applies to the application. The employee in the above example might at appeal argue they can recall instances of when curtains have been despatched at the beginning of the week. In such circumstances the employer will need to address this during the appeal, which might be

> *'During our discussion of your appeal yesterday you said you could recall an occasion last month when the curtains were despatched on a Monday and that it was therefore unfair to base my decision on the fact that everyone had to be in on a Thursday to prepare the weekly despatch of newly made curtains. I explained that you were absolutely correct about the delayed despatch last month, which resulted from the unusual occurrence of the delivery lorry breaking down. But, from the record book that I showed you it was clear this was the only occasion during the past six months when the curtains were not despatched on a Friday'.*

Further information on when an employee may have a right to pursue their application, including making an appeal or complaint to an employment tribunal, can be found at Section 7.

What happens at the appeal meeting?

It will never be possible for an employer to agree to a new working pattern in every circumstance due to the business needs of the organisation. In such circumstances, the reasoning why the request cannot be accepted should be clear to the employee from the notice of the refusal, which must include the business reason and an explanation. But there will be circumstances where the employee may believe that their request has not been properly considered and may want to appeal. The appeal procedure is summarised opposite.

Appealing the decision:

- An employee has 14 days to appeal in writing after the date of notification of the employer's decision.
- If an appeal is made, the employer must arrange an appeal meeting to take place within 14 days after receiving notice of the appeal.
- The employee can be accompanied.
- The employer must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting.

An employee must make their appeal in writing within 14 days after the date they receive written notice that their request has been rejected. When appealing against a refused request an employee will have to set out the grounds for making the appeal and ensure that it is dated.

There are no constraints on the grounds under which an employee can appeal. It may be that they wish to bring to attention something the employer may not have been aware of when they rejected the application, e.g. that another member of staff is now willing to cover the hours the applicant no longer wishes to be work. Or it may be to challenge a fact the employer has quoted to explain why the business reason applies.

The employer must arrange the appeal meeting within 14 days after receiving notification that the employee wishes to appeal. The employee can be accompanied by one companion. This is on the same basis as the meeting to discuss the request and detailed in Section 4. There are no restrictions on who should hold the appeal meeting. Experience shows that an employee is far more likely to feel that their appeal has been taken seriously when a manager senior to the one who originally considered the application hears it. This is not always necessary, nor possible for many small businesses.

The employer must inform the employee of the outcome of the appeal in writing within 14 days after the date of the meeting. **Form FW(E): Appeal Reply Form** has been provided for this purpose.

If the appeal is upheld the written decision must:

- include a description of the new working pattern;
- state the date from which the new working pattern is to take effect; and
- be dated.

If the appeal is dismissed the written decision must:

- state the grounds for the decision. These will be appropriate to the employee's own grounds for making the appeal;
- provide an explanation as to why the grounds for refusal apply in the circumstances. The same principles apply as to what is a sufficient level of explanation at appeal as the amount of explanation that should be given following the initial decision; and
- be dated.

A written notice of the appeal outcome constitutes the employer's final decision and is effectively the end of the formal procedure within the workplace.

Appeal case study

A telephonist asks her line manager in a large call centre if she can work three evenings a week from 5pm to 9pm rather than five evenings a week. After the initial meeting, the line manager rejects the request on the grounds that it would not be possible to re-allocate work amongst existing staff and the difficulty of recruiting new staff to cover those shifts.

However, at the appeal meeting, the employee informs her line manager that a colleague currently on maternity leave wishes to return for a couple of evenings a week. She adds that she has spoken to the woman and they would both be willing to undertake a job share.

The employer explores the proposal with the other employee and subsequently agrees to accept the request.

What happens when the appeal meeting is missed?

The circumstance where the employee misses the appeal meeting should be handled in the same way as for an employee who misses the meeting to discuss the application, as described in Section 4. An employee who fails to attend the meeting without notification should contact the employer as soon as possible to explain their absence. The employer should rearrange the meeting at the next mutually convenient time. An employer whose employee fails to attend a meeting more than once and does not provide a reasonable explanation may treat the application as having been withdrawn. In such circumstances, the employer should write to the employee confirming that the application was now considered withdrawn. For further information about when an application may be taken as withdrawn see Section 6.

Business benefits: Reducing absenteeism

Nexus

Nexus, the Tyne and Wear Passenger Transport Executive. with over 1,000 employees, sees improved working patterns and conditions as a great way of attracting and retaining a diverse workforce – especially in a sector where it is difficult to compete with monetary rewards alone.

Nexus consulted its staff to ensure the opportunities it wanted to offer were the right ones, and then introduced work-life balance practices, such as automated flexitime, alongside a series of workshops covering stress management, career development and work-life balance, to help staff identify their needs and find solutions.

Training and Development Manager Amanda Form, highlights the effect of this initiative: 'Before the work-life balance workshop, many of us felt that working long hours was essential to being a high performer. You felt guilty if you left work on time, but at the workshop we were able to talk through these feeling with senior managers. As well as being made aware that tired workers don't work at their best, it was also highlighted that the decision to work late was a personal decision and it was our responsibility to take control of the situation and talk to managers to find a solution.'

Since introducing work-life balance practices, Nexus has seen some impressive results. During the first half of 2001-2 staff turnover rates fell from 7.3% to 4.1%. Nexus is also on track to see a significant decrease in the rate of sickness absence, which has traditionally driven high levels of costly overtime.

Section 6: Exceptions to the procedure and withdrawals

In the majority of cases, requests for flexible working will follow the procedure as laid out in the previous sections. However, there will be occasions where it is necessary to deviate from this to help reach a suitable outcome. This section outlines the potential exceptions to the procedure and when an application may be taken as withdrawn. In all circumstances it is essential that a written record is made.

Extension of time limits

There are two circumstances where the time limits as laid out in previous sections can be extended:

Through agreement by the employer and the employee

There will be exceptional occasions when it is not possible to complete a particular part of the procedure within the specified time limit. For example, it might be that the employer requires extra time to speak to another employee, who is on holiday, about whether they could work the hours left uncovered by the employee's requested working pattern. Or the employee themselves may be going on leave and as such will not be able to attend a meeting within the time limit. Such extensions of time limits can only take place if they are agreed by both the employer and the employee. The employer must make a written record of the agreement. Form (FW)F: Extension of Time Limit can be used for this purpose.

The written record of the agreement must:

- Specify what period the extension relates to;
- Specify the date on which the extension is to end;
- Be dated; and
- Sent to the employee.

Through the employer's absence

Where an application is sent to the manager who will deal with the application and the manager is absent from work due to leave or illness, an automatic extension applies. The period that the employer has to arrange the meeting will commence either on the day of the manager's return or 28 days after the application is made, whichever is sooner. On a manager's return it will be best practice to acknowledge receipt of the application so the employee is aware that the extension has applied and the period when they can expect to meet their employer to discuss the request.

There are no other circumstances where an automatic extension to any period applies.

Extension of time limit case study

A stylist in a small hairdressing salon asks to change the number of days she works from five to three in order to care for her child. The manager of the salon would like to accept the request, and is almost certain that another stylist would be willing to cover the hours, as she had recently asked about taking on more work. However, that stylist is currently on holiday and the manager would like to double-check her availability before officially accepting the request.

He therefore completes the Form FW(F): Extension of Time Limit asking the stylist to agree to an extension of fourteen days until her colleague returns from annual leave.

When can an application be treated as withdrawn?

There will also be occasions when an application is treated as withdrawn. In all circumstances a written record must be made. Form FW(G): Notice of Withdrawal has been provided for this purpose.

There are three reasons why an application may be treated as withdrawn:

The employee decides to withdraw the application

An employee who withdraws their application will not be eligible to make another application for 12 months from the date their application was made. This will therefore be a factor the employee will want to bear in mind when considering withdrawing their application. Where the employee decides to withdraw their application, they should notify their employer as soon as possible and in writing. This is essential to avoid any misunderstandings and Form FW(G): Notice of Withdrawal can be used for this purpose.

An employer who is informed verbally that the application is withdrawn by the employee but does not subsequently receive written confirmation should contact the employee to confirm their intentions. Where the employer does not receive confirmation from the employee, the employer should confirm the withdrawal in writing.

The employee fails to attend two meetings

In cases where an employee misses two meetings without reasonable cause, the employer may treat the application as withdrawn. It is therefore in the employee's best interests to inform their employer as soon as possible if and why they are not able to attend a meeting. For example, if an employee misses a meeting for a reason such as their child falling ill and informs the employer straight away, the employer should treat this sympathetically. However, if an employee simply misses a meeting and does not explain why, then they can expect their absence to be treated less sympathetically. The employer should warn the employee that they risk their application being treated as withdrawn if they miss another meeting without reasonable cause when rearranging the meeting.

The employee unreasonably refuses to provide the employer with the required information

There may be occasions where the employer is willing to accept a request for flexible working, but requires the employee to provide them with certain information before they can do so. If an employee unreasonably refuses to provide the employer with the information, then the employer can treat the application as withdrawn. For example, an office worker may request to work from home three days a week and the employer may wish to ensure their working space meets health and safety standards. If the employee refuses to comply with this, the employer may treat the application as withdrawn.

Section 7: Unresolved applications

Most applications will conclude with a satisfactory outcome either when the employer gives their decision or at appeal. But there will always be some cases, even after an appeal, where an employee feels their application has not been dealt with to their satisfaction. The employee may want to involve a third party or be thinking of making a complaint to an employment tribunal. This section outlines the options available.

How to deal with an unresolved application

- Through an informal discussion.
- The employer's grievance procedure.
- Third party involvement, e.g. an Acas official, union representative.
- In specific circumstances, making a formal complaint to the Acas Arbitration Scheme or an Employment Tribunal.

Speak to the employer informally

In the first instance, it is likely to be in all parties' interests to try to resolve the problem within the workplace. Evidence shows that the quickest and most effective way for an employee to resolve an issue is to speak with their employer.

It may be that there has been a simple misunderstanding of the procedure, which the employee believes affected the employer's decision. If the employee feels able to discuss this with the manager, the issue may be resolved without the need to resort to more formal mechanisms. For example, where a time limit has not been met in the first instance it may be far more effective to speak to the manager and inform them that they need to reply as soon as possible due to their breach, rather than seek to pursue the matter to an employment tribunal.

Employer's own grievance procedure

Many employers have their own grievance procedure which the employee might use to seek resolution of their complaint. Again, this has the advantages of being far quicker than looking to involve external parties and allows the issue to be resolved at the workplace.

Third party conciliation/mediation

Despite the best efforts of both parties there will be cases where it may not be possible to resolve a disputed request at the workplace but neither is there a desire to pursue the application through a formal avenue such as an employment tribunal. In such circumstances, both parties can agree to try to resolve the issue through the use of an external third party mediator or conciliator. This might be someone from Acas, a union representative, or another person with appropriate expertise, perhaps known through the local Business Link organisation. The purpose is to try to resolve the case in an informal fashion instead of immediately resorting to the more formal route of external arbitration or making a complaint to an employment tribunal.

The third party will tend to contact the employer and employee and attempt to resolve the problem through discussion. They will talk through the issues surrounding the issue, outline the law relating to the case where necessary and generally help parties become aware of the options open to them.

External parties providing the remedy

If a dispute cannot be resolved between the parties in specific circumstances the case can be heard by an external body who provide the remedy to the disagreement: either an employment tribunal or through the Acas Arbitration Scheme.

In what circumstances can a formal complaint be made?

An employee may make a complaint to an employment tribunal or Acas arbitration where:

- the employer has failed to follow the procedure properly; or
- the decision by the employer to reject an application was based on incorrect facts.

An employee has no right to make a complaint where they simply disagree with the business grounds provided by the employer for declining a request, and neither has the employment tribunal/Acas binding arbitration powers to question the employer's business reasons.

A breach of the procedure may, for example, be a failure to hold the meeting to discuss the application within the timescale (where no extension has been agreed) or where the employer fails to provide all the necessary information in their notice to the employee of their decision. Missing a deadline as laid out in the procedure by one day will technically constitute a breach, although in the vast majority of cases where this is simply an accident the problem should be resolved at the workplace.

Equally, it is important that the employer ensures that facts provided to explain why a business ground applies are correct. While a tribunal or arbitrator has no power to question the employer's actual business grounds for declining a request, any rejection based on incorrect facts will provide a basis for making a complaint. Where an employee suspects that a fact is incorrect they must first raise this at appeal. For example, an employee may appeal by arguing against the employer's grounds that there is no-one else to provide cover in their absence, which if not addressed by the employer at appeal could be a basis for making a complaint to a tribunal or arbitrator. Apart from breaches of procedure relating to the failure to meet deadlines in respect of the meeting to discuss the application or the appeal hearing; or notice of the decision on the application or on appeal, the employee cannot make a complaint to an employment tribunal unless they have received notification that their application has been rejected on appeal.

Remedies and compensation

An employment tribunal or Acas binding arbitration, which finds in favour of the employee, will be able to order the employer to:

- reconsider an application by following the procedure correctly; and/or
- pay an award to the employee.

The level of compensation will be an amount that Acas or the employment tribunal feels to be just and equitable in all the circumstances, limited to a maximum amount. The maximum level is eight weeks' pay. The week's pay itself will be limited to the maximum provided under Section 227 of the Employment Rights Act 1996. This is reviewed annually and at 1 February 2004 was £270.

In addition, where an employer is found to have prevented the employee from being accompanied either at the meeting to discuss the application or appeal meeting they may make a separate award of up to two weeks' pay. Again, the week's pay is capped, as set out above.

What is an employment tribunal?

Taking a complaint to an employment tribunal is always a last resort. A tribunal is a formal, legal, public hearing and generally has three members. The 'Chairman' is legally qualified and there are two lay members drawn from people dealing with work-related problems.

The complaint should normally be made within three months of the breach of procedure, or of the detriment or dismissal. Where the detriment is suffered due to the employer's failure to act, the complaint should be made within three months of the failure to act.

An extension to this time limit can be granted only in exceptional circumstances, where the employment tribunal is satisfied that it was not reasonably practicable for the complaint to have been made earlier.

An employee who wishes to make a complaint to an employment tribunal should obtain a copy of the explanatory leaflet *How to apply to an employment tribunal* which contains a copy of the application form IT1. The leaflet explains the procedure and gives the address of the employment tribunal office to which the completed form should be sent. The booklet is available from Jobcentre Plus/Social Security offices, Citizens Advice Bureaux, from DTI Publications Orderline on **0870 1502 500**, or from the Employment Tribunals Service website (www.ets.gov.uk).

When the employment tribunal office receives the completed form, it will send a copy to a conciliator at Acas who will try to help the two sides to reach a settlement of the complaint.

If the conciliation is not possible or fails, the employment tribunal will hear the case and both parties should attend the hearing. They may claim travelling expenses and other expenses within certain limits.

What is the Acas Arbitration Scheme for flexible working?

The Acas Arbitration Scheme provides an alternative to going to an employment tribunal hearing in order to discuss a case relating to flexible working. It provides employees with a choice to having their complaint settled at tribunal, as some people find employment tribunals have become too legalistic, costly and time-consuming.

Use of the scheme is entirely voluntary and both the employer and the employee must agree to the dispute going to arbitration. Where both parties agree to use the scheme, the decision of the arbitrator is binding and the employee waives their right to go to an employment tribunal. The basis for making a complaint to the scheme, and potential remedies available, including compensation, are exactly the same as they are at an employment tribunal. For more information on the scheme please see www.acas.org.uk

The following table provides a breakdown of the main differences between the Acas Arbitration Scheme and an employment tribunal hearing:

How to decide whether to use an employment tribunal or the ACAS scheme

Employment Tribunal	Arbitration Scheme
Likely to have to wait several weeks and possibly months before the case can be heard.	Hearing can be arranged within a few weeks.
Public hearing held at an employment tribunal office.	Private hearing held in such places as an Acas office or a hotel.
Hearing normally completed within a day.	Hearing normally completed within half a day.
Heard by a legally qualified Chair usually along with a panel of two other members.	Heard by a single Acas arbitrator who is experienced in employment relations and flexible working.
Witnesses cross-examined under oath as in a courtroom.	Asked questions informally by the arbitrator.
Legal representatives act for the parties in a large number of cases.	Legal representatives may be present but are given no special status.
If the rejection/refusal is judged unfair the remedies may be re-consideration or compensation.	Same as tribunal – the awards are based on same criteria and reflect the same levels of payment.
Hearings and results are public.	Hearings and results are confidential.
Can jointly hear other claims (e.g. Sex Discrimination Act).	Not able to hear other claims.

Section 8: Protection from detriment and dismissal

Employees are protected from suffering a detriment or dismissal for making an application under the right. Employees who believe they have suffered detriment can complain to an employment tribunal (see Section 7) regardless of their length of service. In most cases, employees will be able to make a complaint to an employment tribunal if they are dismissed during the procedure of making an application.

What protection is there against detriment for requesting flexible working?

An employee is protected against being subjected to detriment by any act or deliberate failure to act by their employer because:

- Their application to work flexibly has been granted.
- They made an application to work flexibly under the right.
- They have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly.

Detriment can cover a wide range of forms of unfair treatment, such as denial of promotion, facilities or training opportunities which the employer would otherwise have offered or made available.

Employees who suffer unfair treatment at work for the above reasons may make a complaint to an employment tribunal.

In what circumstances is an employee protected from dismissal under the rights?

Dismissal means the termination of employment by the employer, with or without notice. It could also include constructive dismissal, where the employee has resigned because the employer has made a substantial breach of the contract of employment indicating that he or she intends no longer to be bound by it. Or, it could include the expiry of a fixed-term contract without its renewal or the end of a contract that expires when a specific task has been completed.

It is unlawful for an employer to dismiss an employee because:

- their application to work flexibly has been granted;
- they made an application to work flexibly under the right; or
- they have made or have stated their intent to make a complaint to an employment tribunal in respect of their application to work flexibly.

This protection against dismissal also applies if an employee is selected for redundancy on these grounds.

Section 9: How the right works with other legislation

The right to request is designed to enable employers and employees to find flexible working solutions that suit them both. The right encourages dialogue and allows a lot of flexibility in how to consider a request whilst requiring employers to follow a basic procedure. Failure to follow the procedure or basing a refusal on incorrect facts will provide the employee with a basis to take their case to an employment tribunal. Other legislation that employers should be aware of when considering requests is outlined below.

If an employee feels that a disputed request also breaches other legislation, it will be possible for both matters to be heard jointly at an employment tribunal. It will not be possible for these cases to be dealt with under the Acas Arbitration Scheme. The following section outlines how the various areas of legislation operate.

Discrimination legislation

Sex discrimination

The Sex Discrimination Act prohibits direct and indirect discrimination. Direct discrimination occurs where a woman or a man is treated less favourably than a person of the opposite sex in comparable circumstances because of their sex. Types of sex discrimination include sexual harassment and treating a woman adversely because she is pregnant.

In dealing with requests for flexible working indirect discrimination is more likely to occur. To establish an indirect discrimination claim, an employee will need to show that it:

- is such that it would be to the detriment of a considerably larger proportion of women than of men;
- the employer cannot show to be justifiable irrespective of the sex of the person to whom it is applied; and
- is to her detriment.

The Equal Opportunities Commission (www.eoc.org.uk) can provide detailed information on sex discrimination.

Racial discrimination

The Race Relations Act makes it illegal to treat a person less favourably than others on racial grounds. It covers grounds of race, colour, nationality (including citizenship), and national or ethnic origin. Further information can be obtained from the Commission for Racial Equality (www.cre.gov.uk).

Disability discrimination

The Disability Discrimination Act makes it unlawful to discriminate against employees on the grounds of disability or to treat them less favourably, without justification, for a reason related to their disability. Further information can be obtained from the Disability Rights Commission (www.dre-gb.org/drc/default.asp).

Part-time workers discrimination

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations make it unlawful to treat part-timers less favourably in their contractual terms and conditions than comparable full-timers.

This means that when granting a request for flexible working that involves a reduction in hours, employers should be aware that their employees are still entitled to the same consideration in respect of training, promotion and financial issues. Further information is available at www.dti.gov.uk/er/pt-detail.htm

Re-examination of the business grounds

It is worth noting that if a case is brought jointly with other legislation, this is the only time that an employment tribunal may seek to re-examine the business grounds. This is due to the fact that existing legislation requires business cases to be objectively justified or to be within a range of reasonable responses. The fact that an employer has sought to establish a business case, and has held meetings under the duty to consider, should help in establishing whether the decision could be objectively justified.

Annex A: What is sufficient explanation?

Where there is a recognised business ground that prevents an employer from being able to accept an application, the employer must include an explanation as to why it applies in the circumstances as part of their written decision provided to the employee. What constitutes an appropriate level of explanation is set out in Section 5 and detailed below are examples of the explanation in different circumstances.

Example 1

Sasha, a systems administrator for a small IT company applies to change from working weekends to her existing days off in the week. Sasha has recently participated in an extensive training programme to undertake the role. The systems administrator role includes undertaking maintenance of the computer system to ensure that all IT equipment is working fully during trading hours.

Her manager discusses the request with Sasha but is unable to agree to a change to the days when Sasha is required to work. When stating the business grounds she includes *inability to recruit additional staff* and the *burden of additional costs* within the explanation about why the grounds apply in the circumstances.

> *"…The role of the weekend administrator is vital to the running of the company. It is essential that the IT equipment is operational from the moment staff arrive on a Monday morning and maintenance occurs out of our core hours. You are aware of the difficulties that we have had during the past year of filling the Systems Administrator posts. The vacancy was advertised twice (at the job centre and in trade press) and on both occasions no suitable applicant was found.*
>
> *You subsequently expressed an interest and agreed to receive the necessary training. We discussed at the time that a necessary part of the job was to fulfil the weekend systems administrator's duties. It was on this basis that I made the case to our board to invest substantially more on training this year than was planned and, specifically, to fund your course. The training programme was extensive and completed only last month. As such, we do not presently have the budget or resources to train anyone else. When we met to discuss your application I agreed to also speak to John, our other administrator, to explore whether he can change his hours but he is unable to help.*
>
> *I am therefore afraid on this occasion I am unable to amend your working hours. I have attached details of the appeal procedure should you wish to appeal."*

Example 2

Colin, a pharmacist makes an application to the owner of a chemist if he can amend his hours so that he can drop off and collect his child from school. At the meeting to discuss the request the owner explains that it is a legal requirement for a pharmacist to be on duty at all times. In his written decision the employer states that due to the business ground of an *inability to reorganise work* amongst existing staff he is unable to accept the request.

> *"…because we handle prescriptions we are contracted by the NHS to provide a dispensing service between 8:30 and 5:30 each day. Despite both dispensers being prepared to cover your absence, by law I must have a qualified pharmacist on duty between these times. The only other weekday pharmacist is Sam who works part-time over the busy lunch period and does not want to change his hours of work.*
>
> *You suggested during our discussion that I could make use of locum pharmacists to cover the periods when you would be absent, in the same way that I use locum pharmacists during periods of leave. I explored this with the locum agency and, as I speculated during our discussion, they confirmed that it is unlikely that a locum pharmacist would be willing to work for an hour in the morning and at the end of the day. As such, the agency said that they could not guarantee cover.*
>
> *I regret therefore that I cannot agree to the work pattern set out in your application. You do have a right to appeal this decision which is set out below."*

Example 3

Emma, an employee at a fish and chip shop applies to work on a Monday and Tuesday instead of Thursday and Friday. The employer provides *insufficiency of work during the period the employee proposes* to work as the business ground for not being able to agree to the request.

> *"…as you know Thursday and Friday are two of our busiest days of the week. Only Saturdays are busier. It is during this busy time when I need extra people to help out in the shop. However, at the beginning of the week, the shop is relatively quiet and as such, I do not need extra staff at this time.*
>
> *I am therefore afraid that I am unable to agree to your request. You do have a right to appeal this decision and details are attached."*

Annex B: The Work-Life Balance Campaign

The Work-Life Balance Campaign aims to persuade companies to introduce ways of working which meet the needs of the business and its customers while simultaneously improving the work-life balance of their employees.

The campaign, which was launched by the Prime Minister in March 2000, is directed at employers in the public, private and voluntary sectors and is intended to benefit all employees whether or not they have caring responsibilities. It aims to convince employers of the case for change by demonstrating what other employers have done and the benefits that they have seen, and also offers support to businesses to help them introduce change. The campaign is not prescriptive, but instead encourages employers to implement policies and practices over and above the legal requirements that benefit their business and help their employees better manage their responsibilities both inside and outside the workplace.

The Work-Life Balance Challenge Fund played a central role in the campaign from 2000 to 2003. The fund provided £10.5 million (including £4.5 million from the European Social Fund) over three years (2000-2003) in consultancy support for employers to introduce and develop innovative working patterns and practices. All projects measure the business benefits in terms of financial savings, improvement in staff retention, reduction in absence and benefit to the employees. Other project-specific measures focused on such issues as improving recruitment and customer service. A total of 400 employers, representing nearly 1.2m employees, received support through the fund. The average funding per project was £27,000.

The work of the fund has now been main-streamed by being incorporated into DTI's Business Support, which is the gateway to DTI's assistance to companies.

Further details of the Business Support can be found at *www.dti.gov.uk*

Annex C: Where to find further information

(i) Acas (Advisory, Conciliation and Arbitration Service):

Helpline number: 08457 47 47 47, **Website:** www.acas.org.uk

Interactive guidance on employment rights (including employer and employee guidance on maternity, paternity and adoption rights) at www.tiger.gov.uk

Acas main offices

London

22/23 Floors, Euston Tower, 286 Euston Road, London NW1 3JJ

East of England

Ross House, Kempson Way, Suffolk Business Park, Bury St Edmunds, Suffolk IP32 7AR

East Midlands

Lancaster House, 10 Sherwood Rise, Nottingham NG7 6JE

West Midlands

Warwick House, 6 Highfield Road, Egbaston, Birmingham B15 3ED

North West

Commercial Union House, 2-10 Albert Square, Manchester M60 8AD Pavilion 1, The Matchworks, Speke Road, Speke, Liverpool L19 2PH

North East

Cross House, Westgate Road, Newcastle upon Tyne NE1 4XX

Scotland

151 West George Street, Glasgow G2 2JJ

South West

Regent House, 27a Regent Street, Clifton, Bristol BS8 4HR

South East

Suites 3-5, Business Centre, 1-7 Commercial Road, Paddock Wood, Kent TN12 6EN
Westminster House, Fleet Road, Fleet, Hants GU51 3QL

Wales

3 Purbeck House, Lambourne Crescent, Llanishen, Cardiff CF14 5GJ

Yorkshire and Humberside

Commerce House, St Alban's Place, Leeds LS2 8HH

(ii) Department of Trade and Industry (for more information on employment rights):

Websites: www.dti.gov.uk, www.dti.gov.uk/workingparents

Publications Orderline: tel: 0870 1502 500
Website: www.dti-gov.uk/publications

(iii) Department of Work and Pensions (for more information on benefits available to expectant mothers and families):

Website: www.dwp.gov.uk

(iv) Other useful organisations

Childcare Link
(freephone helpline for childcare information)
Tel: 08000 96 02 96

Community Legal Service
Tel: 0845 608 1122
Website: www.justask.org.uk

Commission for Racial Equality
St Dunstan's House, 201-211 Borough High Street, London SE1 IG7
Tel: 020 7939 0000
Website: www.cre.gov.uk

Disability Rights Commission
Freepost MID 02164, Stratford-upon-Avon CV37 9BR
Tel: 08457 622 633
Website: www.drc-gb.org/drc/default.asp

Employment Tribunals Service enquiry line
(advice on employment tribunals procedure):
Tel: 0845 795 9775
Website: www.ets.gov.uk

Equality Direct
(for queries from employers on equality issues in England)
Tel: 0845 600 3444
Website: www.equalitydirect.org.uk

Equal Opportunities Commission (EOC)
Arndale House, Arndale Centre, Manchester M4 3EQ

EOC helpline: 08456 015901
Website: www.eoc.org.uk

EOC (Scotland)
St Stephen's House, 279 Bath Street, Glasgow G2 4LJ

EOC (Wales)
Windsor House, Windsor Lane, Cardiff CF10 3GE

Fathers Direct
Herald House, Lambs Passage, Bunhill Row, London EC1Y 8TQ
Website: www.fathersdirect.com

Health and Safety Executive (HSE)
(for information on safety issues involved in homeworking)
HSE Infoline, Caerphilly Business Park, Caerphilly, CF83 3GG
Tel: 08701 545500
Website: www.hse.gov.uk

Low Pay Unit
(for advice on employment rights)
Advice line: 020 397 2522
Website: www.lowpayunit.org.uk

Maternity Alliance
(information and advice on all aspects of maternity and parental rights and benefits)
Advice line: 020 7588 8582
Website: www.maternityalliance.org.uk

Parentline
(confidential freephone helpline run by Parentline Plus, providing support to families)
Tel: 0808 800 2222

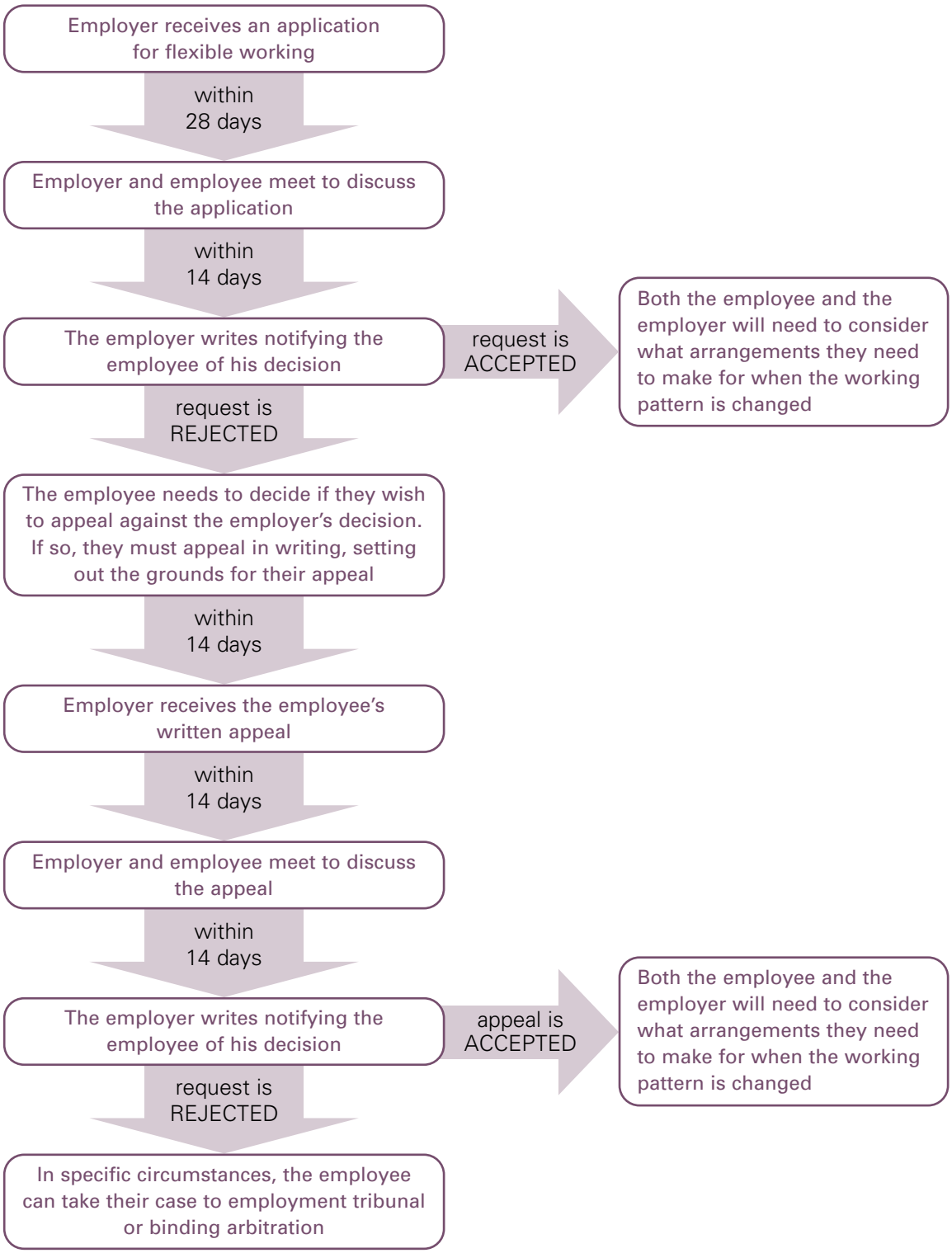
Tax Credits helpline
Tel: 0845 300 3900
Textphone: 0845 300 3909

Tommy's the baby charity
(information and advice on pregnancy health matters)
Tel: 08707 707070
Website: www.tommys.org

Working Families
1-3 Berry Street, London EC1V 0AA
Website: www.workingfamilies.org.uk

Annex D: Summary flowchart of process

How does the process work?



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