

## FLEXIBLE WORKING POLICY

<b>Contents</b>	<b>Page</b>
1. Introduction	2
2. Context	2
3. Benefits	2
4. Flexible working procedure	3
5. Flexible working options	3
6. Other types of flexible working arrangements	4
Appendix 1 - Flexible working procedure	5
Appendix 2 - Request form	9
Appendix 3a - Invite to meeting with head teacher	11
Appendix 3b - Outcome following meeting with head teacher	12
Appendix 3c - Invite to appeal hearing	13
Appendix 3d - Outcome following appeal hearing	14

## **FLEXIBLE WORKING FOR SCHOOL STAFF**

### **1. Introduction**

This section of the HR Guidance for Schools describes the routes by which employees and schools can seek more flexible working arrangements. The right to formally request flexible working arrangements was introduced into UK legislation through the Employment Act, the Flexible Working Regulations and the Children and Families Act 2014. Government legislation has strengthened the rights of employees to manage their work and non-work priorities and there are growing expectations on employers to adopt "family friendly" working practices and policies. Before 30 June 2014 the right to apply for flexible working only applied for the purpose of caring for a child or adult, now any eligible employee can apply to work flexibly for any reason (see appendix 1, paragraph 3).

All employees may apply for a flexible working pattern and employers are obliged to fully consider any application for flexible working and not to unreasonably refuse the application. Employers must follow a specific procedure; the attached Flexible Working procedure relating to staff in schools ([Appendix 1](#)) gives detailed guidance on this. A form for employees to apply for flexible working is given in ([Appendix 2](#)).

### **2. Context**

This policy is recommended for adoption by all Nottinghamshire schools, including: Community Schools, Voluntary Aided and Voluntary Controlled Schools, Academy Schools, Foundation and Trust Schools. Due to the complexities of this area of employment law, governing bodies are strongly advised to adopt this policy without amendment. If an academy or other school outside the control of Nottinghamshire County adopts this policy, references to the council as the employer will need to be replaced by the name of the employing body/trust. These procedures have been agreed with the Recognised Trade Unions through the Joint Consultative Panel process and meet legislative requirements. Any governing body which decides not to adopt the Flexible Working Procedures will need to undertake formal consultation collectively with all of the secretaries of the Recognised Trade Unions and confirm any amendments to the local authority. Governing bodies are advised to seek HR advice in these circumstances.

Article 6 of the Education (Modification of Enactments Relating to Employment) Order 2003 provides for a governing body to be the respondent in relation to any application to an Employment Tribunal arising from alleged discrimination. In law, the Local Authority remains the employer for community and voluntary controlled schools, and will therefore be primarily responsible for the payment of any compensation order by an Employment Tribunal in respect of a finding relating to a complaint about discrimination. However, where it is reasonable to do so, the Local Authority is empowered to deduct such compensation from the school's budget. It is unlikely that the Local Authority would wish to adopt such a course of action provided that the governing body has sought and followed advice given by the NCC HR Service and not acted contrary to law or in some other way failed to observe their agreed procedures.

### **3. Benefits**

Flexible working arrangements should benefit the employee without any detriment to the employer and may even be of benefit to the employer. It can be seen as a way of retaining staff, improving morale, motivation, performance and even attendance.

Flexible working may also allow an employee with a medical condition or disability to continue in work. However, it is recognised that it may not be possible for some of the options below to be made available to all school staff and will to some extent depend on the circumstances of the situation.

#### **4. Flexible Working Procedure**

There is a legal right for employees to request flexible working arrangements. As with all matters relating to the staffing establishment in schools, the decision about whether or not individual posts are suitable for job share or any other flexible work arrangements rests with the governing body, advised by the head teacher. It should be noted however, that a significant number of Employment Tribunal cases have ruled that refusing to allow an employee to return to work on a job share basis following maternity leave amounts to sex discrimination and is potentially automatically unfair. It is important that advice is sought from the HR Service as soon as possible if an employee indicates that they wish to be considered for flexible working arrangements.

When considering any of the possible flexible working options, the needs of the school and the individual must be taken into account. The specific nature of the work being undertaken and the need to be available at specific times during the school day/year must be recognised. Not all of the options described below will be appropriate in individual school environments and the ability to accept or deny requests will very much depend on the individual posts, work environment and role of those making a flexible working request. Please refer to the Flexible Working Procedure relating to teachers and support staff in schools ([Appendix 1 and 2](#)) for more detailed guidance and, if in any doubt on any related issue, please contact your nominated HR Business Partner within the HR Service.

#### **5. Flexible working options**

It is possible for employees to request and for governing bodies to consider requests on a temporary or permanent basis. In considering requests for any of the following the governing body/head teacher would need to carefully balance the entitlement of an employee to make a request against the organisational and operational needs of the school.

Options available include the following:

- Job share
- Part-time/term time only working
- Compressed working hours
- Changes to working times
- Home working

Short term arrangements for compassionate leave and other special leave are detailed on [Wired \(HR Guidance, Document Library, Annual Leave and Leave of Absence\)](#).

##### **5.1 Job Share**

The guidance regarding job sharing for school staff is set out in the HR Guidance for Schools. Experience has shown that all posts in schools are suitable for employees to be considered for job share and advice about making these decisions is set out in the guidance. For further guidance on job share please see [Wired \(HR Guidance, Document Library, Job Sharing\)](#).

##### **5.2 Part-time/term-time only working**

Schools regularly review their staffing structures and it may benefit the organisational needs of the school to consider requests from employees to work either part-time hours all year round or on a term-time only basis. In most schools there are variations in the work pattern between term-time and holiday periods which means that many posts for clerical and other support roles are on a term-time only basis as a matter of course.

If appointed to a part-time or term-time only post, the employee's entitlements to salary, training, leave and other benefits are calculated on a pro-rata basis. Where an employee works term-time only, the salary is calculated according to the number of weeks they actually work (with the addition of holiday entitlement) and payment is spread evenly over the twelve months of the year (equated pay).

Some schools have used such a flexible approach to benefit the school. For example, a number of primary schools have appointed staff on a permanent 0.5 FTE contract to work full-time during the summer term of each academic year and make up the remainder of their contracted days across the other two terms as required by the school. This has the benefit of assisting with budget planning for the school and consistency of income for the employee.

### **5.3 Compressed Working Hours**

This is where the total number of hours worked are compressed so that the employee works longer hours over fewer days. For example an employee may wish to work their full time hours, but over 4 days instead of 5. They would be expected to deal with the same level of workload and responsibility, commensurate with the job role, and would work longer hours over the 4 days, and would be available at times outside of normal office hours.

### **5.4 Changes to working times**

This would apply, for example, when an employee makes a request to start work earlier and finish earlier. They would still be expected to deal with the same level of workload and responsibility, but work at times outside the school normal working hours, where this is required organisationally.

### **5.5 Home Working**

An employee may request to do some of their work from home, and this could also be linked to any of the above options. Whilst it is recognised that there will be limited opportunities for school employees to work from home this should not be automatically ruled out when considering an application. Such arrangements can be made on a temporary basis which may be helpful to certain categories of staff who need to attend to short term domestic responsibilities during the whole or part of the working day.

## **6. Other types of flexible working arrangements**

An example of another type of a flexible working arrangement would be a request for flexible retirement, details of this can be found on [Wired \(HR Guidance, Document Library, Retirement and Pensions, Flexible and Phased Retirement Policy\)](#). An employee may, towards the end of their career, request moving to a post with less responsibility or fewer hours. Request of this nature would be dependent on either a suitable vacancy within school and/or successful recruitment to the remaining hours. In these circumstances pay protection does not apply and there will be some circumstances, particularly for teachers where the terms and conditions are restrictive on such requests. Teachers can obtain further information by contacting Teachers' Pensions. Support staff can obtain further information from the LGPS.

Further advice on all the above options is available from the HR Service.

## **Flexible Working Procedure for School Staff**

### **1. Introduction**

The Employment Act 2002, the Flexible Working Regulations and the Children and Families Act 2014 provides that employees can request a change to their flexible working pattern and sets out a maximum legal timeframe of 12 weeks for requests to be made and considered by the governing body. This policy sets out the process for employees and school managers and governors to follow in the exercising of the right.

### **2. Aim**

The aim of the policy is to ensure that requests for flexible working arrangements from school-based employees are considered and dealt with in a reasonable manner within the framework of the law, and that agreements between employees and head teachers and governors are reached that reflect the needs of both parties. In considering requests the law provides protection and schools must not discriminate unlawfully against an employee. For example where a flexible working request is considered to be a reasonable adjustment for a disabled employee. Further advice is available from the HR Service.

The right conferred by the legislation enables employees to request to work flexibly, however there is no automatic right to work flexibly as the needs of the school must be taken into account. The onus is on the employee to think carefully about their own working pattern when making an application, while schools need to follow a specific procedure in considering the requests.

### **3. Eligibility**

In order to make a request the individual will:

- be an employee (i.e. not an agency worker)
- have 26 weeks continuous service with Nottinghamshire County Council at the time of application or have continuous service linked with a TUPE transfer.
- not have made a previous application to work flexibly under this right during the last twelve months

### **4. Scope of the statutory application**

The Employment Act 2002, the Flexible Working Regulations 2002, 2006 and 2009 and the Children and Families Act 2014 enables eligible employees to make a statutory application to request flexible working which can include the following:

- a change to the hours they work
- a change to the times when they are required to work
- to work from home

This covers working patterns such as part-time, job share, shift working and term-time working which are all existing working patterns in schools. It is recognised that working from home may not be a viable option for most school employees. In considering all requests, the head teacher and or the governing body will be required to carefully set out the reasons for any decisions reached.

## **5. The Procedure**

The statutory overall timeline between receiving an application and the outcome of a potential appeal against a decision is 3 months. In the context of schools, this will mean 12 working weeks, within this timeframe timescales can be adjusted where agreed with the school and the individual making the request.

- 5.1. The employee makes a written application for flexible working to the head teacher (example application form attached as [Appendix 2](#)). The employee must specify the change to their working practices or pattern that they are applying for, and the date on which they propose the change should take effect. The application must explain what effect, if any, the employee thinks making the change applied for will have on the school operationally and organisationally and how any effect might be dealt with.
- 5.2. The head teacher should seek advice on the application from the HR Service and arrange to meet the employee within 28 days (4 working weeks) of the date of the application with a view to exploring the desired work pattern in depth and to discuss how it might be accommodated within the school. The meeting will also enable consideration of alternative working patterns, should there be difficulty in accommodating the employee's desired work pattern. The employee will be entitled to be accompanied at this meeting by a trade union representative or work colleague. The head teacher should seek advice and support prior to this meeting from a member of the HR Service. Notes should be taken at this meeting.
- 5.3. Within 10 working days of the meeting the head teacher will write to the employee, either to agree to the new work pattern (or confirm alternative arrangements agreed at the meeting) and a start date (which will need to take account of existing timetable and cover arrangements), or to provide a written justification of their decision not to accept the application, stating:
  - a) the grounds on which the decision has been made (see section below for the grounds on which an application may be turned down)
  - b) the reasons why those grounds apply
  - c) the right of appeal against the decision within 10 working days of receipt of the outcome and informing the employee that they are entitled to be accompanied at an appeal hearing by a trade union representative or work colleague. If the decision is not to support the application, it is advisable at this stage to set a provisional date for an appeal hearing in advance of receiving an appeal to allow sufficient time to arrange the appeal (details below).

- 5.4. If the employee is not satisfied with the written decision of the head teacher and wishes to exercise their right to appeal they should set out the grounds for appeal in writing to the chair of governors within 10 working days following written notification of the head teacher's decision. The appeal hearing should be held within 10 working days of the employee submitting an appeal. The appeal panel should be comprised of 3 Governors, it is advisable for the school/governing body to request the attendance of a HR Business Partner to advise the panel. Notes should be taken at this meeting.
- 5.5. The appeal panel must notify the employee of their decision within 10 working days of the date of the hearing, again giving their decision and where not supported a written justification if the decision is not to accept the application, stating the grounds for the decision and how they apply in the particular case.

If an employee's application for flexible working is not accepted they may not make another statutory request within twelve months although may still ask without the statutory right. This would not preclude an employee from requesting a short term change to their normal working hours or conditions, for example to request a change for a period of 2 - 3 weeks to cope with a bereavement, this would be agreed between the employee and the head teacher. In these circumstances it is expected that the employee would then revert back to their normal working hours and conditions.

#### **5.6 Grounds on which an application may be turned down**

The Employment Act 2002 sets out that the employer may only refuse an application for flexible working if the employer considers that one or more of the following grounds applies:

- the 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

In the case of requests from a teacher, in each of the above the impact on teaching and learning in the school should be carefully considered. If an application for flexible working is not accepted it must be because one of the grounds set out above applied, and the written justification of the decision must identify the reason and the way in which it applies.

### 5.7 Summary timeframe of the process:

<u>Individual makes an application for flexible working - TASK:</u>	<u>SCHOOL TIMEFRAME:</u>
Meeting arranged to discuss application	Within 28 days of receipt of application (4 working weeks)
Written decision issued	Within 10 working days of the meeting
Employee may submit appeal	Within 10 working days of receipt of the decision
Appeal hearing convened	Within 10 working days of the appeal being submitted
TIMELINE TO HEARING	10 WORKING WEEKS
Outcome issued	Within 10 working days of the hearing
OVERALL TIMELINE	12 WORKING WEEKS

Timescales may be extended, providing that the employee making the application agrees.

### 5.8 Contractual changes

Any contractual changes arising from the flexible working request must be confirmed in writing with the offer of a new contract of employment.

**For guidance on the application of managing flexible working requests, head teachers and governing bodies are advised to seek support and advice from the HR Service.**



**Request form for Flexible Working**

This form should be completed by eligible employees who wish to make a statutory request to work a flexible working pattern which is different to their current working pattern.

**(Note to employees:-** It will help your head teacher if you provide as much information as possible about your desired working pattern. When completing sections 4 and 5, think about what effect your change in working pattern would have on both the work that you do and on your colleagues. Once the form is completed, you should forward this to your head teacher who will then arrange a meeting with you within 28 days to discuss the details of your request.

If your request is approved, this will form a permanent change to your terms and conditions of employment unless otherwise agreed on a temporary basis.)

**1. PERSONAL DETAILS**

Name..... Post Title and grade.....

School.....

If you have made a previous application for flexible working please state date of that application.....

If your request is in relation to the Equality Act 2010 (e.g. as a reasonable adjustment for a disability) please state yes/no:.....

I would like to apply to work a flexible working pattern which is different to my current working pattern and I confirm that I meet the eligibility criteria for each of the following bullet points as follows:

- I have worked continuously as an employee of Nottinghamshire County Council for the last 26 weeks
- I have not made a request to work flexibly under this right during the past 12 months

**2 CURRENT WORKING PATTERN (Include details of days/times/hours worked)**

.....  
.....

**3 REQUESTED WORKING PATTERN (Describe days/hours/times etc)**

.....  
.....

.....

**4 IMPACT OF THE REQUESTED WORKING PATTERN**

I think the requested change in my working pattern would affect the school and my colleagues as follows:

.....  
.....  
.....  
.....  
.....

**5 ACCOMMODATING THE REQUESTED WORKING PATTERN**

I think the effect on the school and colleagues could be dealt with as follows:

.....  
.....  
.....  
.....  
.....

I confirm the above are true and accurate statements and I would like the requested working pattern to commence on.....

Signed..... Date.....

**Invite to meeting with head teacher**

**Appendix 3a**

**Date**

**Private and Confidential**

**Dear**

Further to your application to request flexible working dated.....I would like to invite you to a meeting to discuss your desired work pattern in more detail and consider how it may be accommodated within the school. The meeting will also consider alternative working patterns, should there be difficulty in accommodating your request. The meeting will take place on.....at.....in the following location.....

You are entitled to be accompanied at the meeting by your trade union representative or work colleague.

Notes will be taken of the meeting and circulated to all parties. Within 10 working days of the meeting I will write to you to either agree to the new work pattern or confirm alternative arrangements agreed at the meeting. If the school is unable to support your request I will provide written justification of my decision, including the grounds on which the decision has been made and the reasons why the grounds apply. I will also explain your right of appeal against the decision.

Please confirm by.....your attendance at the meeting and who will be attending with you.

Yours sincerely

Head teacher

Date

Private and Confidential

Dear

Further to our meeting which took place on.....which considered your application to request flexible working dated.....We discussed your desired work pattern in more detail and considered how it may be accommodated within the school. You attended with.....

Options depending on outcome:

- a) I am pleased to confirm that the school are able to accommodate your request to work the following pattern.....and we agreed an effective date of.....
- b) The meeting considered alternative working patterns and we discussed the reasons why there is difficulty in accommodating your request. We agreed an alternative pattern of.....effective from.....
- c) We discussed the reasons why there is difficulty in accommodating your request, however we agreed a pattern of.....on a temporary basis until.....to be reviewed on.....or sooner if the situation in school changes.
- d) We discussed the difficulties in accommodating your request and I outlined the grounds on which your application has been turned down. To confirm the grounds are based on one or more of the following - please state which apply and include more detail under each relevant heading:
  - the 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

The reasons for these grounds are: please detail justification for the decision to turn the request down.

You have the right of appeal against my decision. If you wish to exercise your right to appeal please set out the grounds for appeal in writing to the chair of governors within 10 working days of receipt of this letter i.e. by.....

Yours sincerely - head teacher

**Date**

**Private and Confidential**

**Dear**

Further to your application to request flexible working dated.....and my letter dated.....informing you of my decision, I understand from your letter dated.....that you wish to appeal against the decision. I would like to invite you to an appeal hearing with myself and an appeals panel of the governing body (add names of governors). There will also be a HR Business Partner present to advise the panel (include if applicable). The meeting will take place on.....at.....in the following location.....

You are entitled to be accompanied at the meeting by your trade union representative or work colleague.

Please find enclosed papers that will be circulated to the panel. Notes will be taken of the meeting and circulated to all parties.

Please confirm by.....your attendance at the meeting and who will be attending with you.

Yours sincerely

Head teacher

**Outcome following appeal hearing**

**Appendix 3d**

**Date**

**Private and Confidential**

**Dear**

Further to our meeting which took place on.....which considered your appeal regarding your application to request flexible working dated.....We carefully considered all the evidence presented including the head teacher's justification for turning down your request. You attended with.....

Options depending on outcome:

- a) I am pleased to confirm that the panel have decided that the school should accommodate your request to work the following pattern.....with an effective date of.....
- b) The meeting considered alternative working patterns and we discussed the reasons why there is difficulty in accommodating your request. We agreed an alternative pattern of.....effective from.....
- c) We discussed the reasons why there is difficulty in accommodating your request, however we agreed a pattern of.....on a temporary basis until.....to be reviewed on.....or sooner if the situation in school changes.
- d) We discussed the difficulties in accommodating your request and I outlined why the governors could not support your request. To confirm the grounds are based on one or more of the following - please state which apply:
  - the 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

The reasons for these grounds are: please detail justification for the decision to turn the request down.

Yours sincerely

Chair of governors