Human Resources
Goireasan Daonna
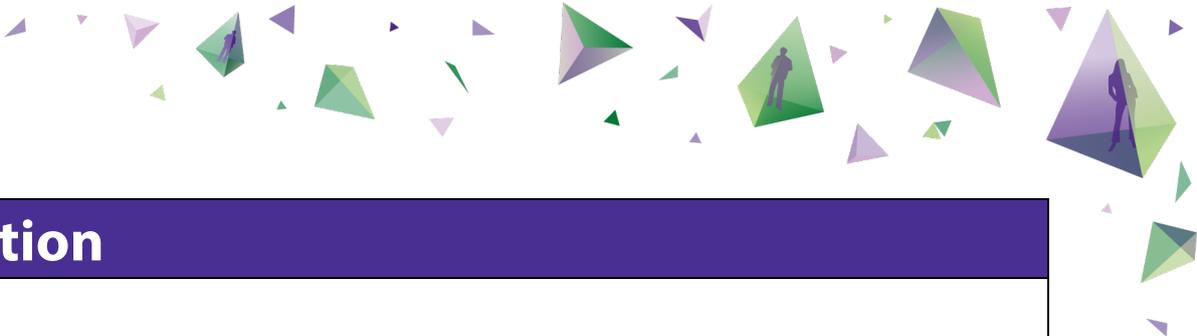
Flexible Working Guidance for Managers

Stiùireadh Obrachaidh Sùbailte

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Clàr-innse

Introduction

What is Flexible Working?

In essence, " flexible working" involves employers making adjustments to their standard working arrangements to accommodate their employees' preferences.

Example
The Council may prefer employees that work in the office, and are present between 9am and 1pm, and 2pm and 5pm, Monday to Friday. However, some of our employees may prefer to work different hours. Their reasons for this might include: caring responsibilities with regard to a child or an elderly parent; disabilities, such as mobility problems, that make the commute to the office every day difficult; and personal preferences, such as a dislike of travelling during the rush hour or being a
"morning person" and preferring to start early and finish early.

" Flexible working" could involve allowing our employees to deviate from the 9am to 5pm, Monday to Friday, office-based culture by, for example:
starting work at 9.30am and finishing work at 5.30pm, to take a child to school or check on an elderly parent in the morning; working from home for a number of days each week; or starting work at 8am and leaving at 4pm.

More radical options could include allowing employees to work during term time only, or operating the flexitime scheme so that employees can adjust their hours from day to day and save up time off to take at a later point.

Who can make a Flexible Working Request?

Under part 8A of the Employment Rights Act 1996, qualifying employees may apply to their employer for a flexible pattern of work.

What sort of changes can an employee request?

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

## How often can an employee request a change?

Employees are limited to making two applications for changes to be considered in any 12 month period.

What procedure should the employee use to make a request?

Where an employee initially approaches their line manager they should make the employee aware of the procedure and if necessary help them to clearly define their proposal. The employee must apply in writing to their line manager using the Flexible Working Application Form, available on the HR Microsite.

The application process, including the appeal process, must be concluded within 2 months of receipt of the application. The line manager should arrange, as soon as possible, for an appropriate time to meet with the employee to discuss the desired work pattern in depth and to discuss how it might be accommodated. The employee has a right to be accompanied by a colleague or trade union representative at this meeting.

After the meeting the line manager will consider how requests might be accommodated and what the implications would be. The manager should also consider meeting with the wider team before deciding whether the request should be granted either in whole, in part or not at all. Justification will be required to support the decision, and managers must consult employees on alternatives before refusing an application.
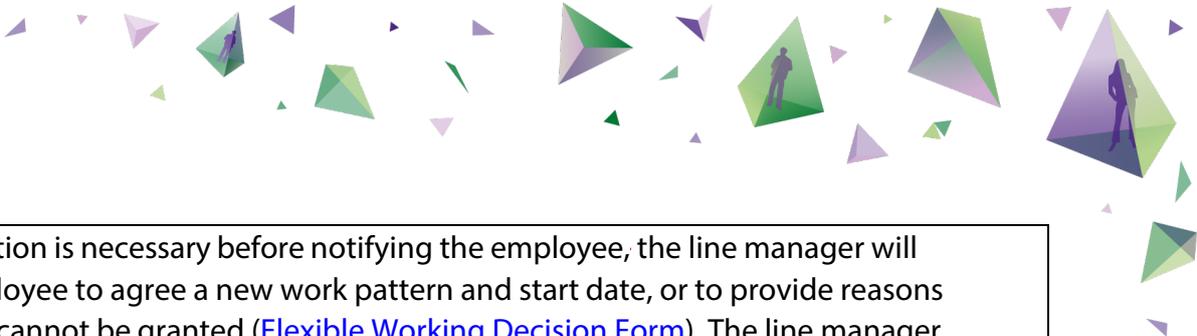
Unless further action is necessary before notifying the employee, the line manager will write to the employee to agree a new work pattern and start date, or to provide reasons why the request cannot be granted (Flexible Working Decision Form). The line manager will also arrange for any changes to be made to the employee's contract of employment.

What factors may be taken into account when considering a request?

Requests to work flexibly must be considered objectively and a manager can only refuse them if there are business reasons for doing so. Managers can not refuse a request without consulting with the employee on alternatives. The statutory code of practice requires employers to do this. These business reasons are set out in legislation and are:

- **The additional costs will impose a burden.**

Tip: In considering this, managers should reflect on whether the proposal's less obvious savings such as a reduction in overheads from homeworking and better coverage of service or increased outputs.

Example:
Jane and Liam are two managers who apply for a post together and propose to part time share the post. Both have the skills and experience needed but want to balance work with outside interests. In line with the Council's policy of considering all vacancies suitable for flexible working, the manager seriously considers their request. Both Jane and Liam want to work three days a week and whilst the manager is happy to appoint he is unable to afford the increased payroll costs. The manager discusses alternative working patterns around 2.5 days each with Jane and Liam, but they are not prepared to change their pattern. In the light of this and an inability to compromise, the manager turns down the request for flexible working.

- **Agreeing to a request will have a detrimental effect on the**

Service's ability to meet customer demand.

Tip: When considering the impact on the business of a flexible working arrangement, a manager can trial an arrangement for a fixed period to see if it is sustainable over the longer term.

Example:

A manager receives a request from Raj (Housing Maintenance Officer) to work compressed hours. Working four longer days and freeing up Thursdays would allow him to undertake a course of part-time study. The manager is concerned that Raj will not be available to deal with pressing time-dependent issues from his customers concerning job progress on a Thursday. He fears a gap in managing and reporting would attract complaints because of Raj's absence and is inclined to refuse the request on the ground of adverse impact on customer service. However the manager values Raj and wants to retain him. He and Raj agree to extend the three month period for considering a request under the "right to request" to trial the arrangement for 10 weeks (the length of the first of three course modules).

It transpires that, rather than complain, some customers report their satisfaction at being able to deal with Raj outside normal office hours on four days of the week. The team has successfully handled routine matters in his absence and in practice Raj has been willing to be contacted by phone about the few urgent issues that arose. After the successful trial the manager agrees to Raj's request for compressed hours to cover the period of the remaining two study modules.

- **It is not possible to re-organise work among existing staff.**

Tip: A manager should consider the cost of recruiting additional staff against the potential cost of losing the existing member of staff making the request. Also consider talking to the team about any reorganisation of work where this would be appropriate before coming to a decision.

Example:

Jack is an employed as an interpreter. He has a full caseload. Jack wants to reduce his hours to pursue his hobby and puts a request to his boss. Jack's
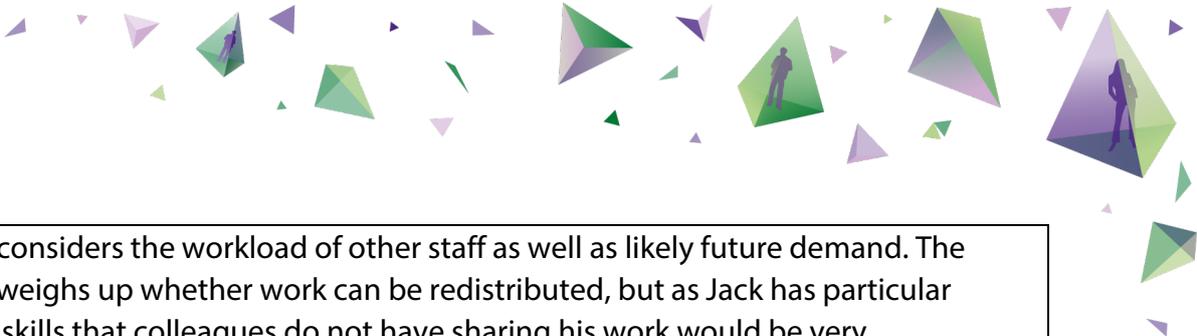
manager considers the workload of other staff as well as likely future demand. The manager weighs up whether work can be redistributed, but as Jack has particular language skills that colleagues do not have sharing his work would be very difficult. The manager considers that agreeing to the request would place unreasonable pressures on other staff and therefore reluctantly turns it down. The process does, however, make the manager consider what options the Service would have on language skills if Jack decided to leave.

- **It is not possible to recruit additional staff.**

Example:

Steve works as a social care worker and part of his shift includes working until 6am on Fridays and Saturdays. The rest of the week the shift ends at 10pm. Steve asks to work shifts that don't include the 6am finish to improve his family life. He is happy to work till 10pm. The manager considers the request and explores whether other colleagues would be happy to do more late shifts but they are not.

The manager then finds he is unable to recruit new staff to cover these hours and so therefore turns down Steve's request.

- **Agreeing to the request will have a detrimental impact on quality.**

Tip: Employers should look carefully at the skills and potential of other employees when considering this reason. With training many staff can acquire new skills.

Example:

An experienced mechanic wants to reduce her hours and asks under the right to request flexible working. The other mechanics are still quite new and are "learning the trade" and the manager is concerned that the garage will be unable to tackle some of the more difficult repairs in the time scales required to keep the fleet operational. The Manager decides therefore to turn the request down but also offers to reconsider the request six months later after a programme of training to up-skill the other mechanics. Subsequently the success of the training programme allows the manager to approve the

reconsidered request.

- **Agreeing to the request will have a detrimental impact on performance. Tip: Performance can mean of the individual, the team or the whole organisation.**

Example:
Julie has been promoted to manage a team of office-based staff where there have been problems of absenteeism, bullying and low performance. She was recruited to rebuild and motivate the team. Julie makes a request to work flexibly from home. The manager considers the request but, at least for the next 12 months, decided that Julie should be visible and sitting with the team to tackle inappropriate behaviour when it occurs and to deal with work issues immediately. The manager considers that Julie working at home would prevent the problems affecting the team being addressed effectively and speedily and so turns the request down.

- **There is insufficient work during the periods the employee proposes to work.**

Example:
Colin works in the Service Centre. He asks to change his hours to start at six am every day. The manager looks at the call pattern and decides there is inadequate demand at this time, and that agreeing the request would reduce cover at peak times and so turns the request down.

- **The Service has planned structural changes that are incompatible with the request. Tip: If a manager has plans in train to make change to the business then it is good practice to share these with the workforce as it could help them see opportunities through flexible working to make the business more effective.**

Example:

Mira is a Community Waste Operative . She currently works 8am to 5pm and wants to start later at 10am and finish at 7pm when the recycling centre closes.

Whilst this seems entirely reasonable for the Service, Mira is told that the recycling centre will shortly be opening earlier at 6am and closing at 5pm to better match customer demand. The manager therefore turns down the request from Mira.

What information must the line manager provide to the employee after reaching a decision?

The line manager must inform the employee of their decision in writing within 14 days of the meeting, or as soon as possible to accommodate the legislative 2-month turnaround window. If an application is accepted the manager should complete the necessary change form. The notification to the employee 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 an application is not successful the notification must:

- State the business ground(s) for refusing the application
- Provide sufficient explanation as to why the business ground(s) for refusal apply in the circumstances
- Provide details of the employees right to appeal
- Be dated

The explanation should include key facts about why the business ground(s) apply and should not be overly long or complex. A couple of paragraphs should be sufficient. The explanation should include relevant facts, be in plain English and avoid unfamiliar jargon. Please see the Flexible Working Decision Form for info.

Is there a right of appeal against the line manager's decision?

Yes. Employees who wish to appeal against any decision can do so by writing to next level of management within the Service within 14 days of being notified of the line manager's decision. Please see the Flexible Working Appeal Form.
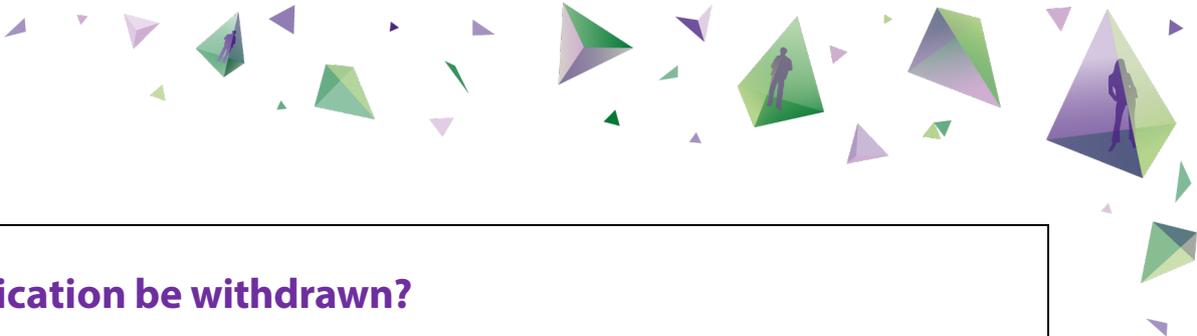
Can an application be withdrawn?

Yes. If an employee decides to withdraw an application they should write to the line manager as soon as possible.

An application will also be considered withdrawn if an employee fails to attend two meetings without good cause or if he or she refuses to provide the line manager with the required information.
If an employee withdraws an application, this will still count towards their two applications in any 12 month period.

Handling requests to work flexibly in a fair way

There may be some occasions, when a manager receives more than one request to work flexibly closely together from different employees. Where this happens it may be possible to grant all of the requests received. However, before doing so the manager will need to look closely at the impact this would have on the business before coming to a decision. Requests should be considered in the order they are received, on a first come first served basis. Having considered and approved the first request the manager should remember that the business context has now changed and can be taken into account when considering the second request against the business reasons set out above.

When a manager receives more than one request, they are not required by the law to make value judgements about the most deserving request. A manager should consider each case on its merits looking at the business case and the possible impact of refusing a request. A manager may want to have a discussion with the employees to see if there is any room for adjustment or compromise before coming to a decision.

Example:
Hamish and Carl both apply to work compressed hours so that they can undertake further studies. The manager is certain that she couldn't approve both requests
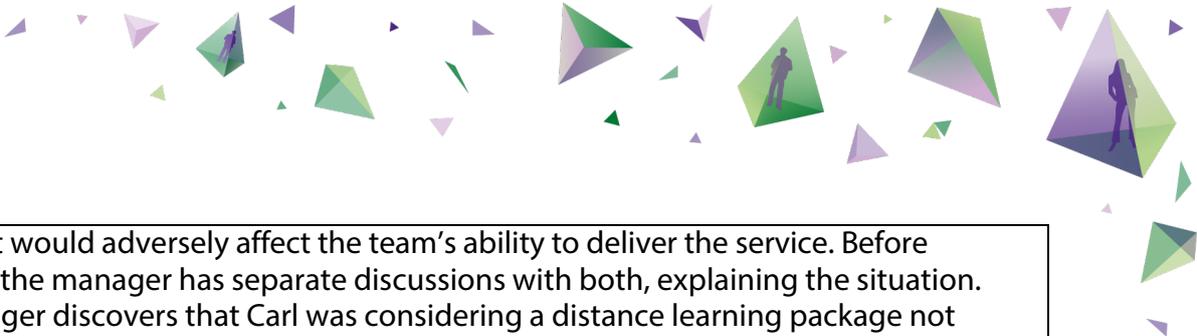
because it would adversely affect the team's ability to deliver the service. Before deciding, the manager has separate discussions with both, explaining the situation. The manager discovers that Carl was considering a distance learning package not requiring a fixed day away from the business compared to Hamish who wants to attend College half a day a week. By carefully comparing rotas the manager can accommodate both requests.

If a manager is unable to approve a request in an environment where a number of other employees are already working flexibly because any further flexible working arrangements will impact adversely upon the business it would be good practice to consider calling for volunteers from existing flexible working employees to change their contracts back to other arrangements thereby creating capacity for granting new requests to work flexibly.

Example:
Barbara manages a cleaning team and is finding it increasingly difficult to approve further requests for flexible working because of the complexity of the rotas and also because she finds employees working standard arrangements are unhappy at being increasingly required to undertake unsociable shifts. Barbara is worried that these staff may leave for other employment. Realising that some staff might welcome a change to standard hours and more money as their domestic situations have changed, she calls for volunteers. Three staff ask for these contractual changes, Barbara agrees and this gives her headroom to better manage further requests to work flexibly.

Flexible Working Examples

Part-time working

Part-time working is the most prevalent and established type of flexible working. Although it is often equated with half-time working (for example, 17.5 hours instead of a full-timer's 35 hours), any number of hours below the Service's standard working week can be considered as part-time working. Part-time work usually involves agreeing a set number of hours to be worked per week or month under a contract of employment. There is usually an agreed pattern to the hours of work.

Potential benefits	Potential challenges
Customer demands can be met and machinery can be used more efficiently if part-time workers cover lunch breaks/evening shifts and weekends	Increase in training
The working day can be arranged around caring responsibilities and/or other commitments	Increase in administrative and recruitment costs e.g. recruiting two part-timers could take longer than one full-timer
Employees can continue to work while increasing their own leisure time	Providing a continuous level of service may be difficult
Staff cover in holidays/sick periods etc	

Part-time issues that must be considered and addressed include:
- holiday entitlement and overtime.
- arrangements for training and meetings, which are often designed around full-time workers' hours.

Part-time workers have legal rights, based on the principle of equal treatment with comparable full-time workers. For further information contact Human Resources.

Variable hours

Variable hours usually involve variable start and finish times based on the Council's normal working week, with the changes in start and finish times under the employee's control. The employee's overall daily number of hours remains the same, but the working pattern could potentially vary from day to day over the course of a week.
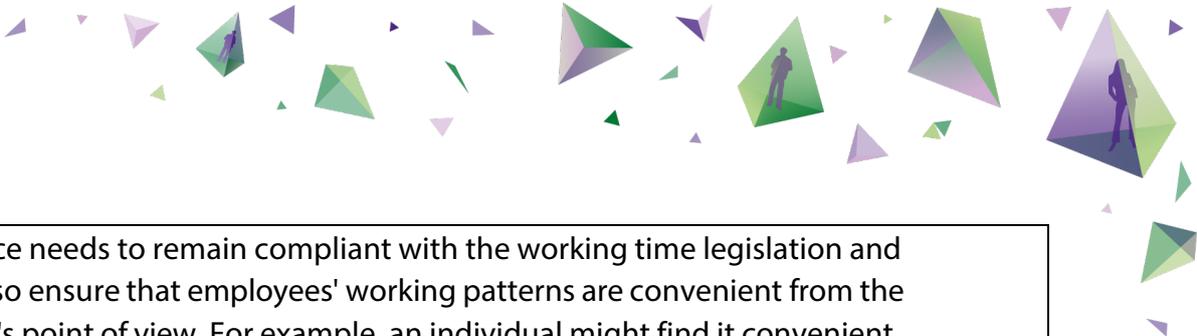
The Service needs to remain compliant with the working time legislation and should also ensure that employees' working patterns are convenient from the employer's point of view. For example, an individual might find it convenient to start work at 6am. However, there might be little to do at that time and the workplace would have to be lit and heated especially for him or her.

Variable hours issues that must be addressed include:

- supervision;
- how an individual's work performance/output will be measured at times outside the hours worked by his or her supervisor; and
- monitoring the individual's hours in the absence of a clocking-in/clocking-out system

Flexitime

Flexitime is a formal, structured version of a variable hours scheme (see Variable hours). Each employee who is covered by a flexitime arrangement can vary his or her hours around a core working day, 10am to 12 noon and 2pm to 4pm and, if he or she wishes, accrue a surplus of hours. A
maximum number of hours can be accrued and carried over into the next period. The hours banked in this way can be used at a later date to pay for time off, such as a day's flexi leave or simply a late start or early finish to
the day. Employees can also run up a limited deficit, in that they owe time back to the council.

The Flexitime schemes procedure can be found on the HR website. They set out not only the core hours, but also the limits on early and late working, the minimum lunch break that must be taken, prohibitions or restrictions on being "overdrawn" in the hours bank, and limits on when and how surplus time can be reclaimed. A limit on accrued hours is set at +14 and -7.

While variations on the standard day are usually under the employee's control, it is normal for flexitime schemes to require leave paid for by banked hours (flexi-leave) to be booked in the normal way through the individual's line

manager, with his or her consent.

Although a flexitime scheme could rely on participants' honesty, many schemes use formal time- keeping systems, which are increasingly computerised.

Potential benefits	Potential challenges
Can help recruit and retain staff	Risk of being understaffed at certain points in working day if business need is not factored into flexi approval
Can help people accommodate responsibilities from outside the workplace	Increased administration e.g. maintaining accurate records
Travel costs may be reduced where travelling outside of peak hours is possible	Direct supervision throughout the working day may be difficult
Increased productivity	Can lead to longer hours being worked, causing fatigue and reducing concentration

Flexitime issues that must be addressed include:
- the management of a team whose exact whereabouts outside core hours are not necessarily known in advance;
- ensuring compliance with the rules of the flexitime scheme;
- managing workloads where demand is not constant throughout the day; and
- avoiding the tendency of flexitime schemes to foster a bureaucratic entitlement culture.
- Accurate recording of hours worked

See the flexi-time guidance on the HR website.

Homeworking

Homeworking on a whole-time or virtually whole-time basis usually involves a change to the individual's contract of employment, whereby his or her official
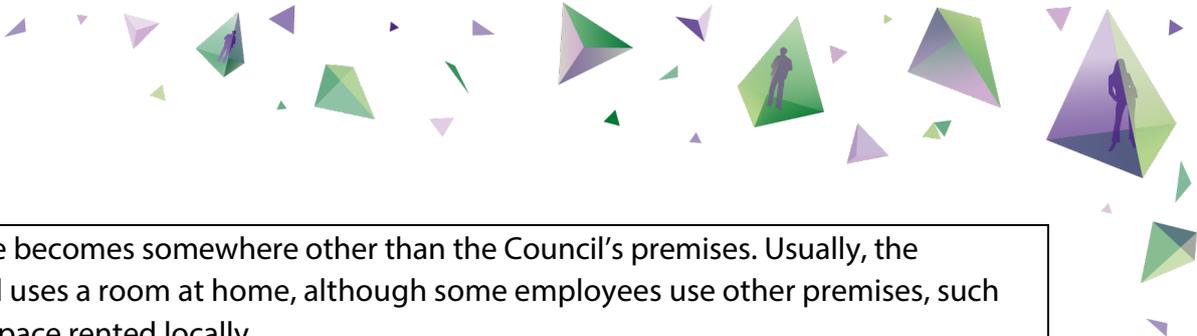
workplace becomes somewhere other than the Council's premises. Usually, the individual uses a room at home, although some employees use other premises, such as office space rented locally.

Most people who do whole-time homeworking are able to do so because their work involves information and communications technology, such as the telephone, computer systems and the internet.

Occasional home working to undertake a special project, such as drafting a report, or to undertake their normal work in the same way as usual (via the telephone, email, computer files, etc) or in some amended form (for example, without access to the corporate intranet).

Peripatetic workers use their home as a base where, for example, they store their records and maintain their computer files while continuing to perform their usual role, which involves being on the road for most of the time.

A whole-time homeworker will rarely attend the Council's premises and will be managed remotely. Whole-time Homeworking is suitable for only some jobs and some personalities. It can create challenges for Council's around their communication systems, company practices (booking holiday and reporting sickness, for example), the security of data and computer networks, and performance assessments. However, provided that the job is suitable for Homeworking, and the employee suited to a homeworker's existence, these difficulties can be overcome.

Potential benefits	Potential challenges
Can provide savings on estates and other overheads	Communication and trust can deteriorate when an employee rarely sees their manager
Can save on travel time and costs for individual	Homeworkers can become stressed and feel isolated
Can allow more flexibility in the hours worked	Homeworkers can find it hard to switch off and can become fatigued/less productive
Can make an employer more attractive to potential employees and can provide a wider catchment area	Career development may suffer Set up cost of homeworking

Homeworking issues to be addressed when an individual wishes to homework on a regular basis include the following:
•Selection: ensuring that both the job and the individual are suited to Homeworking. The individual will have to be self-motivated and able to cope with physical isolation from work colleagues.
•Tools of the trade: identifying the office equipment and access to office systems that the homeworker will require to function effectively in his or her job. Agreement will need to be reached about the items that will be provided by the Council's and those that the employee will supply.
•Facilities support: setting up a system so that the homeworker is able to obtain replacement supplies, such as printing cartridges, when required. In addition, the homeworker will have to be supported when there is a problem with his or her work equipment.
•Health and safety: conducting a risk assessment of the workplace to be used by the homeworker, and identifying ways of ensuring his or her ongoing health and safety.
•Managing and supervising: identifying and agreeing how the homeworker will be managed, the ways in which contact will be made, and whether or not the homeworker's manager should visit him or her at home.

•Council procedures: establishing how company systems such as booking holiday, reporting sickness, and undertaking training and performance management meetings, can be adapted to the Homeworking situation.

•Socialisation: ensuring that the homeworker continues to be included in the normal life of the office. He or she should be included in social events and informed of staff changes and staff news.

•Workplace visits: deciding whether or not to require a certain number of visits each month or year by the homeworker to the Council's premises.

Security: identifying effective processes to safeguard the confidentiality of the Council's information, particularly its computer systems.

•Contract: if the homeworker will be covered by a new contract of employment and, if so, the details that it will include.

Term-time working

Term-time working is a form of part-time work where the employee works only during school terms and takes unpaid leave during the school holidays. The employee's contract of employment is not usually disturbed by these breaks.

Potential benefits	Potential challenges
Can solve the problem of childcare for parents	Long absences during prime holiday work time may make it difficult to arrange cover
Structured working gives employers plenty of time to plan ahead to cover absence	Can put pressure on other colleagues who feel they cannot take leave during school holiday periods
Can be a way to attract women back in to work	

Term-time working Issues that must be addressed include:

- whether or not in service days or holidays are excluded, as well as the summer, Christmas and Easter holidays;
- whether or not to allow the individual to reduce his or her unpaid leave from time to time, for example if childcare can be arranged for a portion of it;

- whether or not it should be a requirement that all normal paid holiday be taken outside term time;
- whether to pay the individual only during term times for the full hours worked, or to even out his or her pay into 12 equal monthly payments;
- the organisation of training for employees who are absent for several months of the year;
- if, and how, the individual will be kept informed about workplace developments during school holidays; and
- how the responsibilities of the job can be maintained during school holidays, particularly where the job involves managing other members of staff.

Compressed hours

Compressed hours arrangements allow individuals to work their normal hours of work over a shorter period of time than is standard in the Council. For example, an individual may work his or her Service's standard 35-hour week in four or four and a half days instead of the usual five days. In this way, the employee obtains an extra half or full day off work each week or fortnight.

Potential benefits	Potential challenges
Can aid the recruitment and retention of staff	Can be difficult for employees to adjust back into work after a long weekend
Can reduce absenteeism	Longer daily work periods can increase fatigue
Employees have a longer weekend/more time away from work without a reduction in pay	Difficult to schedule work and provide sufficient cover throughout working hours

Compressed hours issues that must be addressed include:
- ensuring that the job that the employee does is suitable for hours of work that begin and/or end outside those of his or her colleagues and
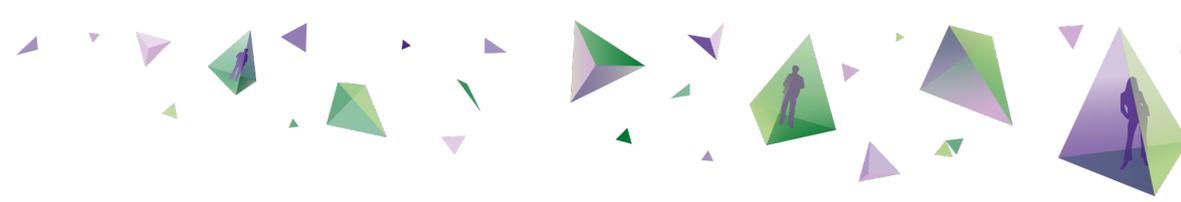
manager;
- setting limits on the length of the working day to ensure compliance with the working time legislation, the availability of work and the need to keep workplace heating and lighting costs to a minimum;
- agreeing the day or half day on which the individual will take his or her accrued time off so as to meet the employee's needs and fit in with the Service's requirements, for example when workloads are relatively light or there is good staff cover;
- coordinating the time off so that it complements that of any other individuals working compressed hours in the same team or department; and
- monitoring the individual's performance to ensure that the new working pattern does not result in overtiredness

Flexible Working Arrangements – Procedure Flowchart

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┌─────────────────────────────┐
│  START OF PROCEDURE         │
└─────────────────────────────┘

┌─────────────────────────────┐
│  The line manager The       │
│  line manager receives      │
│  an application for         │
│  flexible working           │
└─────────────────────────────┘

┌─────────────────────────────┐
│  The line manager and the   │
│  employee meet to discuss   │
│  the application and/or     │
│  alternatives. Line         │
│  manager may meet with      │
│  team members               │
└─────────────────────────────┘

┌─────────────────────────────┐          Application is Accepted          ┌─────────────────────────────┐
│  The line manager writes    │ ───────────────────────────────────────► │  The line manager makes     │
│  notifying the employee     │                                           │  arrangements for the working│
│  of his or her decision.    │                                           │  pattern to be changed.     │
└─────────────────────────────┘                                           └─────────────────────────────┘

              Application is Rejected

┌─────────────────────────────┐
│  The employee               │
│  decides whether to         │
│  appeal against the         │
│  line manager's             │
│  decision.                  │
└─────────────────────────────┘

              Decision to Appeal

Decision
not to
Appeal

┌─────────────────────────────┐
│  The next level of          │
│  management hears           │
│  the appeal.                │
└─────────────────────────────┘

              Appeal is not Upheld

┌─────────────────────────────┐
│  END OF PROCEDURE           │
└─────────────────────────────┘
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We are a **Living Wage** Employer

vivup

happy to talk flexible working

ARMED FORCES COVENANT

EMPLOYER RECOGNITION SCHEME

GOLD AWARD

Healthy Working Lives

spectrum .life

myjobscotland

disability confident EMPLOYER