

Caring for the Carers

A UCU guide for members and reps



4. Rights at Work

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Maintaining a work-life balance

Most if not all colleges and universities should have in place policies that enable employers to maintain employment whilst managing other responsibilities such as caring and childcare. Establishing good work-life balance policies comes with benefits for both employee and employer. These include:

- Improved commitment and retention
- Increased in morale
- Reduction in absence levels

It is important for all workers (regardless if you have caring responsibilities or not) to have a good work-life balance to ensure well-being in all aspects of our lives. A poor balance between a workers' workload and other responsibilities can lead to stress, absence from work and low productivity.

UCU has developed joint guidance for HEIs on Work-life balance

http://www.ucu.org.uk/media/pdf/5/f/jnches_worklifebalance_feb08.pdf and;

Guidance on Shared Parental Leave and Flexible working

http://www.ucu.org.uk/media/pdf/m/2/Shared_parental_leave_guidance_spring_15.pdf

Flexible Working

Any person with caring responsibilities has a legal right to request flexible working. Flexible working allows for you to make alterations to your working hours in order to accommodate your caring commitments. Although it is more likely that women rather than men will be combining paid work with caring responsibilities, employers must avoid making assumptions about who has responsibilities for caring for children or adults. If you are a Carer of a child or adult, you have the **right to request flexible working**.

In order to request flexible working, you must:

- Have worked for your employer for at least **26 weeks**
- Apply in writing to your employer stating how you would like to change your working pattern see *below* for guidance

Your employer must within **28 days** of receiving your request invite you to a meeting (remember to include your union representative in all communication) to discuss your request and has up to **three months** in which to consider your request.

Requesting flexible working is a right. Your employer does not have to grant your request but they must give it due consideration, giving business reasons for rejecting (if that is the case) your application.

Tips for Working Carers

- Make it clear, in your request, that you're a carer.
- Include information about the person who you care for – how you do this might help your case.
- State what changes you'd like to make to your working hours or working pattern, how you think it will affect your job and how any problems could be dealt with.
- Say when you would like your flexible working to start and whether you've made a similar request in the past, giving the date.

The following are Flexible working examples:

Compressing hours

An employee works their usual hours in fewer and/or longer blocks during the week. Employees can build up additional hours which they take as a day or half-day away from work

Phased Retirement

The default retirement age has been phased out and workers can now usually work for as long as they want to. Your employer may be happy for you to phase your retirement by allowing you to change to flexible or part time hours

Term-time

Allows employees the opportunity to reduce their hours or take time off (usually unpaid) during any school holidays. An employer could also offer this arrangement to individuals in full-time education e.g. university students who are only able to work during the school holiday periods

Working from home

When an employee carries out all their working duties at home rather than on the employer's premises. NB: the employer is still responsible for all health and safety issues of that employer working from home

Flexi-time

Flexi-time operates differently depending on the nature of business. It can cover the way a working week is organised during the day, week or year or it can also describe the place of work such as homeworking or being on a temporary contract

Temporary break from work

A worker who is employed for a limited period and whose job is usually expected to last for a short while

Shift Work

Shift work is a pattern of work in which one employee replaces another doing the same job within a 24 hour period

Job share

A form of part-time working where two or more share the responsibility for a full-time job

In some professions, some of the choices above may not be suitable for most, for example, options for frontline customer servicing operatives can be limited but flexi-time, part-time working or job share could still be considered.

Parental leave

Parents whose children are due to be born or being adopted on or after 5 April 2015, and who satisfy the eligibility criteria of 26 weeks, related to their working status, will have access to a fully flexible system of parental leave¹

Time off for emergencies

Also known as dependant leave is applicable to parents and carers who have the right to take time off (**unpaid**) work to deal with an unexpected event involving the person cared for.

For example:

- A dependant is injured or assaulted

¹ UCU Shared Parental Leave Guidance http://www.ucu.org.uk/media/pdf/m/2/Shared_parental_leave_guidance_spring_15.pdf

Time off for emergencies continued

- A dependant needs you to deal with a disruption or breakdown in care, such as a childminder failing to turn up, or to deal with an incident which occurs unexpectedly at school
- A family member dies and you need to make funeral arrangements or attend the funeral
- A dependant who is ill or gives birth

Temporary change

Many employers may favour a temporary change in your working pattern if it is only for a short period for example whilst making arrangements for care.

Having the flexibility of being able to alter your current working pattern while minor adjustments are being made at home for a short period are informal agreements that can be made with your line manager and supported (should there be a transfer of any of your duties) with your colleagues

Statutory and non-statutory requests

You have two options in which to make a request for flexible working:

- a) **Statutory** – making a statutory request means that you are applying under the law
- b) **Non-statutory** – should your application be refused, you will not be able to apply the legislation around flexible working to your case in an Employment Tribunal

The differences between the two options are:

| Statutory Requests | Non-statutory Request |
|--|--|
| You have to meet the eligibility criteria of 26 weeks consecutive employment You can only make one request a year | You will not have to meet any eligibility criteria, unless your employer's scheme has its own There is no limit on the number of requests you can make in a year, unless your employer's scheme has limit |
| If your employer refuses your request, there are rules on how you can make a claim in the employment tribunal under the law on flexible working It can take up to three months, or longer if you agree to an extension of time, for your request to be approved | If your employer refuses your request, you can still take a claim to an employment tribunal but not under the law on flexible working Getting a decision could be quicker. This may be worth considering if you want to make temporary or small changes to your working pattern and need this to start soon |
| You may not need to make a statutory request if your employer's scheme is better | It may be a good idea if you want to try out a new working pattern before making a permanent change. |

The following guides on what you need to do in order to make a statutory request for flexible working

Making a statutory request

In order to make a statutory request, it must be:

- In writing
- Be dated
- State that it is a **statutory** request for flexible working
- Set out the working pattern you are asking for and the date on which you would like it to start

- Explain how the proposed change would affect your employer and colleagues and how you think any changes might be dealt with – see below
- State whether you have made a previous application for flexible working to your employer, and if so, when
- Say if you are making a request because you are put at a disadvantage because of your age, sex, race, disability, religion or belief, or sexual orientation². For example, asking for flexibility as a reasonable adjustment to help with a disability.
- Say why you are making your request, if you think it will help. For example, if you are needed to help with caring arrangements, your employer may realise that it would be discriminatory to refuse your request. **NB: you do not have to say why you are making a request if you don't want your employer to know.**

In making your request, you will need to state how your proposed new working pattern will affect your employer by:

- Suggesting who may be able to cover your work when you are not there
- Being clear about the changes you want
- Being flexible about what may be suitable. If you have more than one option, you could describe them all to your employer, saying which choice you prefer and why. This is important if you are making a statutory request because you can only make one application a year. For example, your first choice may be to work three days a week, but you would accept working four days a week
- Explaining how the work could be managed around your changed hours
- Emphasising your continued commitment to the organisation and suggesting ways in which you may be able to provide additional working hours in emergencies

Making a non-statutory request

It is advisable to include the following when making a non-statutory request. There is no set format:

- Set out the working pattern you are asking for and the date on which you would like to start
- Explain how the proposed change would affect your employer and colleagues and how you think these changes might be dealt with
- Say why you are making your request if you think it will help.

See **Appendix A** for example letters requesting statutory and non-statutory request for flexible working and **Appendix B** for flexible working case studies.

Zero Hour Contracts

Zero hour contracts puts employees 'on call' and to be available for work at their employer's request. The employer is not obliged to provide regular work. Employees are only paid for actual hours worked and must be prepared to work whenever they are asked.

Zero hour contracts are used by many employers in order to secure 'flexible employees'. This type of contract is highly popular in the catering, retail and hospitality industries, and is increasingly used in colleges and universities.

46% of universities and 60% of colleges' use zero hour contracts to deliver teaching.

Source: UCU

Tertiary education is the second largest user of casual labour but zero hour contracts present huge drawbacks in comparison to permanent regular work. UCU's position includes:

- No guaranteed level of regular earnings that provides any certainty over meeting bills or planning for the future

² Protected Characteristics under the Equality Act 2010

- Regular patterns of work can be reduced to zero at a moment's notice with no rights to redeployment or redundancy pay
- Many staff are denied employee status which leads to fewer and less favourable employment rights
- Zero hour contracts have shown themselves to be more open to abuse than regular permanent contracts

UCU's research showed 52.8% of HEIs responding stated that they did use zero hour's contracts for teaching, research and / or academic staff. 47.2% stated they did not. In Further Education, 60.5% of colleges responding said they do use zero hour contracts while 39.5% said they do not.

Targeting the use of zero-hours contracts is a major priority for our union and, like others in the labour movement, UCU is operating a twin track strategy for addressing this. If you are being offered a zero hour contract, **please ensure that you seek advice from your branch representative in the first instance, likewise if there are any changes to your current contract.**

A number of flexible working options which may suit your needs. Always get advice from your branch when considering changes as there may be options which mean you do not reduce your salary are outlined below: You can find out more about UCU's campaign against zero hour contracts at www.ucu.org.uk/index.cfm?articleid=7308.

Example letter of a statutory flexible working request

[DATE]

Dear

Flexible working request

I would like to apply under section 80F of the Employment Rights Act 1996 to work a flexible working pattern that is different to my current working pattern.

I confirm that I am eligible to make a flexible working request because I have worked continuously as an employee of [NAME OF UNIVERSITY OR COLLEGE] for the last 26 weeks. I have worked in [NAME OF DEPARTMENT/FACULTY] as [JOB TITLE] since [ENTER DATE] and my employee payroll reference number is [ENTER PAYROLL REFERENCE NUMBER]. I have not made a request to work flexibly during the past 12 months.

I have not exercised my statutory right to request flexible working during the past 12 months or, I have previously exercised my right for flexible working on [ENTER DATE AND BASIC DETAILS OF THE PREVIOUS REQUEST]

I am making this request for the following reason: **Include whichever of the following statements applies to you and delete the other options – feel free to add if these statements do not apply**

- I have / expect to have parental responsibility for the upbringing of a child aged up to and including 18 including a disabled child
- I am married to / the partner of the mother / father / adopter / guardian / special guardian / foster parent of the child
- I have been granted a residence order in respect of the child
- I am / expect to be caring for an adult and I am the spouse / partner / civil partner /relative living at the same address as the adult.
- I am making this request to help me care for the adult.

Include the statement that applies to you below and delete the rest

I have previously made a request to work flexibly on [ENTER DATE AND REASON FOR THAT APPLICATION] or;

I have never made a request to work flexibly.

My current working pattern is*

| | | |
|---------------|---|---|
| Place of work | [|] |
| Hours of work | [|] |
| Days of work | [|] |
| Times of work | [|] |

I would like to propose the following*

| | | |
|---------------------|---|---|
| Place of work | [|] |
| Hours of work | [|] |
| Days of work | [|] |
| Times of work | [|] |
| Proposed start date | [|] |

I think this change in my working pattern will affect [NAME OF UNIVERSITY OR COLLEGE] and my colleagues as follows: [ENTER HERE THE POTENTIAL IMPACT OF THE CHANGE ON YOUR IMMEDIATE COLLEAGUES, DEPARTMENT/FACULTY ETC]

Yours sincerely

Example letter of a non-statutory flexible working request

[DATE]

Dear

Flexible working request

I would like to make a non-statutory application to work a flexible working pattern.

I have worked continuously as an employee of [NAME OF COLLEGE OR UNIVERSITY] since [ENTER DATE]. I have working in [NAME OF DEPARTMENT/FACULTY] as [JOB TITLE] and my employee payroll reference number is [ENTER PAYROLL REFERENCE NUMBER].

My current working pattern is as follows*:

| | | |
|---------------|---|---|
| Place of work | [|] |
| Hours of work | [|] |
| Days of work | [|] |
| Times of work | [|] |

I would like to propose the following*:

| | | |
|---------------------|---|---|
| Place of work | [|] |
| Hours of work | [|] |
| Days of work | [|] |
| Times of work | [|] |
| Proposed start date | [|] |

I think this change in my working pattern will affect [NAME OF UNIVERSITY OR COLLEGE] and my colleagues as follows: [ENTER HERE THE POTENTIAL IMPACT OF THE CHANGE ON YOUR IMMEDIATE COLLEAGUES, DEPARTMENT/FACULTY ETC]

I am making this application to [ENTER THE REASON FOR YOUR APPLICATION I.E. IF YOU NEED HELP WITH YOUR CARING ARRANGMENTS]

Yours sincerely

Right to request flexible working - case studies in relation to discrimination toward Carers

Avoiding direct and indirect discrimination

A woman who is caring for her young child applies to work flexibly using the right to request, for which she qualifies. She is turned down. She makes another request six months later, suggesting a different working pattern that could easily be accommodated. Her employer does not have to use the procedures set out under the right to request, because these requests only have to be considered at 12 month intervals. However, if the employer refuses to look at her request altogether or if they refuse her again, this may be **indirect discrimination** because of sex, unless the employer can objectively justify what they have done. **This is because a refusal to consider a change in the woman's working arrangements has a worse impact on both the individual woman and on women generally compared with men, because they are more likely to have to combine paid work with caring responsibilities.**

Source: Equality and Human Rights Commission (updated December 2014) – Your Rights to Equality at Work: Working Hours, Flexible Working and Time Off

Requests for changes to hours of work or flexible working on the basis of association with a protected characteristics

An employer offers flexible working to all staff. Requests are supposed to be considered on the basis of the business needs of the organisation, but a manager decides that a man's request to work flexibly to care for his 90 years old father is more important than another man's to care for his 50 year old wife. If the manager's decision is based on the age of the person being cared for, this is almost certainly discrimination because of age by association. It would not be unlawful if the decision was objectively justified, since direct discrimination because of age, unlike because of other protected characteristics is allowed if justified.

If the manager made their decision based on the fact that the person with whom the workers was associated was a disabled person rather than an older person, that too might be direct discrimination by association because of whichever protected characteristics lost out. **The manager should base any decision on the business needs of the organisation, not on the protected characteristics of the people making the requests.**

Source: Equality and Human Rights Commission (updated December 2014) – Your Rights to Equality at Work: Working Hours, Flexible Working and Time Off

Requests relating to maternity, paternity, adoption and parental leave

A lesbian has asked her employer for unpaid parental leave. She and her partner adopted a child two years ago and she wants to be able to look after her child for part of the summer holidays. The worker made sure the time she has requested does not conflict with parental being taken by other workers. In exercising their discretion whether to grant parental leave, the woman's line manager refuses her request because they do not agree with same-sex couples being allowed to adopt children. **This is likely to direct discrimination because of sexual orientation.**

Source: Equality and Human Rights Commission Guidance: Maternity, Paternity, Adoption and Parental Leave

