A short guide to...

# Flexible working

What it is and how you can make it work for your business







Here for everyone, here for business



The Equality and Human
Rights Commission is an
independent public body that
promotes fairness and equality
and ensures the laws on
equality and discrimination
are upheld. Our remit is to
be here for everyone,
including business.

This guide will show how flexible working can add value to your business. A flexible approach has been shown to increase staff commitment and motivation, and to improve relations between employers and employees. Not only that but it can allow some businesses to cut costs and increase productivity.

Of course, many small business owners and managers have been innovators in developing flexible working practices. People often imagine that 'flexible working' is something only large companies can manage and afford, but in fact small organisations are often the most flexible.

Small firms are more likely to provide flexible working informally. They also report many business benefits. A survey by the British Chambers of Commerce (BCC) showed that of those that took part in the survey most small businesses offer some form of flexible working. Of those that did, it found that:

- over 70 per cent reported that it improved employer–employee relations
- about 60 per cent found it easier to retain staff
- over 50 per cent reported higher productivity.

Introducing flexibility does not have to cost a lot. Over 90 per cent of respondents to the BCC survey reported set-up costs to be zero or minimal. The key is to have a flexible attitude – and this comes naturally to many small businesses.

#### This guide covers:

- the law around flexible working
- **case studies** of innovative working in small businesses
- **key principles** for implementing new ways of working
- **six steps** to creating a more flexible workplace
- Q&A section
- directory of useful contacts.

### The law on flexible working

The owner or manager of a business may wish to offer flexible working to the entire workforce, and there is no legal reason why they should not do so. However, under the law certain employees have the right to request flexible working. If you receive such a request, you have a legal duty to give it serious consideration.

To be eligible to make a statutory flexible working request, a person must have been employed by you for at least 26 weeks and not have made a similar request within the past 12 months.

The request must be to care for a child aged 16 or under, a disabled child who is under 18 and who is in receipt of disability living allowance, or an adult who requires care – if the employee is the spouse, civil partner, relative of, or living at the same address as, the person requiring care.

Eligible employees can make a request to, for example:

- change the hours they work
- change the times they are required to work
- work from another location of the business or from home.

You should accept the information they give on their application for flexible working as true unless you have good reason to doubt it.

You must seriously consider all statutory flexible working requests with the aim of deciding whether your business can accommodate the requested work pattern.

Under the statutory procedure, you should hold a meeting with the employee to discuss their request. If you cannot accommodate the requested working pattern, you may still wish to explore alternatives to find a working pattern suitable to you both.

However, you can agree to a flexible working request simply on the basis of the application itself without the need for a meeting.



You can reject a flexible working request on only a limited number of set grounds.

#### These are:

- planned structural changes
- the burden of additional costs
- a detrimental impact on quality
- the inability to recruit additional staff
- a detrimental impact on performance
- the inability to reorganise work among existing staff
- a detrimental effect on ability to meet customer demand
- not enough work during the periods the employee proposes to work.

For more information on the law around flexible working, visit: www.businesslink.gov.uk

## Case study 1

#### West Bromwich Tool and Engineering Company: An adaptable business model

This Midlands engineering business, with a turnover of around £6m, is part of the car industry supply chain and has to respond quickly to changing customer demands.

'Our employees have to respond to our needs by being flexible,' says owner Stuart Fell. 'They also need us to give them flexibility because they have families and relatives and live in the real world.'

The firm makes pressed metal components, such as parts for instrument panels and seats, for large manufacturers like BMW

and Nissan that operate 24 hours a day. It employs about 100 people with nearly 50 different working arrangements that change over time as a result of regular discussions between staff and supervisors.

'On paper, it seems very complicated, but it works very well and the company and employees each get what they need,' says Fell. 'Most importantly, this adaptable and ever changing arrangement has proved to be capable of producing high performance and is not complicated to manage. I could name employees who would not work for us were it not for the flexibility we offer. I also know there is business we have won because we have been able to respond quickly to a customer demand.'

The two-way dialogue with employees proved helpful when the firm had to move to a four-day week, putting everyone on 80 per cent pay, for three months during the 2009 recession. 'It comes down to having a relationship that's based on trust. When we told them these were extraordinary circumstances and things were bad, they really understood that it was serious and necessary and believed that we were telling the truth.'



#### Fell recommends:

- A constant dialogue between employees and team leaders to ensure that both sides are benefiting from the flexible arrangement. 'Sometimes people need to come in early or stay late to get something done.'
- Even if an employee has not requested flexible working, make them aware of the opportunity. The firm offered flexibility to one engineer when he and his wife started a family even before he realised he might need it. 'We don't want to lose him to a competitor. If we offer him flexibility, he's going to have a job he can't replicate because, particularly for men, most employers don't offer flexibility.'
- Companies must adapt to the wider changes around them people increasingly expect flexibility. 'The organisations that don't adapt will end up the dinosaurs. They won't be able to move fast enough or recruit people to work for them.'

## Key principles

To make a success of flexible working, follow these key principles, which apply to both employers and employees:

#### ■ Flexibility is a business tool

It's about managing the head count and workflow effectively to achieve results for the business. It works best when it improves performance and customer service.

#### Business and customers come first

Everyone should be entitled to make a case for working flexibly, but there will be situations where a specific arrangement will not work because of commitments to customers. Where this is the case, look at other options that may work better for all sides.

## ■ Different arrangements work for different types of business

There is no one-size-fits-all solution. Rigid off-the-peg arrangements are less likely to work. The best working arrangements are tailored to the job and the individual.

#### ■ Flexibility involves give and take

Responsibility for making it work must be shared by employees and managers. Together you need to assess opportunities and challenges in any proposed arrangement openly and honestly.

#### ■ Additional resources can make it work

Your role is crucial in securing the resources for change if they are needed, for example by seeking additional IT infrastructure.

#### **■** Presence does not equal performance

It's important to judge the performance of flexible workers by measurable results and outcomes, not by how many hours they work or how long they stay in the office.

#### **■** Arrangements are not forever

New working patterns need to be flexible enough to respond to business requirements. In all cases you need to maintain a dialogue – both sides should keep the possibility of change alive through regular review.

#### ■ Flexibility can work for all

Don't make assumptions about who will and who won't want to work flexibly. Most employees will respond positively for a range of reasons beyond childcare and caring.

#### ■ Avoid penalising people's careers

Employees choosing flexible working should not suffer in terms of career development. Business need, performance and skills should be the basis for promotion.

## Case study 2

#### Clock: Fair rules for everyone

Clock is a small, award-winning digital agency employing about 30 people. Most of the employees are men and most work flexibly. The firm designs and builds websites, develops brands and creates online marketing campaigns for companies including BBC, Channel 4, Football Pools, J D Wetherspoon and News International.

Based in Hertfordshire, Clock has found that some people value flexible working more than the higher salaries offered by some of its competitors. The flexible working arrangements are a powerful recruiting and retention tool: the firm has only had five leavers in 11 years.

It operates 'core hours' of 12pm to 2pm to ensure most people are in the office during the daytime. Apart from that, individuals are given objectives and deadlines and the freedom to achieve these the way they think best. Clients may contact them on their mobile phones. Flexible hours mean the office is staffed from 8am to 9pm.

Web designer Rob Arnold was able to work remotely while completing his university degree. 'The remote working gave me just the flexibility I needed. I was treated like a person and given responsibility which gave me the opportunity to shine.' He has since been promoted to studio manager.

Everyone is equipped with a laptop and broadband at home so they can work there when necessary, for example while waiting for a special delivery. Syd Nadim, chief executive, says flexibility is good for his clients, the business and employees. 'We're in the top 100 new digital agencies, we're successful and we're making money while creating an environment for people to enjoy their lives.'

With government funding, Clock invested in advice from Business Link Hertfordshire to draw up policies on flexible working, part-time working, remote working and career breaks/sabbaticals. 'One of the biggest challenges is perceptions of fairness,' says Nadim. 'If one person gets one thing, other people say, "Why can't I have that?". Having policies makes it fair, workable, replicable and enforceable.'

#### Nadim recommends:

- Making sure everyone in the team understands that his or her working arrangement, whatever it is, impacts on everyone else.
- Trusting people and giving them responsibility. 'If you really trust people and really rely on them, they are more reliable and trustworthy. If they know you don't really trust them and you've got a "plan B", it's easier for them to let you down,' he says. 'Let go and watch how well other people can deliver and perform.'
- Being firm and fair in applying the rules: if someone abuses your trust, take swift action to show them and the team this behaviour is not acceptable.

## Six steps to a flexible workplace

#### 1 Where to start

■ Whether it's an immediate business challenge, a longer-term improvement in performance, or an individual request for different working hours, greater flexibility can provide new solutions.

- First identify the needs of the business, customers and staff. Could you achieve better results with more flexible working arrangements?
- You may be able to see how employees might benefit but not be so sure about the business benefit. Ask yourself: would this help to attract and retain skilled staff and keep them motivated?
- Examine how work is currently organised. Are there peaks and troughs which could be handled more efficiently with more or fewer employees available at different times?
- Could customer service be improved by longer opening hours, with employees staggering their starting and finishing times? Could you save on office space or make better use of equipment if employees worked remotely part of the time?

#### 2 Making it happen

- Discuss flexible approaches with all your staff and involve them in how work will be accomplished, customer needs met, and productivity maintained or improved.
- Give them the opportunity to make suggestions and raise concerns. Explain what you want to achieve and ask them to present ideas for change.

- An effective approach is to give a team responsibility for devising its own flexible working solution to achieve improvements for the business. You will need to set the parameters what cover is required, what mix of skills is needed at different times, how the team will communicate with each other, how problems will be resolved.
- Encourage an open, trusting environment in which everyone feels they benefit. You'll need to keep an eye on performance, provide feedback and communicate consistently.
- Consider a pilot scheme to iron out any problems before everyone commits to it.

#### 3 Creating the right environment

■ Employers often find it works best to open up flexible options to everyone, not just those with young children or caring responsibilities. Arrangements based on the business case rather than an individual's personal circumstances can be fairer for the whole team. Remember, though, that employees who choose to follow the 'right to request' procedure must be treated in accordance with the legislation, as discussed in the section on 'The Law on Flexible Working.'

- Offering informal flexibility creates a positive environment. Your staff are more likely to be flexible in return, for example by putting in extra time when things are busy. But there will be times when you need to formalise longer-term working arrangements. A well-communicated policy makes sense.
- You may not believe a particular job can be done flexibly, but keep the options open. There may be an alternative work pattern that suits you both. If you turn down a request on business grounds, be clear about the reasons. Try to find a compromise. If you are dependent on the employee, consider who has the skills to replace them in the event that they decide to seek work arrangements elsewhere better suited to their needs.

#### 4 Measuring performance and results

- Clearly set out what you expect people to achieve, and to what deadline, whether for a short-term project or for their regular job. Agree any core hours when they have to be in the workplace, how you will appraise and reward them, and how you will communicate with each other.
- You may need to redefine how you measure employees' effectiveness and productivity. Focus on what employees produce and the potential impact on customers, not on how many hours they spend at work.

- Decide how to evaluate the effectiveness of the arrangements; for example, impact on customer relations, recruitment and productivity.
- Flexibility needs to work for all concerned and trust is the key. If you feel things aren't working out for some individuals as well as they should be, tackle this head-on and resolve any problems quickly.

#### 5 Communication

- Talk to all your staff and keep reviewing the arrangements. Don't be afraid to make suggestions for change – and don't assume that an individual's arrangements are set in stone.
- Have an open discussion about how flexibility affects people's responsibilities and how they can be contacted when they are away from the workplace. Keep customers informed.

#### 6 Lead by example

- Try to structure senior jobs more flexibly to show it can be done. Use recruitment and promotion opportunities to redesign jobs and open them up to flexible working.
- If you're working flexibly yourself, you'll need to:
- make clear when and how you will be available mobile, email etc – and what your employees should do in an emergency

- set out what your expectations of your employees are
- set an example by sticking to your flexible arrangement as far as possible
- delegate and trust people think about who can deputise for you and how this could be a development opportunity.

## Case study 3

#### CHA: Access to new talent

Colette Hill has encouraged flexible working since founding CHA, a small PR agency specialising in workplace communications, in 1993. Now chair, she feels that the message about flexible working should be more positive. 'Currently the message is that it's an employee right to be fought for instead of an opportunity for a company and its employees.'

A key opportunity is that it opens up new talent pools. 'As a small business, you might not be able to afford all the talent you want full time, but you could have more of a mix if some of your people work reduced hours,' says Hill, who has regularly worked a four-day week herself.



The firm has always had staff who work part time. 'People who work part time are so much more motivated because when they're at work they're 100 per cent committed to work,' says Hill. 'All the things they would do if they were full time, like booking the dentist or picking up the dry cleaning, they save for their days off.'

Managers need to acknowledge the danger that reduced-hours working can impose an extra burden on full-timers and take action to prevent that.

'It's important to get everyone together and have a sensible conversation about how they're going to manage it,' she says. 'Have a team meeting on the morning when everyone is in the office, or maybe have a day when everyone has to be at work or available for conference calls. You also have to take the temperature regularly to check if it's working both for the part-timers and for the full-timers.'

# Difficult questions – and straightforward answers

#### Q Do I have to offer flexible working to everyone?

- **A** No. By law you are required to consider requests for flexible working from:
- parents with children up to and including the age of 16
- parents of disabled children under the age of 18, and
- carers of dependent adults.

In considering who can work flexibly and who can't, you need to remember that in addition to groups who have a right to request to work flexibly, some types of people are protected by equality legislation. These include:

- women returning from maternity leave who wish to reduce their hours, and
- disabled employees, for whom an employer is legally required to make 'reasonable adjustments' in order to allow them to do their jobs.

Refusing flexible working to people in these circumstances could leave you open to challenge or accusations of discrimination, so make sure you only say no if you have a sound business reason for doing so. For more details, see the section on 'The Law on Flexible Working'.

- Q I want to offer flexible working to my staff. But there are seven people with young children in our workforce of 17 and I'm worried how our small business will cope if they all want to work at different times. What should I do?
- A Be open and honest about the business needs with the whole team. Involve them in planning how work could be done differently. Consider what are the essential times that must be covered and think about the type of work that needs to be done. Some jobs lend themselves to working at home or can be done outside traditional hours. Others, like systems maintenance, are best done when the office is less busy.

Your staff may think of ideas you have not considered. They may prefer to work at different times, days or seasons. Employees with no children might like to work during school holidays and prefer to take time off during term-time.

You can, of course, refuse a request if it will adversely affect your business. However, by involving staff, most employers can find a solution that works for everyone and can offer additional business opportunities.

- Q I've just agreed to one of my staff working a more flexible schedule so he can do a business administration course. Other employees have been complaining there's one rule for him and another for the rest. How can I be fair to everyone?
- A Flexible working will only be a business benefit if it is consistent and fair across the organisation. It's important to have clear and rational criteria that apply to all cases. Ensure that you and your employee have worked out how to cover for any time when he is not available, so that his workload does not fall unfairly on others. Consider if there are business barriers to others working flexibly and, if there are, whether they can be overcome.

If you have done all these, you can address complaints fairly, explaining what the eligibility criteria are and what cover has been agreed. You will also have a strong platform to consider and approve other requests – or to refuse them if you have a sound business reason to do so and to negotiate compromises where necessary.

- Q I know several of my team would like alternative working arrangements, but our clients would not be happy. How can I reconcile these things?
- A Are you sure your clients would not be happy? Quite often, clients are also grappling with flexible working, and sharing experiences with others can be very helpful.

Clients need certain things to happen at certain times. If your team can work flexibly together, they may be able to ensure these requirements are met, and be happier and more productive themselves.

Agree what the essential requirements are and see how you can meet them within the team. Could staff be available or on call, without having to be sitting at a desk in the office? This will depend on the nature of your business and any flexible working arrangements would have to complement your business needs.

- Q One of my employees is a single parent. They are very hardworking and committed to their job, so sometimes I have been flexible with their hours when they have had family demands. Am I being unfair if I don't do the same for my other employees?
- A Many employers have informal flexible arrangements such as this one and they can work well for both the employee and the business. In this case, flexibility allows you to get the best out of a good worker by making their work–life balance easier.

Where employees have short-notice absences, they normally 'repay' lost time by making up their hours. But if you are concerned that allowing your employee flexibility is unfair on the rest of your team, you should make it clear to the others that you are happy to consider all requests for flexible working. Provided that you consider each request on its own merits and you explain your reasons for any refusals carefully, you will be treating your staff fairly. Take care that you are not indirectly discriminating by refusing a request.

Informal flexible working arrangements can work well, but you may want to consider making longer-term fixed arrangements to ease disruption to your business and help your other employees work flexibly if they want to. Doing so may increase productivity among the rest of your team as it will make them feel valued and trusted.

## Q How can I ensure my employees are working if they are not in the office?

A As with any employer–employee relationship, you need to establish an element of trust. It is, however, often the case that employees who have been offered the opportunity to work flexibly become more loyal to their employer and are willing to 'go the extra mile' in return.

There are several things you can do to make sure your employees work productively when they are not in the office:

- Measure progress in terms of outputs. Agree deadlines with your employee so that they know what they need to deliver and when, and ask them to report back to you regularly (for example weekly) with an update on their progress.
- Keep in regular contact with them; they may not be in the office but they should be available to you by phone or email.
- Encourage them to come into the office on a regular basis for important team meetings, training and even social events.

If you are concerned someone may be abusing their flexible working arrangement then you should deal with the problem immediately and fairly. Flexibility is not an excuse for poor self-discipline and you should expect the same high standards of all employees, whether working flexibly or not.

# Q We are only a small business with limited resources. Isn't flexible working a luxury we can't really afford?

A Introducing flexibility does not have to cost a lot. Flexibility is rarely expensive and often the simplest changes have the most impact. Many smaller businesses already work quite flexibly and so you may have already introduced different ways of working without any significant cost implications.

Working flexibly is not just about working remotely or from home, it also works for those who have to be in a fixed place, a factory or office (see the West Bromwich case study on page 6). It's not about a major capital investment, it's about how you plan and organise work to get the best out of your resources.

- Q When people have been with me for a long time, I'm happy for them to work flexibly. But new people need to earn my trust first. Does this put me at odds with the law?
- A It may do, for the reasons outlined above. Some employees are entitled to request flexible working and the request can only legally be refused for specific business reasons. You must consider each request separately and fairly. You must not discriminate between employees but granting one request does not mean it will be right to grant every request.
- Q If I agree to a trial period for flexible working and it doesn't work out, how should I revert back to how things were?
- A You need to put in place proper systems for measuring the success of the trial period and at the outset explain that the arrangements will be withdrawn if it does not work out, explaining clearly how a decision will be reached and the standards for success.

- Q Is it acceptable to make people who work flexibly redundant before people who are prepared to work normal hours?
- A No. The law makes it unlawful to dismiss an employee (or make them redundant) or victimise them because they have exercised their statutory right to ask for flexible working.
- Q If someone wants to work flexibly, is it any of my business to ask why?

A If they are seeking to exercise a statutory right to request flexible working then you are entitled to know why they say they are qualified to request flexible working and that includes telling you why they want it (caring for children or others).



### Directory

More detailed information about many of the issues covered in the guide is available on our website:

www.equalityhumanrights.com/hereforbusiness

We have also listed a number of other organisations below which we think could be helpful to you.

### Advice for employers

#### **ACAS**

www.acas.org.uk

08457 474 747

Provides advice and guidance on a wide range of employment issues such as flexible working and equal pay.

#### Department for Business, Innovation and Skills (BIS)

www.bis.gov.uk

020 7215 5000

Provides guidance on employment rights and responsibilities

#### **Business Link**

www.businesslink.gov.uk

08456 009 006

Offers practical advice on a range of issues including

recruitment, pay and disciplinary procedures.

#### **Central Arbitration Committee**

www.cac.gov.uk

020 7904 2300

For employers seeking trade union recognition, the CAC website includes step-by-step guidance as well as application forms.

## The Chartered Institute of Personnel and Development (CIPD)

www.cipd.co.uk

Provides introductory guidance on a range of employment issues including discrimination in the workplace, pay and flexible working.

#### **Employers' Forum on Disability**

www.efd.org.uk

020 7403 3020

Provides advice on employing and conducting business with people with disabilities.

#### Her Majesty's Revenue and Customs (HMRC)

www.hmrc.gov.uk/employers

08457 143 143

Provides information and advice for employers on issues such as statutory maternity and paternity leave, statutory pay, redundancy and sick leave. There is also a tool to calculate pay for sick, maternity and paternity leave.

## Schemes that support employers in creating fairer workplaces

#### Access to work

www.direct.gov.uk/en/disabledpeople/employmentsupport/ workschemesandprogrammes

London, East England and South East England: 020 8426 3110 Wales, South West England, West Midlands and East Midlands: 02920 423 291

Scotland, North West England, North East England and Yorkshire and Humberside: 0141 950 5327

Employers can access this scheme to obtain extra funds to help them buy the necessary equipment or make the required alterations to their premises so their disabled employee(s) can come to work and do their job(s) properly. There are also funds available to pay for support workers if required.

#### **Local Employment Partnerships**

www.jobcentreplus.gov.uk/jcp/employers/lep 0845 600 8192. A scheme run by the Department for Work and Pensions and Jobcentre Plus which aims to help businesses reach and recruit potential employees from different backgrounds to create a more diverse workforce.

#### **Train to Gain**

www.traintogain.gov.uk 0845 600 9 006 Advice and resources for businesses looking for support in training their staff.

## Where to direct employees

#### **ACAS**

www.acas.org.uk 08457 474 747

Provides advice and guidance on a wide range of employment issues such as flexible working and equal pay.

#### **Directgov**

www.direct.gov.uk By browsing under 'employment', your employees will be able to access guidance on a wide range of issues.

#### **NHS Carers Direct**

www.nhs.uk/carersdirect 0808 802 0202 Gives information about carers' rights in employment and beyond, as well as the services available to them.

#### **Pay and Work Rights Helpline**

www.payandworkrights.direct.gov.uk 0800 917 2368

This helpline provides advice on government-enforced employment rights.

#### **Trades Union Congress**

www.worksmart.org.uk

Provides information for employees on a range of issues.

We believe the overwhelming majority of employers want to do their best by their employees – and we want to be useful and relevant in helping them do so.

To make sure you receive future guides in this series, or to suggest topics you would like us to cover, please get in touch.

You can email us at: hereforbusiness@equalityhumanrights.com



### Contact us

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If you require this publication in an alternative format and/or language please contact the relevant helpline to discuss your needs. All publications are also available to download and order in a variety of formats from our website.

## Equality and Human Rights Commission helplines

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