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Child-friendly working hours

This information sheet explains the rights you have if you want to change your hours to fit in with caring for your children.

Before reading this information, please check your employment status. The rights outlined in this information sheet apply to employees. If you are not an employee, for example, you are self-employed or doing casual work, your rights may be different. If you are unsure about your employment status, seek advice.

For full details of parental rights, including leave and pay, please see our leaflets [Pregnant at Work](#) and [Time off for Working Parents](#).

Your rights when asking for child-friendly working hours

Can I ask to change my working hours?

If you need to change the hours you work because of childcare, you may have the right to request flexible working, and to have your request considered according to standard criteria.

You may also have a case of sex discrimination if your right to request flexible working is unreasonably refused.

This information sheet explains how to request child-friendly working hours using the statutory procedure.

If your request is refused you should get advice about whether you have a claim for compensation under the right to request flexible working AND under sex discrimination law.

The right to ask for flexible work

Who has the right to ask for flexible work?

As a parent, you can make a request for flexible work if:

- you are an employee, and
- you are the parent, adoptive parent, guardian or foster carer of a child under the age of 17, or a disabled child under 18 (or you are married to, living with or the partner of that person), and
- you must have, or expect to have responsibility for the upbringing of the child, and
- you have worked for your employer for at least 26 weeks by the time you make your request, and
- you have not made a request for flexible work in the last twelve months (whether it was granted or refused).

If you care for a spouse, partner, near relative or an adult who lives with you, you also have the right to ask for flexible work.

In 2011, the government will be consulting on extending the right to request flexible work to all employees.

What changes to my work can I ask for?

You can ask to change your hours of work, your days of work or your place of work.

This means you can ask to work part-time, flexi-time, term-time only or on hours or shifts that fit with your childcare. You can also ask to work at home.

Can my employer refuse my request?

Your employer must give your request serious consideration and follow the statutory procedure (see 'How to ask for child-friendly working hours' below). Your employer can only refuse your request for one of the following business reasons:

- the burden of additional costs
- the detrimental effect on the ability to meet customer demand
- they are unable to reorganise the work among existing staff
- they are unable to recruit additional staff
- the detrimental effect on quality
- detrimental effect on performance
- there is not enough work during the periods the employee wants to work, or
- planned structural changes.

Your employer must also explain why that reason applies in your circumstances.

Note: This right is in addition to the law on sex discrimination – see later in this information sheet. There are many similarities between the two rights and both will apply so you may have a claim under both.

How to ask for child-friendly working hours

When should I ask to change my working hours?

There are no hard and fast rules on when to ask but you will need to give your employer time to consider your application and time to

make any changes necessary, for example, to recruit a jobshare partner. If you ask to change your hours under the right to request flexible work there is a set procedure that must be followed with strict time limits. If possible, you should allow up to three months to follow the full procedure (including appeal).

How do I make an application?

To ask for child-friendly working hours you must make an application in writing and you **MUST** include all of the following:

- State that this is an application for flexible work and that you are applying as a parent or as someone with parental responsibility
- State the working pattern you are asking for and the date you want it to start
- Explain what effect, if any, you think the new working pattern would have on your employer and how you think it could be dealt with
- State whether you have asked before and, if so, when
- Sign and date the application

Your application can be made by letter, fax or email and you should keep a copy. Your employer may have a standard form for making an application, so you should check. Alternatively, you could use the government application form Form FW(A) available at www.bis.gov.uk – this form includes an acknowledgment slip for your employer to return to you confirming that they have received your application.

Your application is 'made' on the date your employer receives it. If it is made by email, it is taken as received on the same day. If it is

made by post, it is taken as having been delivered in the ordinary course of post.

How much information do I have to give about the effect of the changes and how it could be dealt with?

You should think about what will happen on the days when you are not at work and how any problems could be overcome. You probably know your job better than anyone else so think about how the new working pattern could work. For instance, is there someone else who does the same job as you who can cover? If not, you could suggest that your employer takes on another part-timer or jobshare partner.

What happens when my employer receives the application?

Your employer must follow the procedure stated in the Regulations. They must:

- Hold a meeting with you within 28 days of your application,
- The meeting should discuss your application and, if your employer does not think that would work, any possible alternative compromise arrangements,
- Give you notice in writing of their decision within 14 days of the meeting and tell you about your right of appeal.
- Give reasons for refusing (which must be one of those allowed by the regulations – see page 1) with an explanation as to why that reason applies in your case. The notice must be dated.

Can I have someone with me at the meeting?

Yes, if you wish you can be accompanied by a colleague at work or a trade union representative from work. They do not lose pay for attending the meeting. If that person is not available for the date of the meeting, your employer must postpone it. You can also be accompanied at an appeal meeting. If your employer refuses to allow you to be accompanied or you suffer a disadvantage you can make a claim in an employment

tribunal. The tribunal can award up to two weeks' pay to compensate you.

What if my employer needs more time to consider my request?

If either you or your employer would like more time at any stage of the procedure you can both agree to an extension of the time period. Your employer must record the agreement in writing stating what the extension is for and when it will end. Your employer must date the record of the agreement and send you a copy.

My maternity leave ends soon and my employer has not made a decision. What can I do?

You could contact your employer and send a copy of this leaflet, pointing out that the matter is now urgent.

If all attempts to contact your employer have failed you could write to your employer (keep a copy), giving details of previous communications or attempts to contact them and ask for an urgent decision with a deadline for replying e.g. seven days. If you are not happy with the way you have been treated you should make a formal complaint by using your employer's grievance procedure.

If your employer has not followed the correct procedure or time limits you can make a complaint in a tribunal within three months of the day they have failed to comply.

If you are on maternity leave and cannot go back to work because of your employer's failure to deal with your request in time, you should write to your employer and let them know that you are still planning to come back to work but it is impossible to do so as they have not clarified your work days/hours. See next section for more suggestions on what to do next.

I returned to work full-time for a year after maternity leave but cannot continue because my parents can no longer help out with childcare. Can I now ask my employer if I can reduce my hours?

Yes, the right to ask for flexible work applies until your child is seventeen years old, but you can only make one request a year. If you have already made one request you

would have to ask again under sex discrimination law which allows you to make any number of requests per year – see section below. Sex discrimination law applies at any time if you are having great difficulty or are unable to work certain hours because of your childcare and you have the right to have your request seriously considered and to be given full reasons for refusing. However, you would need to show why you are now disadvantaged by your old working pattern i.e. have a good reason for asking.

What to do next

If my employer agrees, when does the new arrangement start?

If your employer agrees to your request at the outset, they must write to you within 28 days of receiving your request confirming the new arrangement and the date on which it will start. There will then be no need to go through the procedure above.

The new arrangement should start on the date agreed between you and your employer. This will usually be the date you asked to start the new arrangement which could be the day you go back to work after maternity leave. It should not be backdated to the date you made the application. Your terms and conditions, such as pay and leave, will remain the same until the date the new arrangement starts when they will be pro-rated to reflect your new working pattern.

Your length of employment should continue from when you first started work for your employer (including any periods on maternity leave). If you are given a new contract make sure it does not state that your employment begins from the date of the new working arrangement.

What can I do if my employer refuses my request?

You are allowed to appeal against your employer's decision within 14 days of receiving their notice of refusal. You must write to your employer stating your reasons for appealing and sign and date the letter. If

your employer allows your appeal there is no need for an appeal meeting providing they inform you in writing of their new decision, giving the change agreed to and when it will start within 14 days of receiving your notice of appeal.

Otherwise, your employer must hold the appeal meeting within 14 days of receiving your notice of appeal. They must notify you of their decision within 14 days of the appeal meeting, in writing, giving reasons for their decision.

How do I know if my employer had a good reason to refuse my request?

It will largely depend on the circumstances of your work. If your new working pattern would cause major problems then your employer may be justified in refusing. If you bring a claim for indirect sex discrimination, an employment tribunal would decide whether your employer did have a good reason to refuse – see next question. There have been many tribunal cases under sex discrimination law in the last few years and many of the reasons given by employers are not seen as justifiable - see the section on sex discrimination law below.

You can get further advice on your employer's reasons for refusing from your trade union representative, local Citizens Advice Bureau or from one of the organisations listed at the end of this factsheet. If you want advice on whether you might have a good case you should see a specialist employment lawyer.

What can I do if I don't think my employer had a good reason to refuse my request?

You should start by using your company's grievance procedure. Ask your employer about their grievance procedure. You could also contact ACAS (see Where to go for more help) for advice or arbitration. If you still cannot reach agreement, you could consider the following:

- Under the right to ask for flexible work you can make a claim in a tribunal. This is only possible if your employer does

not follow the procedure (see How to ask for child-friendly working hours) or refuses for a reason not stated in the rules or has rejected your application based on incorrect facts. You must complete the appeal procedure and wait for the decision before you can make a tribunal application. The tribunal will not question whether the employer was justified in refusing unless you can show that your employer got the facts wrong. The tribunal can only award up to eight weeks pay in compensation.

- Under sex discrimination law, you can make a claim in an employment tribunal if you have a good reason for asking and your employer refuses your request without a good business reason. The tribunal will scrutinise your employer's reasons and question your employer carefully about whether they were justified in refusing. They can also award unlimited compensation for loss of pay (if you had to leave your job) and for injury to feelings.

YOU MUST MAKE A TRIBUNAL CLAIM WITHIN THREE MONTHS OF THE REFUSAL

under the new right and under sex discrimination law. **You should also raise a formal grievance with your employer and follow the grievance procedure.** For more information, see [Dealing with pregnancy and maternity-related problems at work.](#)

Your rights under sex discrimination law

What are my rights under sex discrimination law?

There isn't an absolute legal right to change your working pattern but if you need to change the way you work because of your childcare responsibilities, your employer must seriously consider your request and look at how you can do your old job in a way that meets your childcare needs. Your employer can only refuse if they have a good business reason.

It may be indirect sex discrimination if an employer refuses a woman's request to change her working pattern.

If a man's request to change his working pattern is refused but women in the company have been granted the changes they requested, he may be able to make a claim for direct sex discrimination.

Your employer will only know if they have a good reason for refusing your request by giving it a lot of thought. For example, refusing to even consider your request or having a policy of refusing part-time work would probably be seen as sex discrimination by an employment tribunal. An employer must consider each individual request in order to avoid discriminating against a woman or man with childcare responsibilities. People often assume that a job has to be done full-time or at certain fixed times of day. But, if you and your employer look carefully at your job you may be able to work out a more child-friendly option – perhaps one that neither of you had considered before.

Does this apply to me?

Yes, the Sex Discrimination Act 1975 applies to all employers and all parents with childcare responsibilities. But it only applies if you would be disadvantaged by not being allowed to work the child-friendly hours you need to. In other words, you must have a good reason for asking to work differently – just as an employer must have a good reason for refusing.

Examples of a good reason might be:

- You can't find or afford full-time childcare.
- You can't find or afford childcare outside the hours of 9am and 5pm, Monday to Friday.
- You have to be there when your child or children come home from school.
- Your parent or relative cannot look after your child full-time.
- You are suffering severe stress from working long hours
- You are distressed or disadvantaged by having to work your old hours.

Summary of sex discrimination

Direct Sex Discrimination

If a man is refused part-time work, he may have a claim for direct sex discrimination if his employer allows a woman to work part-time but not a man.

Indirect Sex Discrimination

Indirect sex discrimination rights are part of the Sex Discrimination Act 1975 (now the Equality Act 2010) which says it is indirect sex discrimination if

- there is a working practice (such as requiring full-time work or giving better benefits to full-time workers) and,
- far fewer women than men are able to work in that way and
- it is to the woman's detriment or puts her at a disadvantage, and
- the employer cannot show that the working practice is justifiable.

National Statistics (2006) show that only 58% of women can work full-time because of their childcare responsibilities, compared to 91% of men.

Do I have to make a formal application to ask for child-friendly working hours under sex discrimination law?

No, there is no specific application procedure under sex discrimination law so you should first make your request under the right to request flexible work – see How to ask for child-friendly working hours. If your request is refused you should get advice about bringing a claim in an employment tribunal under both rights because under sex discrimination law the tribunal will look closely at whether your employer had good reasons for refusing and you can receive higher compensation – see What to do next.

What counts as a good reason for refusing under sex discrimination law?

As flexible working hours have become much more common and widespread, many of the reasons given for refusing are not accepted by employment tribunals. There have been a lot of cases under sex

discrimination law over the past few years and the cases show the following:

“There are no part-time vacancies”

This is NOT a good reason. To avoid discrimination, an employer must seriously consider every request from a woman asking to work different hours because of her childcare responsibilities. A policy of not having part-time work is likely to be seen as discriminatory in itself. Also, your employer should be looking at how you can do your present job on a part-time or more flexible basis, not looking for other part-time work. The reasons for not offering part-time work must be carefully considered. For example, if there is too much work for a part-timer, your employer could recruit a job-share. *Given v Scottish Power plc (1995)*
Mrs G wanted to start job-sharing after her maternity leave. The company said this was not possible for someone at her level and ruled out any other options. Mrs G resigned and the employment tribunal said there had been indirect sex discrimination and awarded her £35,000.

“The job is too senior”

Again, this is not a good reason. To avoid discrimination, an employer must seriously consider any woman's request to work flexibly, no matter how senior. Some organisations now have very senior people who job-share.

“Last minute overtime is an essential part of the job”

If you can no longer do last minute overtime, or any overtime, your employer should look at other options such as a job-share or 'on call' rota. By looking at your job carefully you and your employer may find that the overtime you do is not essential or that the overtime you do is quite regular and predictable and you may be able to plan your childcare around it.

“It is too expensive”

To make this argument stick, your employer needs to show that the sums add up. In fact, this may not be the case as National Insurance costs are no higher for part-timers, because they are worked out as a

percentage of salary, and your employer may not have to buy extra equipment if part-timers and job-sharers share desks, computers etc. Your employer also needs to take into account the financial benefits of having flexible workers, for example, flexible cover if someone is off sick or on holiday.

“Continuity is crucial”

Employers sometimes refuse part-time work or job-sharing because they need someone who can provide “continuity”. But by looking at the job carefully, you and your employer may be able to think of practical ways around this. When one employer used this argument to say two receptionists couldn’t job-share, the chairman of the employment tribunal said the problem could be overcome ‘by the simple means of a notepad’!

“We can’t find a jobshare partner”

Your employer would need to show that they had made reasonable efforts to recruit inside and outside the organisation. They would also need to show that there would be particular difficulty in finding a jobshare partner, for example, the job was highly skilled and it would be particularly difficult to get someone else to do the work part-time or jobshare. Otherwise, there may not be a good reason why you could not go part-time while your employer looks for a jobshare partner.

An employer would be justified in refusing flexible work if there were good business reasons and there was no alternative solution.

Good Practice

A guide to good practice in relation to requests to work part-time was issued with the Part-time Workers Regulations and recommends that both large and small organisations might consider introducing flexible forms of working, such as term-time working, lunchtime working, flexi-time, home-working, reduced hours working, and a parental leave scheme.

Business Link also has information for employers about the benefits of introducing flexible working, including the effect on staff retention and financial impact as well as some case studies of employers who have introduced flexible working.

Both are available at www.direct.gov.uk

Frequently asked questions

My maternity leave ends in three weeks and my request has been refused. What can I do?

In order to extend your time at home while you make other arrangements or in order to gain some temporary time off while you decide what to do, you could consider:

- Taking **annual leave**, either a day or more a week, or in a block at the end of your maternity leave. Any annual leave should be agreed with your employer in the normal way and it is a good idea to confirm in writing the dates on which you are ending maternity leave and taking annual leave. All employees are entitled to at least 28 days paid leave a year from April 2009. Annual leave continues to accrue during ordinary and additional maternity leave.
- **Parental leave.** You can take up to four weeks parental leave a year (up to a maximum of 13 weeks before your child’s fifth birthday, or 18 weeks before your child’s 18th birthday if they are disabled). Your partner could also take

some parental leave to help out with childcare. Unfortunately, parental leave is usually unpaid. In order to take parental leave you will need to give 21 days notice. For more information, please see [Time off for working parents](#).

If you are unable to negotiate a successful outcome you should not go ‘absent without leave’ as your employer could take disciplinary action against you or treat it as grounds for dismissal. If you are able to return to work on your old hours, for example, full time, you should make it clear (preferably in writing) that you are doing so “under protest” and that you need a decision as a matter of urgency. However, you should note that if you return to work on a full-time basis you may find it difficult to bring a case of indirect sex discrimination later on because you have to prove why you are now disadvantaged by having to work full-time because of your childcare.

If you are forced to resign, you should give your employer the notice of resignation required by your contract. If possible, you should seek legal advice on whether you have a case under the right to request flexible working or under sex discrimination law before resigning.

My employer agreed to let me work part-time but I would now like to increase my hours. Can I go back to my full-time job?

No; not without your employer’s agreement. Once you and your employer have agreed to a new working arrangement it is a permanent change in your contract and you do not have the right to return to a full-time contract unless this was agreed in advance or you and your employer agree on an increase in hours.

I am not sure if I will be able to manage on a lower salary. Is there any help I can get?

Once your baby is born you can claim Child Benefit. From April 2013, Child Benefit will not be payable to families with a higher rate

tax payer. You may be able to claim Child Tax Credit and/or Working Tax Credit depending on your family income. For more information and an application form, telephone the Tax Credit Helpline on 0845 300 3900.

If you or your partner are receiving Income Support, income-based Jobseekers Allowance or Child Tax Credit of more than the family element you may be entitled to a Sure Start Maternity Grant of £500 for your first child (or if there are no other children aged under 16 in your family). Claim on form SF100 (Sure Start), available from Jobcentre Plus offices, from 11 weeks before the baby is due until 3 months after the birth.

What about help with childcare costs?

If you qualify for the Working Tax Credit (see above) you may also be able to get help with the costs of your registered childcare from the childcare element (to pay for a registered childminder, nanny, nursery, playscheme or out-of-school club).

Where to go for more help

Maternity Action

Advice on maternity rights and benefits
www.maternityaction.org.uk
Helpline 0845 600 8533

Department for Business, Innovation and Skills (BIS)

The government website on employment rights for parents.
www.bis.gov.uk see Employment Matters, Work and Families

Directgov

The government's online information resource
www.direct.gov.uk

ACAS

For advice on employment rights or arbitration services
www.acas.org.uk Helpline: 08457 47 47 47

Equalities and Human Rights Commission (EHRC)

For information and advice about discrimination law

www.equalityhumanrights.com

Helplines:

0845 604 6610 England

0845 604 8810 Wales

0845 604 5510 Scotland

Citizens Advice Bureau

You can find your nearest Citizens Advice Bureau (CAB) if you look in your local telephone book or see

www.citizensadvice.org.uk.

Community Legal Advice

For legal information and to search for specialist legal advice in your area
www.communitylegaladvice.org.uk
Helpline: 0845 345 4 345

Working Families

Advice on maternity rights and benefits
www.workingfamilies.org.uk Helpline 0800 013 0313

This factsheet was produced by Maternity Action in May 2011. It is always important to get up-to-date advice.

More Maternity Action information sheets

[Pregnant at work 2011](#) – a brief guide to your rights to maternity leave and pay

[Rights at work for fathers and partners](#) – a brief guide to rights for fathers and partners

[Additional paternity leave and pay](#) – new rights for fathers and partners

[Time off for working parents](#) – rights to paternity leave, adoption leave, parental leave and time off in an emergency

[Child friendly working hours](#) – rights to ask for changes in your working hours to fit with your childcare or other caring responsibilities

[Money for parents and babies](#) – benefits for families

[Common maternity pay questions](#) – how to qualify for Statutory Maternity Pay, Maternity Allowance and Employment and Support Allowance.

[Rights for parents with more than one job](#) – rights for parents working more than one job

[Redundancy during pregnancy and maternity leave](#) – your rights if you are made redundant

[Dealing with pregnancy and maternity-related problems at work](#) – how to deal with problems at work

[Pregnancy discrimination](#) – what is pregnancy discrimination and what you can do about it

[Discrimination during maternity leave and on return to work](#) - what you can do about discrimination during maternity leave

[Pregnant during maternity leave](#) – your rights if you become pregnant on maternity leave

[Breastfeeding on return to work](#) – your rights if you wish to continue breastfeeding on return to work

[Sickness during pregnancy and maternity leave](#) – rights and benefits during sick leave

[Breastfeeding in public places](#) – your right to breastfeed when you are out and about

[Polish language information](#) - rights at work for mothers, fathers and partners; your right to breastfeed when you are out and about

[Maternity rights for migrants](#) – information for EU nationals and other migrants

[Maternity rights for refugees and asylum seekers](#) – information for refugees, asylum seekers and refused asylum seekers

Available at www.maternityaction.org.uk