

RIGHT TO REQUEST FLEXIBLE WORKING ARRANGEMENTS FOR CARING PURPOSES

INTRODUCTION

The Work Life Balance and Miscellaneous Provisions Act of 2023, Part 2 introduced the right to request flexible working arrangements for parents and carers. The right to request such flexible working transposes Article 9 of the EU Work Life Balance Directive. In March 2024, the WRC published a Code of Practice for Employers and Employees Right to Request Flexible Working and Right to Request Remote Working

TYPES OF FLEXIBLE WORKING

For the purposes of the Parental Leave Acts, 1998-2023, flexible working is a working arrangement where an employee's working hours or working patterns are adjusted, including through the use of remote working arrangements, flexible working schedules or reduced working hours.

<i>Part-time work</i>	Where an employee works fewer hours than full-time employees.
<i>Term-time work</i>	Where an employee can take unpaid leave for a certain period of the year, most typically summertime.
<i>Job-sharing</i>	Where a full-time post is divided into two part-time roles and both employees share the overall duties and responsibilities for the role. Pay and benefits are shared in proportion to the hours each employee works.
<i>Flexitime</i>	Where an employee can vary their start and finish times outside of core hours while completing the required hours of work each week/month as specified in their contract.
<i>Compressed working</i>	Where an employee works their full-time hours in fewer days by extending their hours working day in longer blocks of time e.g. a five-day week that is compressed into four days.
<i>Blended working</i>	<p>Where an employee works part of their working week at a location remote from the employer's workplace, which may be the employee's home (i.e. their residential address in his/her normal tax residence as recorded on UCC's HR systems). For the avoidance of doubt, employees may work from airports, hotels etc. if they are travelling on University business, subject to maintaining appropriate security and confidentiality requirements.</p> <p>Please note that while blended working is classified as a category of flexible working, a separate procedure for requesting blended working arrangements applies, and is set out in a separate procedure.</p>

ELIGIBILITY CRITERIA

To make a request for flexible working an employee must be:

- the parent or acting in loco parentis to a child* under 12 years of age or under 16 years if the child has a disability or illness and who is or will be providing care to the child, or
- providing or will provide personal care or support to a specified person namely the employee's child, spouse or civil partner, cohabitant, parent or grandparent, sibling or a person other than one in the categories already specified who lives in the same household as the employee. The person must also be in need of significant care or support for a serious medical reason.

The legislation provides that a flexible working arrangement for the care of a child referred to above* shall end

- a) subject to paragraphs (b) and (c), not later than the day on which the child concerned has attained the age of 12 years,
- b) subject to paragraph (c), in the case of a child who –
 - (i) is the subject of an adoption order, and
 - (ii) has, on or before the date of the making of that order, attained the age of 10 years but not 12 years, not later than the expiration of the period of 2 years beginning on that date, or
- c) if the child concerned has a disability or long-term illness, not later than the date the child -
 - (i) attains the age of 16 years, or
 - (ii) ceases to have that disability or long-term illness or any other disability or long-term illness, whichever occurs first.

An employee can request flexible working from their first day at a new job, but they may be required to complete a minimum of 6 months continuous employment with the University before an approved arrangement can start. However, probationary employees may be considered for flexible and blended working, where flexible and blended working is appropriate, taking into account the general criteria, and specific further factors relevant in the context of probationers.

MAKING A FLEXIBLE WORKING REQUEST

An employee must submit their request for flexible working to their Head as soon as is reasonably practicable but not later than 8 weeks before the proposed starting date. The head is defined as the academic head of an academic unit [by whatever name titled] or the administrative/research head of an administrative/research unit and shall include a person acting in the capacity of head. For the purpose of this policy, head shall also include a line manager with express authority delegated by the head to carry out the head's duties under this policy. It is envisaged that an online application form will be developed in advance of implementation. (See attached sample application form - Appendix 1).

In addition to the information requested on the application form, a Head can ask an employee for any additional information that they may reasonably require about the person in need of care.

Employees should be mindful of their obligations under the GDPR in relation to such sensitive personal data.

An employee can withdraw their request for flexible working, up to when an approved arrangement is signed by the employee and the Head. Notice to withdraw a request must be in writing and signed by the employee and given to the Head.

RIGHT TO A RESPONSE TO A FLEXIBLE WORKING REQUEST

A Head who receives a request for flexible working must respond as soon as is reasonably practicable, but not later than 4 weeks after receiving the request. If a Head experiences difficulty assessing the viability of the request, they can extend the 4-week period for a further period not exceeding 8 weeks.

Within 4 weeks of receiving the request, the Head must:

- approve the request by confirmation email to the employee and to the People and Culture Department setting out the details of the agreed arrangement, the start date and duration of the arrangement, or
- provide notice in writing informing the employee that the request has been refused and the reasons for the refusal, or
- provide notice in writing informing the employee that more time is needed to assess the request and set out the length of the extension.

CONSIDERING A FLEXIBLE WORKING REQUEST

A Head who receives a request for flexible working must consider the request, having regard to:

- the needs of the University, including the needs of the service/unit;
- the employee's needs, i.e. the reasons why the employee is requesting the flexible working.

When considering a request for flexible working, the Head may refer to the criteria set out in this policy in relation to '*Considering a Request for Blended Working*'.

CHANGES TO A FLEXIBLE WORKING ARRANGEMENT

A Head and an employee can agree, in writing, a change to a flexible working arrangement which has already been signed, before or after it has started.

A change to an arrangement can be:

- postponing the arrangement or part of it to an agreed date; or
- curtailing the period of the arrangement in a way and to the extent agreed; or
- varying the arrangement in an agreed way.

Where an approved flexible working arrangement has not yet commenced and the employee becomes ill or incapacitated and is unable to undertake the care in relation to which the flexible working arrangement is based, the employee can give notice to the Head postponing the arrangement until the employee has recovered.

This notice must be in writing and be given as soon as is reasonably practicable and include a medical certificate or such evidence that the Head may reasonably require showing that the employee is unable to care for the person concerned.

TERMINATION OF A FLEXIBLE WORKING ARRANGEMENT

A Head can terminate an approved flexible working arrangement in certain circumstances, before or after it has started if the Head is satisfied that the flexible working arrangement would have, or is having, a substantial adverse effect on the operation of the business needs of the University:

- seasonal variations in the volume of the work concerned, or
- the unavailability of a person to carry out the duties of the employee in the University, or
- the nature of the duties of the employee in the University, or
- the number of employees in the area, or
- the number of employees in the area whose periods of approved flexible working arrangement overlap in whole or in part with the period specified in the employee's flexible working arrangement, or
- any other matters relevant to the substantial adverse effect on the operation of the University.

In such circumstances, the Head, having consulted with the People and Culture Department, can give an employee written notice of termination of an arrangement, having considered the following:

- the needs of the University;
- the employee's needs, i.e. the employee's reasons for requesting flexible working; and
- the requirements of this policy in relation to considering termination.

The notice must set out the reasons for termination and specify the date on which the employee must return to their original working arrangement. This date must not be earlier than 4 weeks from the date of receipt of the notice of termination unless the date the approved flexible working arrangement comes to an end is less than 4 weeks from the date of receipt of the notice.

In the event that the Head proposes to give notice of termination it will first:

- notify the employee in writing of the proposal to terminate the arrangement, and
- include details of the grounds for terminating the arrangement, and
- give the employee 7 days after receipt of the notice to make representations to the Head in relation to the proposal, and
- consider any representations made by an employee before deciding whether to give notice of termination.

When considering termination of a flexible working arrangement the Head will consider if the reasons for terminating the arrangement are objective, fair and reasonable. The grounds for the decision will be set out in a clear manner in the notice to help the employee to understand why the arrangement is being terminated and that the decision has been given consideration. Where the employee receives the notice, the Head will also consider in an objective, fair and reasonable manner any representations that have been made by the employee. The parties will consider whether any alternative arrangement may be feasible other than termination depending on the particular circumstances of each individual case.

If the Head decides to proceed with terminating the arrangement, the employee must return to their original working arrangement on the date stated in the notice.

RETURN TO PREVIOUS WORKING ARRANGEMENT

An employee can request by written notice, to return to their original working arrangements earlier than had been approved by providing reasons and a proposed date of return. The Head must consider and give notice within 4 weeks of receipt as to whether the request has been approved or refused and the reasons for any refusal. When considering the request, the Head will have regard to:

- the needs of the University, including the needs of the service area/unit,
- the employee's needs i.e. the reasons the employee made the request to return early.

If the Head agrees to an early return, they can propose an alternative date for return to the original working arrangement.

On the expiration of an employee's flexible working arrangement, the employee is entitled to return to the original working arrangement that they held immediately before the approval of the flexible working arrangement.

NON-COMPLIANCE

An employee must use the approved flexible working arrangement for the purpose for which it was approved.

If the Head, having consulted with the People and Culture Department, has reasonable grounds for believing that the flexible working arrangement is not being used for that purpose, they may give an employee written notice of termination setting out the reasons for the termination and specifying the date on which the employee must return to their original working arrangement.

In the event that the Head proposes to give notice of termination on these grounds it will first:

- notify the employee in writing of the proposal to terminate the arrangement; and
- include details of the grounds for terminating the arrangement; and
- give the employee 7 days after receipt of the notice to make representations to the employer in relation to the proposal; and
- consider any representations made by an employee before deciding whether to give notice of termination.

An employee is required to return to their original working arrangement 7 days after receiving notice of termination for abuse of an arrangement.

RAISING CONCERNS

If an employee feels that the flexible working request has not been considered in line with the legislation and/or with the Code of Practice, the employee may invoke the University's Grievance Procedure under the informal process in the first instance.

REVIEW POLICY

The policy will be reviewed after a period of 12 months in operation so that the University's Work-Life Balance Policy can evolve taking on board learnings from how arrangements work out over time for employees and the University.

Every flexible working arrangement is subject to an initial trial period of 6 months. The trial period will allow time for both employees and managers to assess how the arrangement is working. Any issues should be raised/ discussed and dealt with at an early stage through ongoing engagement with the Head. A formal review meeting will take place between the Head and the employee at the end of the trial period and any issues arising can be discussed with a view to resolving them. An extension of trial period or termination may be considered if necessary or if no issues have arisen the arrangement can be signed off on.

Version	1
Approved by:	Date
Governing Authority	11 February, 2025

SAMPLE FLEXIBLE WORKING APPLICATION FORM

I wish to apply for flexible working arrangements under section 13B of the Parental Leave Acts 1998-2023 for caring purposes.

I confirm that I (insert name)

- am an employee who is a parent or guardian of a child and who is or will be providing care to that child.

Or

- am an employee who is or will be providing personal care or support to a person in need of significant care or support for a serious medical reason.

Please select the criteria which applies to the person for whom you are intending to provide care:

- your child;
- your spouse or civil partner;
- your cohabitant;
- your parent or grandparent;
- your brother or sister;
- a person, other than one specified above, who lives with you;

And

- the person I intend to care for is in need of significant care or support for a serious medical reason.

The type of flexible arrangement I am seeking is as follows:

Please note that if the form of flexible working sought is blended working then the location requirements under the legislation and the WRC Code of Practice on Flexible and Remote Working apply.

Please include details of the blended working location below.

The proposed location for my blended working is _____. I believe this location is suitable for blended working under the WRC Code of Practice on Flexible and Remote Working for the following reasons

I wish to commence the flexible arrangement on xxxxx. (This date should be at least 8 weeks after the application is submitted). I wish to avail of this flexible working arrangement until xxxxxx.

I am enclosing the following in support of my application:

- My child's birth certificate or a certificate of placement in the case of an adopted child;
Or
- Details of my relationship with the person who is in need of care.
- The nature of the significant care or support that is required.
- Relevant evidence relating to the need of the person for significant care i.e. a medical certificate stating that the person is in need of significant care for a serious medical reason and signed by a doctor or other suitable evidence.

Signed _____

Date _____