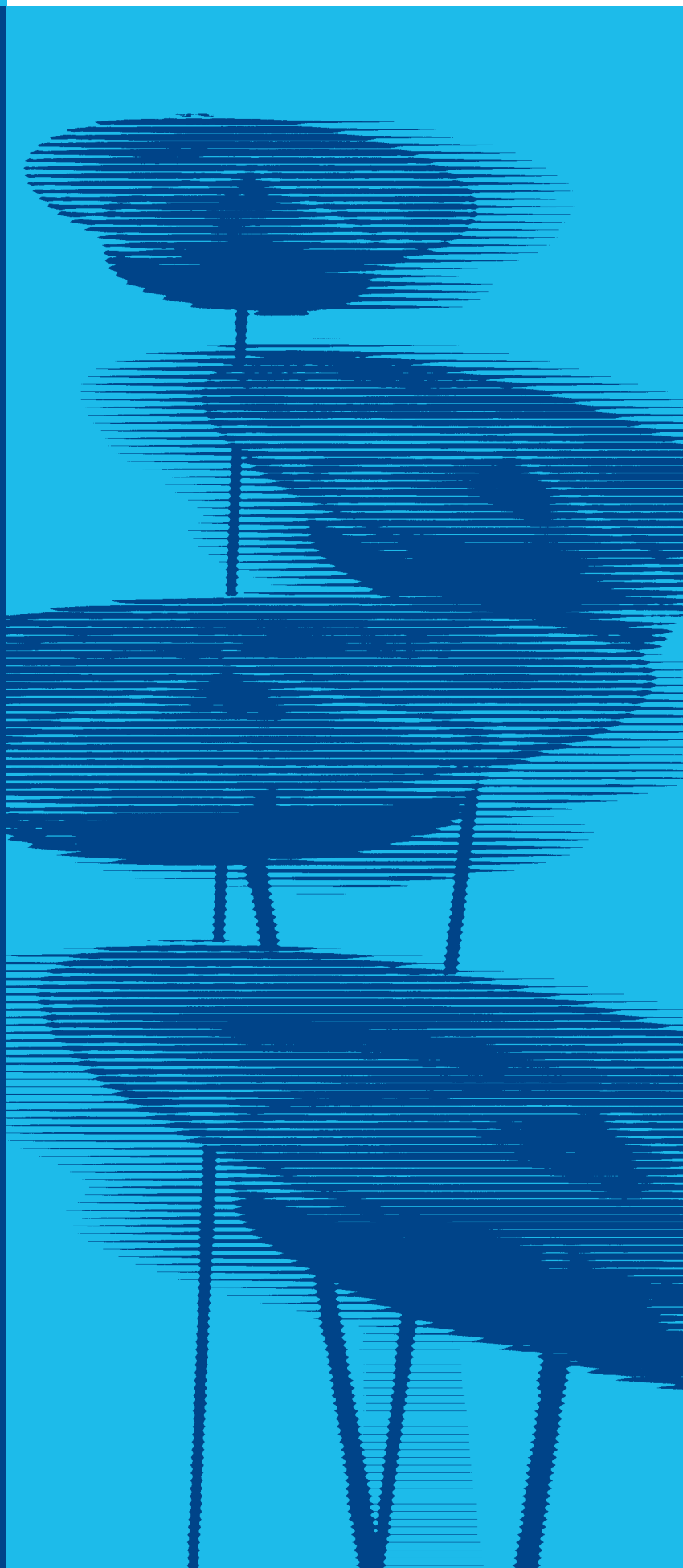


Spinning plates: establishing a work-life balance

*A guide for RCN
representatives*





Royal College
of Nursing

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Introduction

This publication provides guidance to RCN representatives on the issues affecting work-life balance today. The aim is to ensure that representatives can influence employers and policy-makers in their workplaces, and provide appropriate representation to RCN members who may need support to gain access to flexible working.

It gives information on:

- ◆ RCN surveys to support negotiations
- ◆ relevant legislation
- ◆ examples of ways to work flexibly
- ◆ how employee-friendly policies can benefit all workers, as well as carers and parents.

A guide to employee-friendly policies

1. Definitions and terminology

For many people, achieving a good quality of life is dependent on striking a balance between the demands of employment and their responsibilities outside of work. In a recent report by the Work Foundation, they defined a good work-life balance as:

“Having sufficient control and autonomy over where, when and how you work to fulfil your responsibilities within and outside paid work.”

The term family-friendly has been widely used over the past 10 to 15 years. It describes policies that enable parents and carers to participate in paid work without compromising their caring responsibilities. The RCN’s view is that these policies should go further and promote a balance between work and life outside of work for all nurses, regardless of gender and whether or not they are carers.

Therefore, the RCN uses the term employee-friendly to describe policies that encourage a good work-life balance for all. Employee-friendly policies usually take the form of providing flexible working arrangements. Some examples of policies are given in a subsequent section.

2. Work-life balance policies

Employment practices must enable organisations to secure the workforce they need, and to allow people with very complex lives to participate in paid work. The UK workforce is becoming increasingly diverse. It includes a high percentage of parents and individuals with other caring responsibilities such as looking after older relatives. Almost half (49%) of nurses have children living at home, and 15% have responsibilities caring for an older relative or other adult with care needs.

For nurses in the 55 age group this proportion rises with age to 25%. People also wish to pursue other

activities outside of work including, for example, life-long learning, charity work.

An organisation’s work-life balance policy should recognise the importance of helping its employees balance their work and home life by offering flexible working arrangements.

New technology and the move towards a 24-hour society have also changed the nature of work. For the most part, these changes are beneficial. However, the raft of recent health care reforms along with performance-related targets is contributing to increasing stress at work for nurses.

The growth in demand for health care, together with the reform of health care delivery to high quality patient led services, can only be met if working arrangements help skilled and experienced nurses to participate in nursing employment.

Nurses and other health care professionals must have access to healthy and safe working arrangements that help them to achieve a balance between work and life outside of work. This will ensure that they can continue to provide quality health care delivery without compromising their own physical or mental health.

Achieving the necessary equilibrium between meeting the needs of service delivery and the needs of staff is a continuing challenge for both employers and employees.

3. The RCN’s principles and values

The effective development of employee-friendly policies should meet the RCN’s principles and values that include:

- ◆ consultation with nurses – policies should be agreed and not imposed if they are to be effective
- ◆ flexible working arrangements should provide mutual benefits to both staff and managers

- ◆ recognition of the diversity of nurses' lives
- ◆ equal consideration for nurses with and without caring responsibilities
- ◆ developing and maintaining a team work culture in which nurses understand each others needs and support each other to achieve healthy work-life balance
- ◆ an appraisal of the needs of nursing students in educational establishments and while on clinical placements.

4. The benefits of work-life balance policies

Work-life balance policies benefit health care employers, managers, employees and ultimately patients. Retaining experienced nurses makes good business sense. Costs of providing employee-friendly working arrangements are more than offset by the reduction in recruitment, turnover and absenteeism costs.

Increased demand for nurses means that the organisations that provide employee-friendly policies will gain a competitive edge in attracting and retaining a quality nursing workforce.

An ageing workforce also means that the health service has to look at ways of encouraging older nurses to work for longer. This means providing flexible working hours towards the end of nurses' working lives and pensions schemes that allow staff to step-down to lower grade jobs in the run up to retirement, while protecting their pension entitlement.

Good employers respect the needs of all staff to balance work and life outside of work. They understand that equal access to modern working arrangements leads to a committed and motivated workforce and a healthy and safe work environment in which team work flourishes. In turn this creates an organisation able to attract and retain staff and reduce absenteeism and other costs associated with work-related stress.

5. The impact of national policy

Since 2000 there have been a number of initiatives to improve the working conditions of nurses in the NHS such as *Improving working lives* (IWL) in England and Wales, and the *PIN* guidelines in Scotland. Recent years have also seen the addition of new legislation to support access to flexible work for some employees. Further information is provided in the subsequent section *Related legislation*.

6. What nurses say about their working lives

The RCN conducts regular surveys of members that explore nurses' working patterns and how they feel about them. In terms of work-life balance, three elements of working patterns are important:

- ◆ how nurses work i.e. part-time, full-time or job-sharing. The continued ageing of the nursing profession is significant because there are fewer nurses who work full-time and longer hours
- ◆ shift pattern
- ◆ hours of work.

Most recently evidence shows that the proportion of nurses overall working part-time is relatively stable at 37% (Holding on, 2007). However, this figure masks differences and changes between employment sectors. In the NHS the proportion working part-time is the same as a decade ago (33%). Another 2% job-share or work occasional hours. Full-time working has increased over the last 10 years in the independent sector (up to 71% from 61%). While the number of nurses working in GP practice has gone up to 28% from 13%, and in agency/bank nursing has risen to 28% from 9%.

Working full time is most prevalent among younger age groups and the most recently qualified. UK-qualified black and minority ethnic (BME) nurses who responded to the RCN survey are more likely to work full-time (80% compared to 70% in

2002). Similarly, internationally-recruited nurse (IRN) respondents are also more likely to work full-time in 2007 than was the case in 2002 (97% compared to 91%).

Unsurprisingly, nurses whose income accounts for more than half their total household earnings (79%) are more likely to work full-time. This compares to nurses whose income accounts for less than half (30%) of their earnings.

The proportion of nurses working shifts has remained fairly constant over the last two years (56% compared to 55% in 2005), but there are differences between employer groups. Respondents working for NHS Direct (73%), independent care homes (81%) and in NHS hospitals (76%) are most likely to be working shifts.

The type of shift patterns vary. Internal rotation is the most prevalent at 59%, which is up from 54% in 2005. Fewer nurses work days only, at 30%, and 11% of nurses work permanent nights. However, permanent night contracts are more prevalent in independent hospitals (28%). IRNs are also more likely to work permanent nights (31%), compared to 12% of UK-qualified BME nursing staff and 10% of white British nurses.

Shift length varies considerably between employer groups and specialties. Across all respondents working shifts, 45% work 12 hour shifts, 55% work 8 hour shifts and just below 1% work other lengths of shift.

More than half (58%) of the nurses who responded to the survey said that they had worked in excess of their contracted hours in their last working week, although 44% said they did so regularly.

The majority of nurses express positive views about their working hours. Approximately 60% agree that they are satisfied with their input into planning off-duty and work times, and feel able to balance their home and working lives. They also say that they are satisfied with the choice that they have over the length of shifts they work. However, a significant minority disagree with these statements.

Significantly, nurses who work internal rotation feel least satisfied with their working hours.

7. Flexible working options

In your role as an RCN representative, a good starting point to improve the work-life balance in your organisation would be to ensure that your employer/human resources department is fully aware of the flexible working options that could be offered to staff. Ideally, they will have a written policy on flexible working. However, a policy is only as good as its implementation, so the key should be to raise awareness and initiate dialogue both with management and employees.

NHS employers are required to comply with the guidance provided in the *NHS terms and conditions of service handbook* (see sections 33, 34 and 35). Independent health care employers determine their own policies, but these must comply with minimum legislative requirements.

Flexible working is a phrase that describes any working pattern adapted to accommodate a better work-life balance. The following sections contain information from XperTHR online human resources intelligence www.xperethr.co.uk/policies (Xperthr, 2007) and describe a variety of flexible working options that could be taken alone or combined to suit an individual's circumstances. A subsequent section on flexible shift-working options deals with some general guidance on how best to deal with shift-working.

Part-time working

The employees are contracted to work fewer than the standard number of contractual hours per year for the type of work in question.

Benefits to the employee:

Employees can fit paid work around childcare and other commitments. Part-time work can be used to allow the employee to become more accustomed to increased leisure time in the run-up to retirement, or to supplement a pension from another employer. It can give an employee the ability to continue with

the security of regular employment while at the same time working on a self-employed basis.

Benefits to the employer:

Periods of peak demand in production or service can be targeted. This can be used to retain the skills of female employees after maternity leave.

Points to watch:

Reduced pay may not make it feasible for all employees. There must be no less favourable treatment of part-time workers in relation to pay and other benefits such as pension, sick pay, holiday and training, unless it can be objectively justified.

Notes:

A reduction in the number of hours worked may be a reasonable adjustment permitting a disabled individual to do, or continue in a job. Overtime rates are paid only when the employee has worked beyond the normal full-time contractual hours for the position.

Variations:

There is enormous variation in part-time working patterns. For example, some nurses start later or finish earlier, work only afternoons or mornings or fewer days in the week.

Relevant legislation:

- ◆ Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 SI 2000/1551
- ◆ Sex Discrimination Act 1975
- ◆ Disability Discrimination Act 1995
- ◆ Employment Act 2002.

Flexi-time

A system that permits flexibility of working hours at the beginning and end of a day or shift. The employee must work designated core hours and complete an agreed number of hours over an agreed period, which is usually a month. The most common core hours are 10am to 12pm and 2pm to 4pm.

The scheme might then allow a start time from 7.30am onwards, and a finish time up to 7.30pm.

Benefits to employee:

Increased scope to manage work and personal commitments. Depending on the rules of the scheme, credit hours may be turned into full days off work. Travel to and from work may be easier and cheaper outside peak hours.

Some people are naturally early or late risers and their working day can be fitted around these natural rhythms. Tasks requiring concentration can be undertaken during the quiet extended parts of the working day.

Benefits to employer:

Flexi-time can act as a recruitment and retention aid. Staff cover can be extended beyond the normal hours of work. Individual control over the start and end of the working day can be particularly helpful for those with caring responsibilities, the majority of whom are women. Such a scheme can therefore assist in the promotion of equal opportunities.

Points to watch:

An accurate system of recording the hours worked is required. Depending on business requirements, it may be necessary to stipulate that adequate cover is provided during the flexi period. Working long hours can cause fatigue and affect performance. Unless the scheme is handled with care, additional burdens may be placed on some team members or service delivery may suffer at particular times.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Employment Act 2002.

Annualised hours

A system whereby the employee's contractual working hours are expressed as the total number of hours to be worked over the year. This allows flexible working patterns throughout this period.

Usually the hours are divided into rostered hours, which are set, and reserve hours, when the employee can be called into work as demand dictates and to cover unplanned work and employee absence. Payment is usually in 12 equal instalments. However, some arrangements permit pay for the work actually done in the period to which the payment relates.

Benefits to employee:

The set hours that an employee is rostered to work will usually be known well in advance. This offers regular salary level throughout the year even though hours of work vary. It usually results in improved basic pay for staff, and possibly salaried status because the new rate of pay takes into account the loss of overtime hours. Other improved benefits such as better pension, sick pay and annual holiday are often negotiated in the package.

Benefits to employer:

Annualised hours arrangements may be suitable where there are predictable fluctuations in activity level for different teams over different periods. It is also useful where the situation is less predictable, but workload is likely to be heavy at points throughout the year and light at others. There is greater flexibility to match staffing to the demands of work, and the working hours necessary to produce effective service delivery. Other benefits to employers include: reduced overtime payments; improved productivity; and a reduction in the cost of employing temporary or bank staff.

Points to watch:

Employees can be called in at short notice so may find they have less freedom in planning their leisure hours. Long hours at particular times of the year in response to seasonal demand can result in increased stress, absence, and difficulties for employees with caring responsibilities.

Overtime opportunities for employees are reduced or non-existent so can no longer be used as an incentive. The employer may find themselves

paying for hours not actually used. Effective communication may be a problem, particularly where rostering arrangements mean individuals are away from work for long periods at a time. Demands on administrative time and resources are often high. The need for overtime may not be removed completely.

Notes:

Annualised hours are rarely available on an individual basis. The option is usually introduced to provide greater flexibility in the way work is organised to accommodate peaks and troughs in demand for an organisation's product or service.

An arrangement on overtime may need to be agreed. Similarly there will need to be an agreement on what happens to reserve hours that have not been used throughout the year.

Adopting an annualised hours system requires careful planning and communication, and will usually require union agreement and a lengthy period of employee consultation. Account must be taken of what happens when an employee leaves part way through a year. Averaged pay will affect the calculation of maternity and other benefits.

Variations:

Some systems work over a three or six-month period rather than a full year.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ National Minimum Wage Act
- ◆ Employment Act 2002.

Compressed hours

A system that permits employees to work their total number of contractual hours over fewer working days. Usually a five-day week is compressed into four days or four and a half days, or a 10-day fortnight into nine days.

Benefits to employee:

An extra day per week/fortnight is freed up for the employee to pursue a hobby or further education, or spend time with dependants. There is no reduction in pay.

Benefits to employer:

Quiet periods of work can be used more effectively if the employee's time off is arranged to coincide with them. Staff cover can be extended beyond the normal hours of work.

Points to watch:

Working long hours can cause fatigue and affect performance, cancelling out the advantages of the scheme.

Notes:

Where service cover has been extended by longer hours, consideration needs to be given to what will happen if the employee no longer wants to continue with the arrangement. Where more than one employee in a team wishes to work compressed hours, a rota may be necessary to ensure fairness, as some days (usually Monday and Friday) will be more popular choices for time off.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Employment Act 2002.

Job-sharing

Two part-time employees share the responsibilities of one position. In a shared responsibility arrangement the individuals both carry out all the duties of the job, simply picking up the work where the other one left off, while in a divided responsibility arrangement the duties of the position are divided between the two individuals, with each providing cover for the other where necessary.

Benefits to employee:

Job-sharing allows the post-holder more time for caring responsibilities or other commitments. The employee works at regular, defined times,

permitting arrangements in their free time to be made in advance. This can allow the employee to become more accustomed to increased leisure time in the run-up to retirement. It can also give an employee the continuing security of regular employment, while at the same time working on a self-employed basis.

Benefits to employer:

Two individuals are likely to bring increased skills and expertise to the position. Peak periods of demand can be covered by hours when the two individuals work simultaneously. Sick leave and annual leave can be covered, and overtime savings may be made.

Points to watch:

Increased costs are likely to result from benefits (for example, car and health benefits), training, overlap time and equipment where it cannot be shared. The arrangement is likely to be unsuccessful unless regular communication and handovers take place between the individuals. Account must be taken of what happens if one individual leaves. Demands on line managers increase in line with the number of individuals for whom they have responsibility.

Notes:

One individual's prolonged sickness or other absence or an issue with their conduct will impact on the other individual in the arrangement.

Variations:

A position could be split between more than two people.

Relevant legislation:

- ◆ Sex Discrimination Act 1975
- ◆ Employment Act 2002.

Term-time working

The employee works under a permanent contract, but can take unpaid leave of absence during the school holidays. Salary is usually paid in 12 equal monthly instalments, although the employee could

also be paid only for the time worked and receive no pay during the holidays. The contract usually specifies that no annual holiday should be taken during term time.

Benefits to employee:

The problem of finding childcare during school holidays is removed, and the employee can spend more time with their children during this time. This provides a regular salary level throughout the year.

Benefits to employer:

Term-time working makes it possible to recruit and retain nurses whose childcare responsibilities might otherwise keep them out of the employment market. This is particularly valuable in areas where recruitment is hard, and is a means of attracting women back to work.

Points to watch:

Other employees may be put under pressure not to take their annual holiday during the school holidays. The reduction in pay could act as a disincentive.

Averaged pay will affect the calculation of maternity and other benefits. Term-time working may be unsuitable where a long break from employment would be disruptive to the job or service provided, or where the employee has unique knowledge or skills that are needed on a consistent basis throughout the year.

Notes:

In some industries, students on holiday from college/university can be recruited to cover the school holidays. Where a managerial role is being considered for term-time working, account must be taken of whether the team involved can work extended periods without direct supervision.

Variations:

Longer hours could be worked during term-time and shorter hours during the school holidays to make up full-time hours.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ National Minimum Wage Act 1998
- ◆ Employment Act 2002.

Swapping hours

Employees can swap hours or shifts with colleagues doing the same type of work at different times of the day. Another version of this would be to provide staggered hours where there could be different starting, break and finishing times for employees in the same workplace.

Benefits to employee:

Occasional changes in hours or shift can be organised. For example, to attend a school sports afternoon or prize giving, or to be at home for a delivery or to have repair work done. There is no loss of pay.

Benefits to employer:

The needs of the business or service continue to be met. Employees are less likely to take sick days to accommodate their needs, so sickness absence is reduced. Where an employee would have taken a day's holiday to meet their personal needs the employer may have had to organise cover and this need is removed. Minimal managerial involvement is necessary.

Notes:

Notice-boards or the company intranet can be used by employees to advertise the shifts they want to swap. Such methods are likely to reach a wider number of potential swappers than word of mouth alone. It may not be possible or desirable to accommodate shift swaps between employees who are paid at different rates.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Employment Act 2002.

Voluntary reduced working time (V-time)

A system where it is agreed that the employee will work reduced hours for a certain period of time, with a return to full-time hours at the end of this period. Salary, pension, holiday and other benefits are pro-rata during this time.

Benefits to employee:

A temporary reduction in hours allows an employee to accommodate a specific event in their life, for example, a course of study or a relative's illness, but to return to the security of a full-time position.

Benefits to employer:

The employee's skills are retained on a reduced basis at a point when they might otherwise have been lost completely, and regained on a full-time basis when the agreed period comes to an end. The system could also be a way for an employee recovering from an illness or adjusting to an impairment to return to work on a phased basis.

Variations:

Although the variation in hours is usually temporary it may also be permanent. Employees could also volunteer to increase their hours.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Sex Discrimination Act 1975
- ◆ Disability Discrimination Act 1995
- ◆ Employment Act 2002.

Career breaks

A system where the employee has an extended period of time away from paid work, often with a guarantee of a return to the same or a similar job at the end of the time.

Benefits to employee:

The employee has an extended period of time away from the workplace to study, spend time with dependants, carry out voluntary work or perhaps travel abroad. A career break can be used as an opportunity for personal development.

Benefits to employer:

The employee's skills are retained in the long term. New ideas and extra skills, motivation and enthusiasm may result from the employee's period of time away from the workplace. While the possibility of a career break to look after young children may be particularly attractive to female employees, career breaks can also be used to attract, motivate and retain other sectors of the workforce, for example those who missed out on a gap year of travel between school and university.

Points to watch:

Lack of pay over the career break period is likely to limit the number of employees for whom this will be an option. A replacement will have to be found for the employee in their absence or the workload divided between the remaining members of the workforce. The individual's status during the career break and the impact of the break on their continuity of service, pension and other conditions of service must be made clear. Thought needs to be given to how any business reorganisation or restructuring might impact on the employee's right to return. Time away from the workplace can lead to a loss of skills or confidence.

Notes:

A period of induction and/or retraining may be necessary on the individual's return. Some means of keeping the individual informed about important developments in the workplace or field of work could be considered. The opportunity to take a career break can be used to reward long service.

Variations:

Particularly where longer periods of absence are concerned, the employee may have a right to first consideration for any vacancies rather than an absolute right to return. Under some schemes the employee is required to maintain regular contact with the employer throughout their absence.

Relevant legislation:

- ◆ Employment Rights Act 1996
- ◆ Employment Act 2002.

Working from home

This is an agreement where the employee carries out all or a proportion of their work duties from home rather than on the employer's premises. It may consist of the occasional day at home to coincide with a domestic requirement, or a regular arrangement of several days a week.

Benefits to employee:

Travel time and costs are reduced, often resulting in a reduction in stress. The system may permit more flexible hours. For example, the employee may be able to start work earlier as a result of no longer having to commute to work. The employee may be able to move away from their place of work to take advantage of cheaper house prices or a different lifestyle.

Benefits to employer:

A wider catchment area for recruitment is created. Employees who move out of the immediate vicinity of the workplace may be retained. Productivity can be increased by reducing working time lost to traffic jams and train and bus delays. Employees who do not have to commute to work may start their working day more mentally alert. Desk and equipment sharing can save on costs. The system may make work more feasible for an individual with a disability affecting mobility.

Points to watch:

A higher degree of trust may need to be placed in the employee as direct supervision of their activities will no longer be possible. Unless it is clear at which times the employee can be contacted at home regarding work, work time may overspill into the employee's leisure time. Employee motivation may be an issue. The employee may begin to feel isolated and out of touch with the workplace and the rest of the team. Communication may deteriorate, particularly if the individual rarely visits the employer's premises.

Notes:

The system is often used by mobile employees, such as salespeople, who spend a large proportion of their working time away from the employer's premises. New technology is increasing the range of work for which home working may be suitable. The employer will need to carry out risk assessments of the employee's work station and ensure that they are working safely. It must be made clear whether the employer or the employee is responsible for any necessary furniture, IT equipment or extra phone lines.

The employer will need to ensure adequate insurance of all its property. Mortgage or rental agreements may prohibit working from home, so these should be checked. Where it is necessary for the employee to take confidential material home, thought should be given to provision for its storage. Safeguards to ensure that other people cannot access computer systems may also need to be considered.

For the initial period of their employment, new employees will probably have to spend the majority of their time on the employer's premises to familiarise themselves with the role and procedures. Care must be taken that employees working from home are not overlooked for training or promotion. A trial basis may be helpful.

The company's IT service may need to be developed so that an effective service for home workers is provided. The employee's own IT skills may need to be improved so that they are able to resolve any problems that arise. A change in the employee's personal circumstances may make home working more difficult, for example, if they become parents or move to a smaller house. The suitability of the arrangement may need to be reviewed on a regular basis.

The impact of the employee's absence from the workplace on other employees in the team must be considered carefully.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Health and Safety at Work Act 1974
- ◆ Management of Health and Safety at Work Regulations 1999
- ◆ Health and Safety (Display Screen Equipment) Regulations 1992
- ◆ Employment Act 2002.

8. Asking for flexible working

It is important that all employees are aware that anyone can ask their employer for flexible work arrangements. However, the government has introduced a statutory right in order to encourage applications from those with parental responsibilities if they fulfill the following criteria. All employees have the statutory right to ask for flexible working if they:

- ◆ are an employee (but not an agency worker or in the armed forces)
- ◆ have a child under six or a disabled child under 18
- ◆ are responsible for the child as a parent/guardian/foster parent
- ◆ are applying to care for the child
- ◆ have worked for the employer for 26 weeks continuously before applying.

Under the law an employer must consider seriously any application made to them. However, they don't have to agree to it if there is a good business reason not to. Employees have the right to ask for flexible working – not the right to have it.

9. Flexible working: making it work

While some approaches to flexible working practices will involve changes to individual contracts of employment and be relatively easy to implement, others such as flexitime or the imposition of annualised hours will have a greater impact on sections of the workforce as a whole.

Before any such working pattern is implemented it is therefore important for management to commit to in-depth consultation with employees and their representatives, and recognise that gaining their agreement is likely to have a positive impact on the success of the scheme. Consultation gives all parties the opportunity to raise the issues that are of greatest importance to them and ensures that they are considered from all angles.

Depending on the size of the organisation, it could take the form of an employee survey followed by focus groups and a pilot scheme of the new working pattern. The findings of any consultation should be communicated to the workforce, along with any proposed action resulting from the consultation. As an RCN representative, you can play an important role in this part of the process.

10. Training, support and publicity

Both managers and employees may benefit from training to accustom themselves to working patterns with which they are unfamiliar. It is important to allow sufficient time to implement and fine-tune new working practices. A review period should always be agreed to examine how a change to working patterns is working in practice for all affected by it.

All managers and employees should be kept aware of the flexible working options open to them via intranet or notice-boards. To increase acceptance of flexibility throughout an organisation, examples of successful strategies could also be circulated via the intranet, notice-boards and staff newsletters.

Line managers should be encouraged to promote flexible working arrangements rather than acting as gatekeepers aiming to restrict their use.

You may like to suggest that your organisation's policy on flexible working practices is included in all recruitment literature to encourage applications from the widest range of job applicants possible.

11. Work-life balance and shiftworking

Not all of the flexible working options which have been described are practical for some nurses because of the nature of their work. This is particularly for staff based in the acute sector or working shifts. While nursing is a 24-hour service, it is still important to incorporate nurse choice by designing and operating work practices that realistically fit in with nurses' lives.

Research shows that the nurses working internal rotation are the least satisfied with the choice they have over their shifts compared with those working other patterns. However, where there is more choice and staff involvement in shiftwork rostering, many of the harmful effects of shiftworking are reduced. Tolerance to shiftwork differs between individuals, but figures show that 20% to 25% of people reject and leave shiftwork at an early stage because of chronic ill health.

There is no single most appropriate shift system, and working time arrangements are a compromise between the needs of individuals and groups of nurses. There is a diversity of shift arrangements operating in health care, but many do little to meet the needs of individual nurses or the ward.

Research has identified that there are morning and evening types of people, and that evening people adjust better to night work. Night shifts can lead to a chronic sleep deficit that may result in:

- ◆ behavioural changes
- ◆ persistent fatigue
- ◆ reduced alertness
- ◆ a higher incidence of health problems
- ◆ sleep difficulties
- ◆ reliance on sleep-inducing drugs
- ◆ dissatisfaction at work
- ◆ reduced job performance
- ◆ higher injury rates
- ◆ poorer safety records on rapidly rotating shifts.

Non-standard working practices also contravene society's established social rhythm. As a result, shiftwork has an adverse affect on:

- ◆ life partnership relationships
- ◆ social life, often leading to social isolation or marginalisation
- ◆ time available to spend with children.

Many nurses who leave their jobs give the following reasons:

- ◆ lack of flexible working hours
- ◆ inadequate crèche or day care facilities
- ◆ inadequate after-school childcare
- ◆ no part-time opportunities.

12. Flexible shiftworking

Flexible shiftworking provides a variation on the traditional, fairly rigid, shift system. It means that employees can negotiate the shifts that suit their needs and/or rearrange shifts among themselves. Where self-rostering is effective there are often high levels of staff satisfaction with working hours. Evidence shows however, that there must be a transparent and agreed framework of principles to support the self-rostering principles and nurse managers must be willing to delegate accountability to staff for arranging the work rotas.

The length of shifts that nurses work can vary and many nurses work long shifts. However, all shifts must comply with the rest periods required by the Working Time Regulations. Furthermore, the RCN recommends that no shift should be longer than 12 hours.

Benefits to employee:

Occasional changes in shift can be organised to accommodate a particular need or event in an employee's life. Job satisfaction increases when employees' personal requirements are taken into account. Where partners or relatives are employed by the same employer, greater control over the shift patterns they work means they can share caring responsibilities.

Benefits to employer:

The needs of the business or service continue to be met. Employees are less likely to take sick leave to accommodate their needs, so sickness absence is reduced.

Points to watch:

Demands on administrative time and resources may increase. It may not be possible to accommodate all employees' requirements and preferences.

Notes:

The employee who wants to change their working pattern must apply to do this.

Variations:

Employees' personal requirements may include part-time working, evenings or nights only, day-time only or shifts that co-ordinate with those of their partner or another relative.

Relevant legislation:

- ◆ Working Time Regulations 1998
- ◆ Employment Act 2002.

13. The flexible bank

Many nurses who want a flexible shift pattern that gives them a balance between their work and home life decide to work permanently as bank or agency staff. However, they achieve this flexibility at a cost. They lose pension and other benefits, as well as the pay levels of permanent staff.

As more flexible working patterns are introduced throughout the NHS and the independent sector, more and more nurses should be encouraged to apply for permanent positions that allow them to balance their time at work and outside of work, and receive the pay and benefits they are entitled to.

Negotiating and representing

When you first talk with your employer about work-life balance, you will probably be negotiating with them to introduce a new policy or to revise an existing policy on flexible working. It is important to emphasise why it is important and what the benefits to the organisation will be. These points are covered in the following section.

1. The benefits of having work-life balance policies

Some employers may see the development and implementation of work-life balance policies as an initiative that will be more beneficial to employees than the organisation. However, this is not necessarily the case. When negotiating with employers on the merits of implementing a work-life balance policy, it is important to stress the benefits to the employer as well as to the staff.

The overall benefits to employers and managers include:

- ◆ lower staff turnover. This leads to reduced recruitment and training costs and better continuity of care. Each time a nurse is replaced it costs the employer at least £5,000
- ◆ more effective recruitment. In times of nursing shortages, employee-friendly employers can compete more effectively for nurses in a tight labour market
- ◆ reduced absenteeism. Research shows that carers may take up to 12 days off a year, usually as sick leave, because caring arrangements break down. Absenteeism is costly to employers and puts extra strain on other staff, lowering morale
- ◆ less need to use bank and agency staff. Lower absenteeism and staff turnover reduces the need for bank and agency staff, so less time and effort is spent by managers on finding replacement staff. Also, nurses will not need to work exclusively on a bank if they can get the flexibility they need in a permanent post
- ◆ improved morale and staff wellbeing generates greater productivity. In addition to better recruitment and retention, Equal Opportunities Commission research shows that employee-friendly employers report greater staff commitment and loyalty
- ◆ enhanced corporate image increases the ability to attract staff. A rise in the number of applicants gives greater scope for selecting staff with appropriate skills and experience
- ◆ demonstration of commitment to equal opportunities. Employment Tribunal decisions have found the absence of flexible and family-friendly working arrangements are discriminatory on the grounds of sex and/or marital status. Employee-friendly arrangements demonstrate the translation of policy statements into practice.

The benefits to nurses include:

- ◆ financial reward because they are able to continue working. There are not only immediate rewards, but also future returns such as pension entitlements
- ◆ less stress and an improved quality of life. Work performance is enhanced if nurses are not concerned about balancing work with responsibilities at home
- ◆ improved morale and a feeling of being valued at work. Better morale reduces absenteeism and ensures that nurse colleagues do not experience additional stress from having to cover gaps in the duty rotas, or to support bank and agency staff who are unfamiliar with the clinical area
- ◆ potential to reduce stress and fatigue-related errors at work. Research shows that the negative aspects of shiftwork are reduced when nurses are able to work their preferred shifts
- ◆ reduction in sleep difficulties and other shiftwork ill health.

2. Key steps to take

If your workplace does not have employee-friendly practices then urge management to take action. It is important that any policy embraces all aspects of working time arrangements including shift patterns. It should go beyond family-friendly employment practices, and include measures that recognise an appropriate balance between work and personal lives for all nurses.

Key actions for RCN representatives to suggest to employers/managers:

- ◆ set up an implementation steering group with nurse involvement
- ◆ set up training for nurse managers on how to deal with individual applications to work flexibly or to implement organisation-wide schemes
- ◆ set up information systems and advice-giving forums for nurses
- ◆ use ongoing discussion with RCN representatives, other trade unions and the steering group to develop, implement and monitor policy
- ◆ use nurse surveys to monitor policy effectiveness by: assessing satisfaction levels; exit interviews; staff turnover; ease of filling vacancies; and scale of emergency cover
- ◆ evaluate monitoring results against measurable objectives.

RCN representatives have an important role to play by working with nurse managers to improve flexibility. Nurse managers will not only be faced with new ideas, but will also need to learn new communication and interpersonal skills to negotiate change to working time arrangements.

Line managers may also need support or training to help them manage any conflict that may arise in the team as a result of implementing new work-life balance policies. They will need to be transparent about the fairness of new processes.

New flexible shift patterns will affect rostering and workload distribution. But the results will accommodate new ways of working that can improve patient care, and help nurses achieve a healthier work-life balance.

3. How you can influence the workplace

RCN representatives can help by:

- ◆ requesting a staff survey to see what schemes staff would prefer
- ◆ suggesting a joint management and staff forum for developing employee-friendly policies
- ◆ identifying examples of best practice in similar organisations and seeking further information
- ◆ encouraging the development of good monitoring and evaluation systems for employee-friendly policies
- ◆ ensuring an employer's human resources strategy and business plan includes a commitment to employee-friendly policies.

Representatives can also encourage all RCN members to influence the workplace by:

- ◆ taking the initiative and being proactive in finding out what employee-friendly arrangements are available to them
- ◆ being flexible in thinking about new ways in which work and shifts can be organised and challenging traditional methods of working
- ◆ giving feedback to their employer on arrangements already in place
- ◆ being supportive of other colleagues' needs to work particular shift patterns
- ◆ telling their RCN representative about schemes that they have heard about that work well elsewhere, so that they can champion their introduction
- ◆ having realistic expectations about what can be achieved with limited resources and service delivery demands, and recognising that not every request can be accommodated.

4. Have principles not rules

When tackling the issue of flexible working in an organisation, it is far more important to be guided by principles rather than hard and fast rules.

The supermarket chain Sainsbury's employs over 140,000 people. It has found that by implementing forms of flexible working across the business that it has been able to attract and retain talented people. The company encourages their stores to develop working solutions that enable employees to manage their home life, while also ensuring that the right numbers of staff are in the right place, at the right time to meet customer needs.

"When we first introduced flexible working, like most companies, we started with a set of fixed do's and don'ts. Over the years, we've learnt that it's less about enforcing rules and more about instilling values and principles."

Human Resources Manager, Sainsburys

The main reason that more organisations with large numbers of staff avoid the issue of flexible working is the fear that it will be too complex to set up, and difficult to manage a system to keep track of everybody's working patterns. Despite the advantages of flexibility, many companies fear an avalanche of requests where employees dictate their hours of work. They believe it will result in extra costs or the inability to guarantee delivery of services.

Maintaining a fixed roster pattern is seen as the safe low-maintenance option because everybody knows the routine, when it will be very busy or exceptionally quiet. However, introducing flexible rostering enables a company to challenge these assumptions and do something about them.

As with any employee policy, communicating it to all employees is vital to its success. Ideally, employee representatives should be consulted about flexible working policies, which are then incorporated into contracts or terms and conditions of employment. Training will then be needed for managers, workforce planners, human resources (HR) and any others involved such as payroll.

5. Setting up flexible working arrangements

Advice from the online publication *Flexibility* recommends that, rather than waiting for the requests to come in, it is much better for employers to be prepared. They should have in place a range of flexible work options, and a framework that enables managers and staff to see how different options may apply to different roles, tasks and situations. This also takes away the necessity to reinvent the wheel every time a request comes along.

A further advantage may be that if flexible working arrangements are available as a matter of course in the company, staff should not need to make a request under the Employment Act. Potentially, this gives the employer more control over future variations to flexible working and exit arrangements if it proves unsatisfactory.

You can advise your organisation that policies need to cover:

- ◆ the range of options available
- ◆ eligibility issues
- ◆ contractual issues
- ◆ compliance with other legislation (e.g. Working Time Regulations, Health and Safety legislation)
- ◆ access issues and provision of kit and connection, in the case of home-based working
- ◆ training issues
- ◆ line management/supervision
- ◆ variation in arrangements
- ◆ colleague cover in the case of illness, etc
- ◆ who in the organisation should deal with requests.

Actions also need to include the training of managers to supervise flexible workers, and to implement policies consistently and fairly.

6. Outcomes

Here are some of the outcomes that nurses and managers should aim for when negotiating the introduction of flexible working arrangements:

- ◆ team-based self-rostering
- ◆ accommodating everyone's strengths
- ◆ sharing information about individual caring or other commitments and ambitions to ensure fair rostering
- ◆ respecting patients' needs
- ◆ involving nurses, RCN representatives and managers in change-making
- ◆ setting clear ground rules for self-rostering to accommodate: fairness; non-standard working patterns; the needs of other groups such as people with personal development activities; and caring or childcare responsibilities
- ◆ using job interviews to negotiate the right shift pattern
- ◆ negotiating re-entry strategies to work prior to or during a career break plan that takes account of the nurse's working time needs
- ◆ adopting a consistent recruitment and promotion approach to employee-friendly arrangements
- ◆ recognising the wide diversity in nurses' personal circumstances and that social norms and practices are changing
- ◆ recognising that nurses need to establish a balance between work and personal responsibilities, and that the balance differs between individuals.

7. Good practice case studies

The following case studies, taken from *Shifting patterns, a guide to employee-friendly working* (RCN, 2004), may be useful for you to use to encourage your employer to implement work-life balance policies in your workplace. They provide examples where different approaches to working flexibly have been successful and had benefits beyond their original intention.

Devolving rostering and self-rostering

“We are into the fourth or fifth month now that I haven't done the off-duty. The nurses said they wanted to look at some long days and other patterns. I was quite happy as long as we had some ground rules: a set of criteria which said the numbers and skills mix required on each shift and what was to happen if this wasn't achieved. A small steering group developed these and we wrote them down. I looked them over and had one of the nurses co-ordinate it for a four-week period – make it all work. They ensure that in that period full-timers have 150 hours and I discourage carry-over.”

“It's changed the shift systems as they have gone for a lot of long days. It's what they want and they are managing it. I can't say I'd have done it that way but I don't think there are any safety problems but I do discourage them doing three or more long days in a row. Fairness, running the service and not pushing people around is the key. When you start laying down the law and trying to put unreasonable things in place for the sake of trying to control, then it just doesn't work.”

A&E manager, Addenbrookes NHS Trust

This case shows that:

- ◆ the allocation of workload and rostering decisions does not have to be a central managerial function
- ◆ facilitating self-rostering or greater nurse involvement in rostering decisions requires training for ward managers in change and conflict resolution skills
- ◆ consultation with nurse representatives is vital.

Promoting flexibility at recruitment

“We have changed our advertising locally and nationally. I do a page advertisement each month saying that we offer flexible working. We work in partnership – what we can offer them what they can offer us. It's open to any nurse. We promote it internally. All our patient records are on computer and we promote flexible working on the screen.”

“What I want to ensure is that nurses know and understand that flexibility is for everybody. If

they have a hitch in their life. ...be it childcare arrangements, elderly care problems, relatives or just feeling unable to continue full-time, instead of thinking 'I've got to get out', come and talk and find out how we can find a solution. I'd rather not lose anyone. At interview if you are open in negotiations you find that there is often someone who wants to do a series of lates or a series of earlies – put the two together and you have cover. So we say at interview, we are happy for you to work family-friendly hours but we would like, perhaps, one weekend a month.”

Senior nurse, Winchester & Eastleigh Healthcare NHS Trust

“In our maternity leave policy we encourage nurses to think about their hours of work when they return and to discuss this with the manager before going on leave. This doesn't change their contractual rights but it sends the individual off with some assurances that they will return at say three days a week on XYZ shifts. This helps nurses and managers to plan. We've just had a case where a nurse returned, by prior agreement, on just one day a week at times which suited her. She's willing to do a few weekend shifts also. She thinks it's fantastic. The important thing is to just get them back. Okay, they might only come back part-time but, as their children get older, they will often stay and increase their time. It's all about getting some sort of balance and talking openly about that.”

Human resource manager, Addenbrookes NHS Trust

These cases show that:

- ◆ rigidity of shift arrangements reduce recruitment
- ◆ employee-friendly working times encourage nurses to apply for vacant posts
- ◆ flexibility following career breaks encourages early return and eases re-entry to the workplace
- ◆ compromise is OK
- ◆ staff commitment improves.

Accommodating social lives

The cases below show how that employee-friendly working arrangements are not exclusively aimed at parents.

“There is a male nurse who is crazy about football and throughout the football season requests Saturday off. He had a season ticket and he wanted to go to the games. There was quite a bit of unhappiness about it that he was getting every Saturday off to go to football. I thought long and hard about how to deal with it. Football isn't my scene, but I thought, 'well, no, it's not my scene, but I'm flexible with somebody who does an evening class that has nothing to do with nursing'. I suddenly realised that it doesn't matter what it is. If it's what that person is interested in I shouldn't be judging that person and nobody else should be judging that person. We solved that by having a ward meeting where I said 'would you think differently if he was doing a course on a Saturday?' They all agreed, 'yes they would see it differently.'”

“We also agreed that he was very flexible in other ways, willing to do other unpopular shifts. He would do Sunday or Saturday night shift as long as he could go to the match. He'd do Friday night shift. He was trying to be as flexible as he could while trying to have a social interest. The meeting turned to quite a joke thinking we had been awful to him and it was settled: throughout the football season he had the Saturday off and he works every Sunday. People feel that is fair. He's happy he gets to see the football, the rest of the staff are happy because they feel he is pulling his weight and, yes, it's important to have social interests. The fact that it happens to be football doesn't matter a jot. I was horrified about the price of the season ticket.”

Ward Manager, Addenbrookes NHS Trust

“I wanted to do a Spanish class but I thought this was nothing to do with work and they'd laugh at me if I asked to have off-duty every Wednesday night. But I got up courage and talked to the sister. 'It's fine', she said.”

D-grade nurse, Nottingham University Hospital NHS Trust (formerly Queen's Medical Centre University Hospital)

These cases show that:

- ◆ it is important to promote employee-friendly practices where other quality of life-matters are incorporated
- ◆ ward managers need conflict resolution skills
- ◆ flexibility is rewarded by nurses offering flexibility
- ◆ nurses' quality of life can be improved without damaging the service.

8. Useful tips

A series of brief case studies provide some more useful tips for nurses and ward managers about practices that can facilitate employee-friendly working arrangements. They show that there is no one way to implement work-life balance policies.

Off-duty fairness

"Nurses fill out the off-duty requests in order. Each month nurses move up the list; you might be third one month and second the next. So it's not the same people getting their off-duty."

Senior nurse, Nottingham University Hospital NHS Trust (formerly Queen's Medical Centre University Hospital)

Predicting the monthly rota

"Many wards attempt to replicate each monthly rota in order to help nurses plan their childcare and social activities. This rarely proved possible due to annual leave, sickness, recruitment difficulties, nurses' requests for changes and so on. However, many nurses appreciated any early warning of future work patterns. Permanence (nights) and predictability (rotas either rolled over or issued long in advance) help nurses balance work commitments with personal arrangements."

Senior sister, Three Shires Hospital (part of independent provider group BMI Healthcare)

Considering the partner's work patterns

"We try to be flexible like when somebody says 'my husband is a policeman and he's on a particular

case and working at such and such time on this investigation for three months and the only thing I can do is work round him.' Even if it's at short notice we'll look at it and do what we can. We have to change the system to fit the person. I have a number of nurses with police officers as husbands and they bring in their fixed shift patterns. I use these to work round. Mostly they want to work any time their husband is not, particularly when you've got people who can't afford to go out for childminding and they are relying on one another. Lots of us are like that."

Senior sister, Three Shires Hospital (part of independent provider group BMI Healthcare)

"I request shifts to fit in with my husband's nights. Sue (the ward manager) asks what shifts your husband is doing and nine times out of 10 she fixes it."

D-grade nurse, Nottingham University Hospital NHS Trust (formerly Queen's Medical Centre University Hospital)

Working across wards

"We have clinical support nurses to cover all shifts in case of sickness. They serve many wards and are qualified and know the working environment. There are three of them covering the three shifts across seven wards. One of our nurses works as this support person on a six month secondment."

Addenbrookes NHS Trust

Providing accommodation

Some nurses at the Queens Medical Centre campus travel considerable distances to work in Nottingham and are provided with accommodation. A number work three consecutive 12-hour shifts (either days or nights) and stay over at the hospital. They return home (often 100 miles distant) for the remainder of the week. The provision of accommodation makes it possible for those nurses to work in Nottingham.

Nottingham University Hospital NHS Trust (formerly Queen's Medical Centre University Hospital)

Term-time wards

“Why don’t we have a term-time only ward for waiting list initiatives? The ward can run day case waiting list initiatives and shut during the long holidays. It would tackle the waiting lists and there’s a workforce out there more than willing to do it. Whatever we like to say, nursing is still a female-based workforce. If you’re a female in a relationship more often than not you are the one who is looking after the children or relatives.”

Senior nurse, Nottingham University Hospital NHS Trust (formerly Queen's Medical Centre University Hospital)

9. Related legislation

Employers are not obliged to have a specific work-life balance policy in place yet. However, there are a number of existing pieces of legislation providing rights to employees that, when combined, add up to many of the issues that would need to be taken into account in developing a work-life balance policy. The following acts and regulations all have a work-life balance dimension to them:

- ◆ Work and Families Act 2006
- ◆ Employment Act 2002
- ◆ Flexible Working (Eligibility, Complaints and Remedies) Regulations 2002 SI 2002/3236
- ◆ Flexible Working (Procedural Requirements) Regulations 2002 SI 2002/3207
- ◆ Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 SI 2000/1551
- ◆ Working Time Regulations 1998 SI 1998/1833
- ◆ Sex Discrimination Act 1975
- ◆ Disability Discrimination Act 1995
- ◆ Health and Safety at Work Act 1974
- ◆ Management of Health and Safety at Work Regulations 1999 SI 1999/4242
- ◆ Health and Safety (Display Screen Equipment) Regulations 1992 SI 1992/2792.

Under the right to request flexible working, an employee with 26 weeks' continuous service and a

child under the age of six-years-of-age (18 if they have a disability) for whom they have parental responsibility, has the right to request a change to the number of hours they work, the times or the place where they work.

From April 2007 this right has been extended to cover carers of adults. Employees can apply to work flexibly to look after a relative. The definition of relative covers parents, parent-in-law, adult-child, adopted adult-child, siblings (including in-laws), uncles, aunts, grandparents or step-relatives.

The employer may refuse a request only on the grounds of:

- ◆ burden of additional costs
- ◆ detrimental effect on ability to meet customer demand
- ◆ damaging impact on quality
- ◆ negative impact on performance
- ◆ inability to reorganise work among existing staff
- ◆ unable to recruit additional staff
- ◆ lack of work during the periods the employee wishes to work
- ◆ planned structural changes.

Part-time workers have the same statutory rights as equivalent full-time workers (irrespective of the number of hours they work). Since the implementation of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, they are also entitled to equivalent contractual benefits on a pro rata basis.

Under the Working Time Regulations 1998 a worker's working time for any reference period must not exceed 48 hours for a seven-day period. The ordinary reference period is 17 weeks, but regulation 23(b) permits this to be increased to up to 52 weeks under a workforce or collective agreement.

Although rest period rights may be varied under a workforce or collective agreement, adult workers are entitled to rest breaks of:

- ◆ not less than 20 minutes where their daily working time is more than six hours,

- ◆ not less than 11 consecutive hours between the end of one working day or shift and the beginning of the next
- ◆ 24-hours in each seven-day period (or 48 hours in each fortnight).

Night workers are subject to a working time limit of an average of eight hours in each 24-hour period. The standard averaging period is 17 weeks, although this can be extended in certain circumstances. Night workers whose work involves special hazards or heavy physical or mental strain are subject to an eight-hour limit for every 24-hour period (with no averaging over a reference period).

A refusal to permit a woman to work on a part-time basis may lead to claims of indirect sex discrimination under the Sex Discrimination Act 1975. This is because a requirement for an employee to work full-time is deemed to have a disproportionate adverse impact on women (compared to men) since more women have the prime responsibility for childcare.

Under the Disability Discrimination Act 1995 employers have an obligation to make reasonable adjustments to premises and/or working arrangements that place a disabled employee or job candidate at a substantial disadvantage because of their disability. Adjustments to working arrangements could include more flexible working practices.

A decision by the European Court of Justice (ECJ) in the case of *Coleman v Attridge Law* is expected in late 2008. The claimant, Ms Coleman, claimed she had been discriminated against because she is the primary carer for her disabled son. If the ECJ find in favour of Ms Coleman it will mean that the Framework Employment Directive for equal treatment in employment and occupation (2000/78/EC) provides protection against discrimination and harassment against an employee on the ground of *his or her association* with a disabled person. At present legal protection is limited to protection against discrimination against a disabled person. The implications of such a decision would be significant and would extend the rights of people caring for a disabled person to request flexible working arrangements.

Employers have general duties under the health and safety legislation to ensure that staff members working at home are kept safe from harm. Risk assessments should be carried out to ensure that there is a safe system of work and satisfactory measures to control risks in place.

Family-friendly reforms

There are further reforms to family-friendly legislation being implemented this year. The Maternity and Paternity Leave etc. and Paternity and Adoption Leave (Amendment) Regulations 2006 apply to parents whose babies are due to be born or placed for adoption on or after 1 April 2007.

The main changes are:

- ◆ the removal of the current six-month service requirement for an employee to claim additional maternity leave (AML). Any employee who qualifies for ordinary maternity leave (OML) will now automatically qualify for AML regardless of length of service
- ◆ the distinction between OML and AML is retained to continue to provide for different rights on return to work after OML and AML
- ◆ the amount of notice an employee needs to give when they intend to return to work early is doubled from four to eight weeks
- ◆ keeping in touch days are where an employee can agree with their employer to work up to 10 days during the statutory leave period without bringing the leave to an end. However, employers are not to be obliged to offer, nor employees to accept, such work
- ◆ provisions mirroring the changes to maternity leave have been introduced in relation to adoption leave
- ◆ an increase on statutory maternity pay (SMP) from 26 weeks. SMP increased to 39 weeks with effect from 1 April 2007, and there are plans to increase it to 52 weeks before the next general election
- ◆ the Government plans to introduce the right to up to 26 weeks' additional paternity leave (APL) for employed fathers before the next general election. A proportion of SMP may then be transferred

to the father should the mother return to work before the end of her maternity leave

- ◆ the right to request flexible working has been extended to carers of adults from April 2007. The relevant adult must be aged 18 or over and a spouse, partner or civil partner, a near relative or someone who lives at the same address as the employee. A near relative includes parents, parents-in-law, adult-child, adopted adult-child, siblings (including in-laws), uncles, aunts, grandparents and step-relatives.

Working Time Directive and flexible working

The Working Time Directive (WTD) regulations provide rights to:

- ◆ a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer
- ◆ four weeks' paid leave a year
- ◆ 11 consecutive hours' rest in any 24-hour period
- ◆ an in-work rest break if the working day is longer than six hours
- ◆ one day off each week
- ◆ a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

The regulations apply to all workers, including the majority of agency workers and freelancers. Doctors in training have been covered by the WTD since 1 August 2004. They currently work a maximum of 58-hours a week until 1 August 2009 when it falls to 48-hours. This change will impact on nurses' patterns of work. They will be part of the teams covering for the loss of junior doctors' hours and will have to deal with new or expanded roles as well as service redesign. This will also have implications for organisations' ability to implement employee-friendly arrangements because they will have to make up the loss of hours using the existing workforce.

Advice on what constitutes working time and entitlement to rest breaks is available on the Activist Zone of the RCN website.

Age discrimination legislation and flexible working

According to an Age Concern report (Age Concern, 2004), GDP is between £12 billion and £30 billion lower than it could be because of the under-employment of older people.

The under-employment of older workers is happening at a time when society as a whole is ageing:

- ◆ average life expectancy is now 76 for men and 80 for women
- ◆ by 2050 this is expected to be over 80 for men and over 85 for women
- ◆ by 2021 there will be more people over 80 than there are children under 5-years-of-age
- ◆ in 20-years time there will be two million fewer adults aged between 16 and 50, and two million more between 50 and state pension age.

Couple this with a pensions crisis where many people now under 60 will not have enough income after retirement, there is an overwhelming economic need for people to rethink what retirement means for them. The implication of this is that people need to work longer, and postpone retirement.

At the same time, few people want to work flat out beyond the current retirement age. In fact, workplace surveys usually show that older staff are very actively thinking about working differently - either scaling down their work, working different hours, or spending one or two days per week working from home.

The new Age Discrimination legislation is the UK's response to a European Directive on Equal Treatment in employment. The legislation to ban age discrimination took effect in October 2006.

The legislation:

- ◆ bans any discriminatory procedures in recruitment on the grounds of age - this includes workers at any age, not only older workers
- ◆ outlaws age-related harassment in the workplace on the lines of current gender equality legislation

- ◆ outlaws workplace benefits that are age-related, which could be bad news for some older workers
- ◆ set a default retirement age of 65. This prohibits arbitrary earlier retirement ages, and gives the worker at 65 the "right to request" to continue working beyond this age
- ◆ as with the recent flexible working rights for parents, employers are obliged to consider this request. However, there is no right to request flexible working, just a right to request continuing to work.

Some barriers are being removed, but it will take more than this legislation to encourage many older workers to re-enter the workforce, and to make people approaching retirement want to continue working.

Greater flexibility in working arrangements should be part of the equation, but that is also not the whole answer. Pension provision needs also to move into a new era of flexible retirement, so that workers know they will not be penalised in any way for continuing to work or by adopting flexible working practices towards the end of their working lives.

However, governments will only do so much. Employers can take the lead by making themselves the employer of choice for older workers. They can put in place changes to working patterns that meet the needs of older workers.

10. How to request the right to apply to work flexibly

The following section may be useful in your role representing individual members to apply to work flexibly. It is up to the individual worker to make an application to work flexibly (see template application form in the Appendix). They need to make the case for doing this, specifying the type of flexible work that would be involved, and how it would not have an adverse impact on the business of the employer.

Within 28 days, the employer must arrange a meeting with the applicant to consider the application. The employee may be accompanied, but only by a colleague from the workplace. Within a further 14 days, the employer must make a decision about whether to grant the application to work flexibly.

If the application is granted, arrangements must be made to put it into practice. If not, the following appeal process may come into play. The refusal must be based on valid business grounds, must be phrased in plain English and include relevant and accurate facts.

The business grounds for refusal must be from among the following reasons:

- ◆ burden of additional costs
- ◆ detrimental effect on ability to meet customer demand
- ◆ inability to reorganise work among existing staff
- ◆ inability to recruit additional staff
- ◆ detrimental impact on quality
- ◆ detrimental impact on performance
- ◆ insufficiency of work during the periods the employee proposes to work
- ◆ planned structural changes.

If the employee is dissatisfied with the employer's decision, they can appeal. Initially this is an internal affair. The appeal should be in writing, setting out the reasons why the applicant thinks the decision is wrong.

The employer must arrange an appeal meeting within 14 days. The employee may be accompanied, but only by a colleague from the workplace. A decision must be made within a further 14 days.

In the event of a refusal, if the employee does not accept the decision, they can appeal through any of the following three routes:

- ◆ employer's own grievance procedure
- ◆ Acas arbitration scheme
- ◆ Employment Tribunal.

11. In case of dispute

Appeals can be made to the Acas arbitration scheme or an Employment Tribunal only on the grounds of incorrect:

- ◆ procedure
- ◆ facts used by employer.

There are no grounds for contesting the business case because external bodies are not considered qualified to comment.

However, an Employment Tribunal would also be able to consider claims relating to other legislation if they were connected with the refusal of a request to work flexibly. For example, sex, disability or racial discrimination, and discrimination under the new Part-Time Workers regulations.

If you are representing a member who considers their application to work flexibly has been rejected because of an issue that might relate to any of the equality legislation, then it is important that you seek advice from a full-time RCN officer before taking the case any further.

References

- Department of Health (2007) *The Agenda for change terms and conditions of service handbook* (version 2), London: DH.
- Flexibility (2003) *The "right to request flexible work" – our advice to employers*, London: Flexibility. www.flexibility.co.uk/flexwork/general/flexible-guidance.htm
- Meadows P (2004) *The economic contribution of older people*, London: Age Concern.
- Ball Jane & Pike, Geoff (2007) *Holding on: nurses employment and morale in 2007*, London: RCN.
- Ball Jane & Pike, Geoff (2004) *Shifting patterns: a guide to employee-friendly working*, London: RCN.
- Ball Jane & Pike, Geoff (2002) *Working well? Results from the RCN working well survey into the wellbeing and working lives of nurses*, London: RCN.
- Ball Jane & Pike, Geoff (2005) *At breaking point? A survey into the wellbeing and working lives of nurses in 2005*, London: RCN.
- Visser F and Williams L (2006) *Work-life balance: rhetoric versus reality?* London: The Work Foundation.
- Xperthr website – www.xperthr.co.uk/policies
(Accessed October 2007)

Further advice and reading

Advice

Department for Business, Enterprise and Regulatory Reform

For further advice on requesting flexible working arrangements go to the Department for Business, Enterprise and Regulatory Reform (BERR) website. BERR has taken over from the Department of Trade and Industry (DTI):

BERR/DTI has a lot of very useful guidance that is easily downloadable from the website. For example: BERR (2003) *The right to request and the duty to consider: a guide for employers and employees*, London: BERR. <http://www.dti.gov.uk/files/file21364.pdf>

This guidance suggests that if a number of possible arrangements could work for the employee, they should consider suggesting them in order of preference. This will provide the employer with more options, and may strengthen the employee's claim for indirect discrimination in the event of refusal.

The BERR guidance also suggests having a trial period to see if the proposed new arrangement works. The case study in the guidance suggests a trial period of 12 weeks, after which the parties should decide if the change should be permanent. Under the Sex Discrimination Act, it will weaken the employer's argument that a refusal of flexible working was justified if the employer failed to agree to a trial period where one was feasible. www.berr.gov.uk

Health and Safety Executive

The Health and Safety Executive (HSE) has published guidance aimed at employers, safety representatives, trade union officials, employees, regulators and other stakeholders. It provides information on assessing and managing the risks associated with shiftwork and how to establish systems to manage the risks of shiftwork.

Health and Safety Executive (2006) *A new guide on managing shiftwork*, London; HSE. www.hse.gov.uk

South West Strategic Health Authority (SHA)

South West London SHA produced a very useful guide to work-life balance as part of their work in Improving Working Lives. It contains advice on making the case for flexible working, partnership working, setting up a project and developing a work-life balance policy. It also provides some case studies where flexible working policies have been successfully implemented in healthcare settings, which can be used to strengthen your case when negotiating with your employer.

South West London Strategic Health Authority (2005) *Changing times in health: a practical guide to work-life balance*, London: South West London SHA.

NHS London has taken over the role of the former South West London SHA. It is the strategic health authority for London, and one of the ten SHAs established in 2006 to lead local NHS areas. www.london.nhs.uk

Online journal Flexibility

Flexibility is a very useful online journal that brings together research and opinion about innovations in employment practice, organisational development, technological change and public policy. The website looks at the impact that flexible work has, or may have, on individuals and society.

www.flexibility.co.uk

Further reading

Acas (2007) *Flexible working and work-life balance*, London: Acas.

http://www.acas.org.uk/media/pdf/i/t/b20_1.pdf

Chartered Institute of Personnel and Development (2005) *Flexible working: the implementation challenge*, London: CIPD.

<http://www.cipd.co.uk/NR/rdonlyres/EBAA2100-EF46-43EE-9C6D-16577DCBC6DE/0/flexwork1005.pdf>

Equal Opportunities Commission (2005) *Shared caring: bringing fathers into the frame*, London: EOC.

Equal Opportunities Commission (2004) *Introducing and managing flexible working: guidance for managers and supervisors* (revised July 2006), London: EOC.

Appendix

Flexible working application form

Note to the employee

You can use this form to make an application to work flexibly under the right provided in law to help eligible employees care for their children or for an adult.

You should note that under the right it may take up to 14 weeks to consider a request before it can be implemented, and possibly longer where difficulties arise. You should therefore ensure that you submit your application to the appropriate person well in advance of the date you wish the request to take effect.

It will help your employer to consider your request if you provide as much information as you can about your desired working pattern. It is important that you complete all the questions as otherwise your application may not be valid. When completing sections three and four, think about what effect your change in working pattern will have both on the work that you do and on your colleagues.

Once you have completed the form, you should immediately forward it to your employer (you might want to keep a copy for your own records). Your employer will then have 28 days after the day your application is received in which to arrange a meeting with you to discuss your request. If the request is granted, this will normally be a permanent change to your terms and conditions unless otherwise agreed.

Additional forms are available on the BERR website if you want to appeal a decision:
<http://www.dti.gov.uk/employment/workandfamilies/flexible-working/flexforms/index.html>

Note to the employer

This is a formal application made under the legal right to apply for flexible working and the duty on employers to consider applications seriously. You have 28 days after the day you received this application in which to either agree to the request, or arrange a meeting with your employee to discuss their request.

You should confirm receipt of this application using the attached confirmation slip.

Additional forms are available for you to respond to this application on the BERR website, which can be found at: <http://www.dti.gov.uk/employment/workandfamilies/flexible-working/flexforms/index.html>

1. Personal details

Name:

Staff or payroll number:

Manager:

National Insurance number:

To the employer:

I would like to apply to work a flexible working pattern that is different to my current working pattern under my right provided under section 80F of the Employment Rights Act 1996. I confirm I meet each of the eligibility criteria as follows:

Either

- ✦ I have responsibility for the upbringing of either:
 - a child under six; or a child under 18 who has disabilities.
- ✦ I am:
 - The mother, father, adopter, guardian, special guardian or foster parent of the child; or
 - Married to, or the partner or civil partner of, the child's mother, father, adopter, guardian, special guardian or foster parent.
 - I am making this request to help me care for the child.

Or

- ✦ I am, or expect to be, caring for an adult.
- ✦ I am:
 - The spouse, partner, civil partner or relative of the adult in need of care; or
 - Not the spouse, partner, civil partner or relative of that adult, but live at the same address.
 - I am making this request to help me care for the adult in need of care.
 - I have worked continuously as an employee of the company for the last 26 weeks.
 - I have not made a request to work flexibly under this right during the past 12 months.

Date of any previous request to work flexibly under this right:

If you are unable to tick all of the relevant boxes then you do not qualify to make a request to work flexibly under the statutory procedure. This does not mean that your request may not be considered, but you will have to explore this separately with your employer. Many employers offer flexible working to their staff as best practice.

2a. Describe your current working pattern (days/hours/times worked):

2b. Describe the working pattern you would like to work in future

(days/hours/times worked):

2c. I would like this working pattern to commence from:

Date:

3. Impact of the new working pattern

I think this change in my working pattern will affect my employer and colleagues as follows:

4. Accommodating the new working pattern

I think the effect on my employer and colleagues can be dealt with as follows:

Name:

Date:

NOW PASS THIS APPLICATION TO YOUR EMPLOYER

Cut this slip off and return it to your employer in order to confirm your receipt of their application.

Employer's confirmation of receipt

(to be completed and returned to employee)

Dear:

I confirm that I received your request to change your work pattern on:

Date:

I shall be arranging a meeting to discuss your application within 28 days following this date. In the meantime, you might want to consider whether you would like a colleague to accompany you to the meeting.

From:



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of Nursing

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