

Spinning plates – working flexibly to support a healthy work-life balance: a guide for RCN representatives

Healthy workplace, healthy you Work-life balance



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Introduction

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This publication supports the RCN's Healthy Workplace campaign by providing guidance to RCN representatives and other interested parties on one of the main issues affecting work-life balance today: flexible working.

The aim is to ensure that representatives can work with 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:

- how flexible working can lead to a better worklife balance for all, not just carers and parents
- examples of ways to work flexibly
- RCN surveys to support negotiations
- relevant legislation.



A guide to flexible working

1. Flexible working and healthy workplaces

The RCN believes that, in order to provide the very best patient care, health and social care staff should work in a healthy workplace.

The RCN defines a healthy workplace as one which:

- offers fair pay and rewards, and
- has high-quality employment practices and procedures which promote a good work-life balance and dignity at work;
- protects and promotes employees' health and safety at work; designs jobs which provide employees with a degree of autonomy and control, and
- provides equitable access to training and learning and development opportunities for all employees.

This document is part of the RCN's Healthy Workplace campaign and provides information and guidance to RCN representatives on how to make the arguments for fair policies promoting work-life balance through flexible working. It also outlines some of the various forms of flexible working that members may benefit from and describes how they can request them from their employer.



2. Defining work-life balance and flexible working

For many people, achieving a good quality of life is dependent on striking the right balance between the demands of employment and their responsibilities outside of work. Work-life balance can be defined as: "Having sufficient control and autonomy over where, when and how you work to fulfil your responsibilities within and outside paid work."

Some argue for the phrase "life-work" balance to be used instead as it seeks to address the imbalance between work and home demands. However, for this campaign we will use the well-known "work-life" balance phrase, whilst acknowledging that, for many these days, the pressures of work are so great that the balance can seem impossible to achieve.

The RCN believes that the opportunity to work flexibly is key in achieving a good work-life balance, and that all staff can benefit from such working arrangements regardless of their gender or age, or whether or not they have caring responsibilities. The RCN also believes that flexible work opportunities can benefit employers and enhance their business/service delivery.

Previously, flexible working was described as "family friendly", meaning it was a provision that enabled parents and carers to participate in paid work without compromising their caring responsibilities. However, the right to request flexible working has since been extended to cover all employees, so the RCN uses the term "employee friendly" to describe policies that encourage a good work-life balance for all. Some examples of policies are given in section 6, from page 8.

3. The changing nature of work and the workforce

The UK health care workforce has always been and continues to be very diverse. It inevitably includes a high percentage of parents and individuals with other caring responsibilities such as looking after older relatives. Almost half (49 per cent) of nurses have children living at home, and 15 per cent have responsibilities caring for an older relative or other adult with care needs.

For nurses aged 55 and over this rises to 25 per cent. People also wish to pursue other activities outside of work including life-long learning, charity work and/or community activism (RCN 2011).

The growing demand for health and social care and the move to full seven day services in the NHS can only be met if skilled and experienced nursing staff are allowed working arrangements which do no compromise their health and wellbeing.

Good employers recognise that, in order to attract and secure the workforce they need to deliver effective services, they must offer a range of flexible employment policies and practices compatible with the competing responsibilities of their staff.

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

4. The benefits of supporting work-life balance through flexible working

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

Increased demand for nursing staff means that organisations which adopt such policies will gain a competitive edge in attracting and retaining a quality nursing workforce.

An ageing workforce also means that health and social care employers have to look at ways of enabling older staff to work productively and effectively for longer. This can mean providing flexible working hours towards the end of nurses' or care workers' working lives and pension schemes that allow staff access to flexible retirement opportunities.

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 environment in which 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. What nursing staff say about their working lives

The RCN conducts regular surveys of members exploring and analysing working patterns, and staff attitudes towards them. In terms of work-life balance, three elements of working patterns are important:

- those working part-time, full-time or jobsharing
- shift patterns
- total working hours.

The latest RCN employment survey (2013) found that just over two-thirds of nurses work full time, 30 per cent work part time and three per cent work occasional hours. A large proportion of these nurses work some form of shift pattern.

Working full time is most prevalent among younger age groups and the most recently qualified. For example, 81 per cent of respondents aged 26-34 worked full-time hours compared to 56 per cent of those aged 55 to 64.

Two-fifths of all respondents (38 per cent) state they work in excess of their contracted hours *several times* a week (compared to 40 per cent in 2011) and 19 per cent work in excess of their contracted hours on *every shift* (compared to 16 per cent in 2011). Just nine per cent of all respondents report *never* working additional hours.

Of those nursing staff who reported working excess hours, a third (34 per cent) *work up to two hours a week*, and 31 per cent work *between two and four hours per week*. A further 13 per cent of respondents work an additional *eight hours* each week.

27 per cent of respondents stated that their working hours and domestic commitments frequently or always conflicted and half said they occasionally conflicted. Historically, the majority of nursing staff have expressed positive views about their working hours. Many 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, nursing staff who work internal rotation feel least satisfied with their working hours.

As the workforce ages and more health and social care workers needing to work to access their full pension benefits, and an increase in ill health and caring responsibilities, the availability of flexible work will be key to ensuring effective workforce planning. The 2013 survey of RCN members over the age of 60 found that the promotion of flexible working was considered key in supporting an extended working life.



6. Flexible working in practice

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. You may also want to encourage fair and transparent decision making by requesting that applications and outcomes from flexible working requests are monitored to ensure equity of access across the workforce and across all groups protected under equality legislation.

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 and social care employers determine their own policies, but these must comply with minimum legislative requirements.

There are many forms of flexible working. It can describe a place of work, for example homeworking, or a type of contract, such as a temporary contract. Other common variations include: part-time working, flexitime, job sharing and shift work.

The descriptions of typical flexible work options listed below are taken and amended from Acas (2015) and the Chartered Institute of Personnel and Development (2015). Each option could be taken alone or combined to suit an individual's circumstances. Recognising that a significant majority of nurses and health care workers work shifts, also contained below is general guidance on how best to deal with flexible work in shift working.

Part-time working

The employees are contracted to work fewer than the standard number of contractual hours 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 runup to retirement, or to supplement pension income (where re-employment is permitted).

It can give an employee the ability to continue with the security of regular employment while at the same time pursuing other interests or activities.

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 2000SI 2000/1551
- Equality Act 2010
- 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-12noon and 2-4pm. 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.

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 1998
- 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

This is where 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 or other responsibilities. 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 selfemployed 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:

The RCN believes that all jobs should be open to job-share, unless a valid business reason can be made (see page 17). However, some organisations have an informal rule that senior or management positions cannot be shared. This is worth contesting. 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:

- Equality Act 2010
- Employment Act 2002.

Term-time working

The employee works under a permanent contract, but can take unpaid leave of absence during the school holidays. Although essentially a part-time contract when looking at the year overall, the employee works full hours during term time and no hours during 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 those 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.

Care must be taken in the calculation of leave and other benefits to ensure that the correct pro-rata rate is applied.

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 extend their return to work on a phased basis once their paid entitlement has been exhausted.

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
- Equality Act 2010
- 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 parents, 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. This is no different however, to other long periods of absence, for example, maternity or ill health.

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. Although unlikely to be appropriate for health care workers it may be relevant for those with managerial responsibilities that could be undertaken away from the ward/care environment.

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:

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. 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.

7. Flexible work and shiftworking

Due to the nature of the nursing profession, not all of the flexible working options which have been described here are practical for all staff, particularly those based in the acute sector or working shifts. While nursing is a 24-hour service, it is still important to incorporate choice by designing and operating work practices that realistically fit in with the lives of nursing staff.

Evidence suggests that where nurses are given choice over their working patterns, specifically self-scheduling or self-rostering of shifts, there are likely to be improvements in both their physical and mental health (Joyce K et al 2010).

There is no single most appropriate shift system, and working time arrangements are a compromise between the needs of individuals and those with whom they work. There is a diversity of shift arrangements operating in health and social care, but many do little to meet the needs of individual nursing staff or the ward. Research has identified that there are morning and evening types of people, and that evening people adjust better to night work (HSE 2009). 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 effect on:

• relationships

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

Many nursing staff 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.

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. However, there must be a transparent and agreed framework of principles to support the self-rostering procedures and nurse managers must be willing to delegate accountability to staff for arranging rotas.

The length of shifts that nursing staff work can vary and many nursing staff 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 and the number of back-to-back 12 hour shifts should be restricted (RCN 2012). Emerging evidence on the impacts of 12-hour shifts on both patients and staff should be closely monitored.

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, daytime only or shifts that co-ordinate with those of their partner or another relative.

Relevant legislation:

- Working Time Regulations 1998
- Employment Act 2002.



The flexible bank

Many nursing staff 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 nursing staff 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.

Zero hours contracts

Many RCN members do work in forms of zero hours contracts. In the main this is mainly work through a 'nurse bank' or nursing agency. In both cases members make themselves available for work without knowing if any work is available. Many members value the ability to work on such contracts at particular points in their lives. However many who work on a bank or through an agency also have a substantive contract of employment with an employer. This leads to concerns that in some areas nursing staff are not offered the opportunity to work 'overtime' and are rather re-directed to work these extra hours through the bank system. In some cases the rates of pay through a bank system is less than overtime rates. Reliance on bank staff can be seen to hide ineffectual workforce planning, an inadequate nursing workforce, cost-cutting vacancy control measures, and high levels of staff sickness absence.

The RCN also has concerns that in some areas, particularly in social care, zero hours contracts are being exploited and used to drive down costs, with employment practices that are, in the opinion of the RCN, often unnecessary, bureaucratic, discriminatory and unsafe.

8. Requesting flexible working

Whereas once only parents and carers had a statutory right to request flexible working, the Children and Families Act 2014 extended that right, from 30 June 2014, to all employees regardless of their caring responsibilities.

This important change, welcomed by the RCN, enables all staff to have access to working arrangements that will help them balance their work with their domestic responsibilities and activities.

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 worked for the employer for 26 weeks continuously before applying
- have not made another application to work flexibly during the past 12 months.

Acas have produced a guide on flexible working and also a *Code of Practice*, which replaces any previous statutory procedure. The *Code of Practice* will be considered by tribunals when making decisions on flexible work claims. The *Code of Practice* recommends that any flexible work request should contain the following information:

- The date of the application, the change the employee would like and when they would like it to come into effect.
- What impact if any, they think the change will have on the business and how they think that effect might be handled (see below).
- A statement that this is a statutory request.
- A statement as to when, if at all, a previous application for flexible working was made.

Under the law an employer must consider the application and arrange to talk with the employee as soon as possible after receiving the request. The law requires that all requests, including appeals, must be considered and decided on within a period of three months from the first receipt (unless the employee agrees to extend this period). Employers do not have to agree to the application if there is a good business reason not to. Employees have the right to ask for flexible working – not the right to have it.

The business reasons for rejecting a flexible working request are as follows:

- The burden of additional costs.
- Inability to organise work among existing staff.
- Inability to recruit extra staff.
- Detrimental impact on quality.
- Detrimental impact on performance.
- Detrimental impact on ability to meet "customer" demand.
- Insufficient work for the periods the employee wants to work.
- Planned structural changes to the business.

Whilst this might seem like an all-encompassing list, it is not sufficient for an employer to turn down a request on a "hunch" that one of the above reasons might apply. As representatives supporting members or scrutinising decisions once they have been made, you should ask for evidence to support the employer's contention.

The Acas guide encourages employers to develop a policy for handing flexible working requests. This should aid transparency and equity of access but also provide information and guidance for line managers on how to consider competing or multiple requests now that the right to request has been extended to all. Of course such a policy should be agreed in partnership and in your role as a local negotiator you will want to ensure that the following is reflected in any policy document:

- A commitment to fairness and transparency.
- A commitment to handling requests reasonably and equitably.
- Arrangements for employees to be accompanied to any meeting to consider a request (there is no statutory right to this so it will need to be negotiated).

- Arrangements for an appeal process (there is no statutory requirement to have an appeal process but the Acas guidance says there "should" be one, so again this will need to be negotiated).
- Monitoring procedures across departments and the wider organisation to ensure equity of decision making.

You may also wish to negotiate for the removal of the 26-week service requirement and for temporary changes and/or trail periods to be built into the policy.

Employees can apply to the Employment Tribunal if they feel their employer has not dealt with their request reasonably, has rejected the application erroneously or has failed to provide a decision within three months of the request being made. The usual time limits and fees apply to such claims, so seeking legal advice from your local RCN office at an early opportunity is recommended. This is especially important if you are representing a member who considers their application to work flexibly has been rejected because of an issue that might relate to equality legislation



9. 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 and meaningful 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. Meaningful 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.

Flexible working opportunities are a key recruitment and retention tool for employers, yet some still consider them to be burdensome and inconvenient. As the workforce has to work longer until retirement age, the ability to work/retire flexibly will be an asset in keeping valuable skills and expertise in the workplace.

As mentioned above, a good flexible working policy will contain a commitment to monitor applications and decision making to ensure that unintentional discrimination does not creep into the process. You will want to ensure that this monitoring is scrutinised in partnership and becomes a regular agenda item in partnership forum meetings.

10. Training, support and publicity

Both managers and employees may benefit from training to accustom themselves to working patterns unfamiliar working patterns. 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 such changes are 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, noticeboards 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.





Negotiating and representing

While the benefits of work-life balance policies and practices such as flexible working are now more widely known about and accepted, like any employment provision they need to be crafted carefully and implemented fairly and equitably. This section covers the areas you may need in your discussions and negotiations with employers.

1. The benefits of having work-life balance policies

Some employers may see the development and implementation of any kind of work-life balance policy 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 worklife balance policy such as flexible working, 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 in 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 reduce 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. This generates greater productivity and may also be seen to reduce presenteeism. In addition to better recruitment and retention, research shows that employee-friendly employers report greater staff engagement, commitment and loyalty
- enhanced corporate image. Increasing 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 nursing staff:

- financial reward because they are able to continue working. There are not only immediate rewards, but also future returns such as career development and pension entitlements
- less stress and an improved quality of life.
 Work performance is enhanced if staff 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 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 staff are able to work their preferred shifts
- reduction in sleep difficulties and other shiftwork-related ill health.

2. How you can influence the workplace

If your workplace does not have or promote employee-friendly practices then urge management to take action.

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 an organisation to challenge these assumptions and do something about them.

RCN representatives have an important role to play by working with employers and 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 changes to working time arrangements within teams and departments. 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 and may welcome your involvement in discussing flexible work within teams/departments.

New flexible shift patterns will affect rostering and workload distribution. But it is possible to accommodate new ways of working that can improve patient care, and help nursing staff achieve a healthier work-life balance. RCN representatives can help by:

- requesting a staff survey to see what flexible work options staff would prefer
- suggesting a joint management and staff forum for developing appropriate 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.
- challenging blanket policies over flexible work that cannot comply with the requirements of the Children and Families Act 2014

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 flexibly
- 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.

3. Good policy development

A policy on flexible working opportunities should be developed in partnership to support line employees and managers in accessing and determining requests. As well as outlining a range of flexible work options, it should also provide a framework that enables managers and staff to see how different options may apply to different roles, tasks and situations.

You can advise your organisation that policies need to cover:

- the range of options available
- eligibility issues and the need to ensure equity of access
- contractual issues
- compliance with other legislation (for example, Working Time Regulations, Health and Safety legislation)
- access issues and provision of equipment and IT 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.
- monitoring and reporting arrangements.

Actions also need to include the training of managers to supervise flexible workers, and to implement policies consistently and fairly. Here are some of the outcomes that you should aim for when negotiating the introduction and/or promotion of flexible working policies:

- recognising the wide diversity in nursing staffs' personal circumstances and that social norms and practices are changing
- recognising that nursing staff need to establish a balance between work and personal responsibilities, and that the balance differs between individuals
- adopting a consistent recruitment and retention approach to employee-friendly arrangements that recognises and accommodates everyone's strengths, abilities and needs
- team-based self-rostering including sharing information about individual caring or other commitments and ambitions to ensure fair rostering, which respects patient demand
- involving nursing staff, RCN representatives and managers in change-making
- negotiating re-entry strategies to work prior to or during a career break plan that takes account of the nursing staffs' working time needs.



4. Good practice case studies

The following case studies, 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 coordinate 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, Acute 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, Acute 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, Acute 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 that employee-friendly working arrangements are not exclusively aimed at parents or carers.

"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, Acute 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, Acute NHS Trust

These cases show that:

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



5. Useful tips

A series of brief case studies provide some more useful tips for nursing staff and ward managers about practices that can facilitate employeefriendly 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, Acute NHS Trust

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, Independent sector hospital

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, Independent sector hospital

"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, Acute NHS Trust

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."

Acute NHS Trust

Providing accommodation

Some nurses at the Queen's 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.

Acute NHS Trust

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, Acute NHS Trust

6. Related legislation

Work-life balance is not a provision that is enshrined in law and employers are not obliged to have a specific work-life balance policy in place. In addition to the legal right to request flexible working, there are laws covering maternity, adoption and parental rights.

The Equality Act 2010 and the Working Time Directive 1998 also have a bearing on flexible working rights

The Equality Act 2010 and flexible working

Employers can be rightfully concerned about how to manage competing requests for flexible working, especially where they interact with equalities legislation. For example, a refusal to permit a woman to work on a part-time basis may lead to claims of indirect sex discrimination under the Equality Act 2010. 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.

Also under this Act, employers have an obligation to make reasonable adjustments to premises and/or working arrangements for disabled applicants or staff and this could include flexible working. Employers will have to judge whether the requirements to make adjustments under this legislation means flexible work requests from disabled staff should be given more priority.



Working Time Regulations 1998 and flexible working

The Working Time 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
- 5.6 weeks' paid leave a year
- 11 consecutive hours' rest in any 24-hour period
- an in-work rest break of not less than 20 minutes 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 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.

Note:

Rest period rights may be varied under a workforce or collective agreement and there may be exceptions for shift workers and those working on call or standby who are entitled to compensatory rest. The Working Time Regulations 1998 require that all workers are entitled to on average 90 hours rest a week.

The regulations apply to all workers, including the majority of agency workers and doctors in training and should not be compromised by flexible working arrangements.

As a representative you should also be aware of the need for effective and meaningful consultation when employers wish to alter or change shift patterns. This would be considered a contractual change so should be covered in the usual collective consultation processes of the organisation. Insist on the matter being discussed in partnership forum meetings and seek advice from you RCN office if necessary.

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Further reading

Acas

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Code of practice – handling in a reasonable manner requests to work flexibly. Available here – www.acas.org.uk/index.aspx?articleid=4859 (accessed 6 May 2015) The guidance in this Code, as well as helping employers, will also be taken into account by employment tribunals when considering relevant cases.

The right to request flexible working: an Acas guide. Available here – www.acas.org.uk/ index.aspx?articleid=4859 (accessed 6 May 2015) Further information for employees and employers with practical examples on making and managing requests for flexible working can be found in the Acas good practice guidance on handling requests to work flexibly in a reasonable manner.

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.

Managing shiftwork,; health and safety guidance (2006) Available at www.hse.gov.uk/pubns/books/ hsg256.htm (accessed 6 May 2015)

HM Government www.gov.uk/flexible-working/overview (accessed 010615)

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 3 months to get a decision (including any appeal). 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 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.

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 reasonably. You must make a decision (including any appeal) within 3 months from the date you received this application. You must arrange a meeting with the employee as soon as possible after receiving the request in order to discuss the application. You do not need to have a meeting if the request can be agreed without further discussion.

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

Flexible working application form

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 The Children and Families Act 2014:

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.

(NB – if you have made a previous request within the last 12 months 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:

Signed:	
Name:	
Date:	

NOW PASS THIS APPLICATION TO YOUR EMPLOYER

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

Employer's confirmation of receipt (to be completed and returned to employee)

Dear:				
l confirm	that I received your request to change your work pattern on:			
Date:				
I shall be arranging a meeting to discuss your application. In the meantime, you might want to consider whether you would like a colleague or trade union representative to accompany you to the meeting.				
From:				
Position:				



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