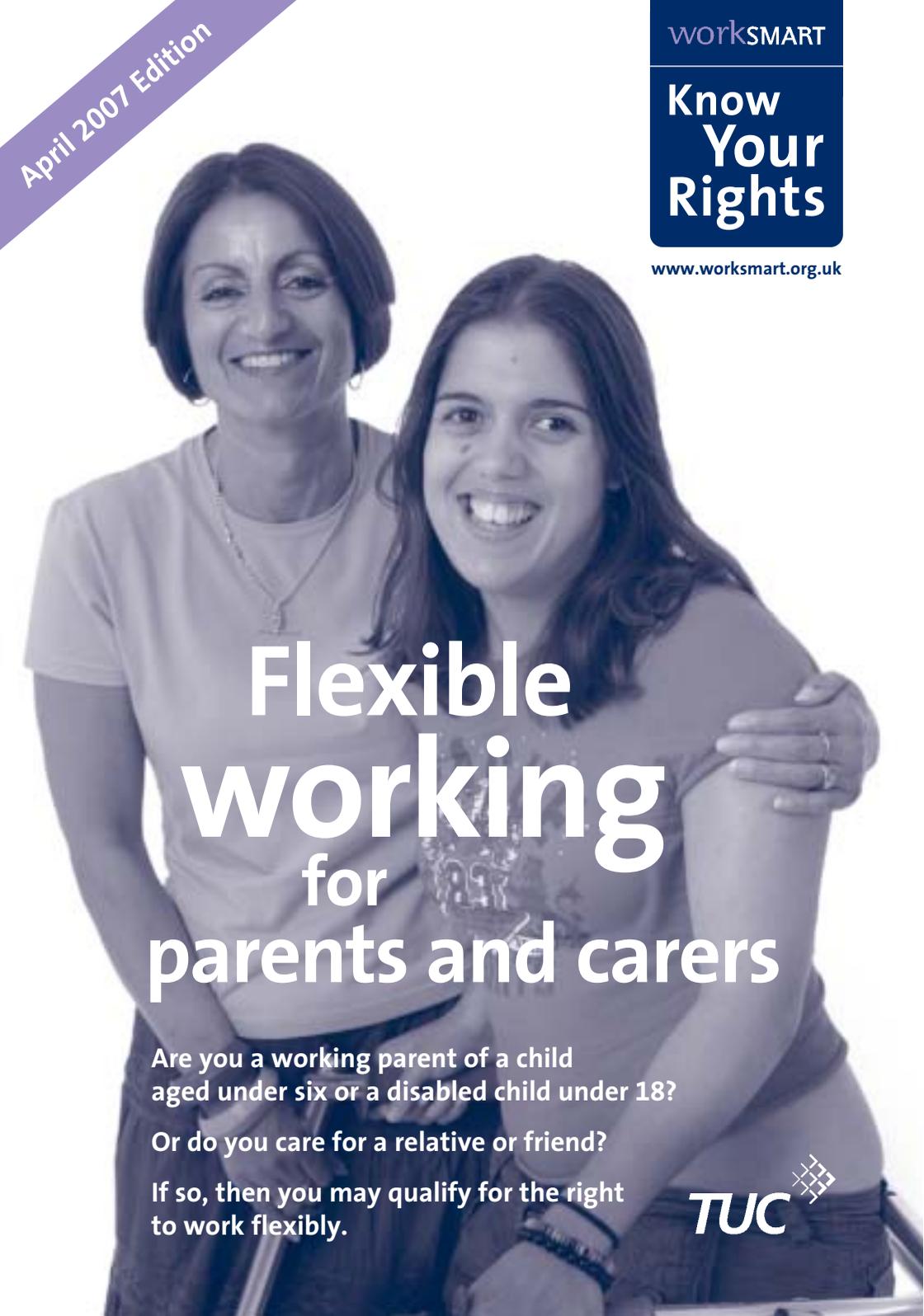


April 2007 Edition

workSMART

Know  
Your  
Rights

[www.worksmart.org.uk](http://www.worksmart.org.uk)



# Flexible working for parents and carers

Are you a working parent of a child  
aged under six or a disabled child under 18?

Or do you care for a relative or friend?

If so, then you may qualify for the right  
to work flexibly.

TUC 

If you are a parent or carer and you meet certain conditions you will have the right to ask your employer if you can work flexibly. This can be a request to change your hours, to change the times when these hours are worked, or to change where you are required to work.

This booklet gives a basic guide to these rights and answers common questions. However, the rights for parents, carers or others seeking changes to work patterns or arrangements can be complicated and everyone's situation is different, so you may need to seek further legal advice. This booklet is not a comprehensive statement of the law.

As well as the right to have your request for flexible working considered, if you need to change your work pattern you may also have stronger rights, particularly under sex discrimination law. It is very important to bear this in mind if you are planning to make a request for flexible working, so make sure you get advice from your union representative first, if you have one.

This booklet gives you information on rights to have a request for flexible working considered.

It does not provide information on maternity rights, adoption rights, paid paternity leave for partners, the right to unpaid parental leave, protection against discrimination for part-time workers, or the right for emergency time off for dependants. Information about all of these rights is available by calling the TUC *Know Your Rights* line **0870 600 4 882** or visiting **[www.worksmart.org.uk](http://www.worksmart.org.uk)**



# Check your rights with your employer

Your employer may offer better rights on flexible working than the law sets out, and you need to check your contract of employment, your staff handbook, or perhaps a special leaflet that the personnel department may provide in larger organisations to find out your entitlement with your current employer.

Improving benefits and entitlements on flexible working is a priority for unions, so if you work for an organisation that recognises unions you are very likely to have access to more generous flexible working rights. For more information on TUC and union projects and campaigns on flexible working see [www.tuc.org.uk/changingtimes](http://www.tuc.org.uk/changingtimes).

Any additional rights to flexible working will normally be included in your contract of employment. If this is the case, your employer is legally bound to honour them because they have been promised to you. If you have a dispute over your terms and conditions on flexible working then you should seek advice from your union representative, if you have one.

## Worker or employee?

Some working parents will not be eligible for these legal rights. This is because not everyone who works for someone else is an employee in the eyes of the law. Some employers try and circumvent their obligations by treating their staff as self-employed and you can even find that you are taxed as if you are employed but still denied the legal rights that an employee would enjoy. This is because legally you are a worker not an employee.

If your employer tells you that you are a worker rather than an employee then you must seek legal advice to be sure you can claim your rights to request flexible working. You can find out more about this from the TUC's booklet *Your Job and the Law* available from the TUC's *Know Your Rights* line **0870 600 4 882** or by visiting [www.worksmart.org.uk](http://www.worksmart.org.uk)

If you find that you are a worker and not an employee, you will not be entitled to have your request for flexible working considered under these rights, although you may have other legal rights and should therefore seek advice.

If you are a worker in a unionised workplace you may find that your union has negotiated rights that cover both workers and employees – you need to check your contract of employment and ask your union representative about this.

In general, these rights apply to you if you are an employee who:

- has a child under six, or a disabled child under 18, who you have or expect to have responsibility for (this right also applies to adopters, guardians, special guardians or foster parents);
- is married to the parent (or adopters, guardians, special guardians or foster parents) of the child;
- lives with the child and the parent in an enduring family relationship (this can include either heterosexual or same-sex partners of the parent but not other members of the family);

**or**

- is making an application in order to care for a person aged 18 or over. This person must either be a spouse, a partner, a civil partner, a relative, or someone living at the same address as you;
- has 26 weeks continuous service with an employer at the date the application is made;

- is not an agency worker;
- has not made a previous application under the new rights during the past 12 months.

### What is a partner or a relative?

In law, to be a 'partner' means you must be one half of a couple, living as if you are married or in a civil partnership. A relative is defined as a mother, father, adopter, guardian, special guardian, parent in law, step parent, son, step son, daughter, step daughter, brother, step brother, brother-in-law, sister, step sister, sister-in-law, uncle, aunt or grandparent. This definition includes adoptive relationships and half-blood and full-blood relationships.

### What can 'flexible working' mean?

The concept of flexible working is very wide, and you could ask for a variety of different work patterns or arrangements under these new rights. These could include:

- working from home
- job-sharing
- teleworking
- term-time working
- compressed hours
- flexitime
- staggered hours
- annualised hours
- self-rostering.

The TUC website

**[www.tuc.org.uk/changingtimes](http://www.tuc.org.uk/changingtimes)** has more information on these types of arrangements.

# How to make a request

You must comply with the following rules when making a request. Your application must:

- be made in writing, in either paper or electronic form, stating that it is being made under the statutory right to apply for flexible working;
- confirm your relationship to the child (and if relevant with the child's parent), or your relationship with the person you care for;
- set out your proposed change to your working patterns and explain what effect you think this change would have on your employer and how this might be dealt with;
- state whether you have made a previous application under this right and if so the date on which it was made;
- be dated.

If you are making the request in relation to a child, the employer must receive your request at least 14 days before the child's sixth birthday, or in the case of a disabled child, 18th birthday.

## What happens if the employer grants the request?

If your request is granted, the terms and conditions of your contract are varied to take account of that change. Unless otherwise agreed, changes to your contract are permanent and you cannot revert to your previous terms and conditions. You should get advice about this from your union representative, if you have one, or a legal adviser. You may want to consider asking for a variation for a specified length of time only or, if possible, ask for a right to revert to your old arrangements on giving appropriate notice.



## Employers' duty to consider the request

Unless your request is granted immediately or you are told of the employer's agreement within 28 days, your employer must:

- arrange a meeting with you within 28 days of receiving the application to discuss the request;
- notify you in writing of their decision within 14 days of the date of the meeting. This notification will either: accept the request and establish a start date or other action; confirm an alternative arrangement agreed at the meeting; or reject the request and set out clear business reasons for the rejection together with notification of the appeals process.



If you decide to appeal, the employer must:

- arrange to hear your appeal within 14 days of being informed of your decision to appeal;
- notify you in writing of their decision on the appeal within 14 days after the date of the meeting. This notification will either: uphold the appeal; specify the agreed variation and start date; or dismiss the appeal, state the grounds for the decision and contain a sufficient explanation of the refusal.

## You're not alone

You have the right to be accompanied at meetings or appeal meetings to discuss your request. The companion you choose must be a fellow worker employed by the same employer as you. This also applies if you choose a union representative as your companion, although the union representative may work at another site or establishment – as long as the overall employer is the same. Your companion is permitted to address the meeting (but not to answer questions on your behalf), and may also confer with you during the meeting.

Your contract of employment or employer's collective agreement with your union may give wider rights of representation at meetings, and you should check your rights on this carefully. The employer may also be prepared to allow a union official or other expert on flexible working not employed by the organisation to participate in meetings if you wish them to do so.

If your employer refuses, or threatens to refuse, to allow you to be accompanied at meetings or appeal meetings, you have a separate right to complain to an employment tribunal. This complaint must in general be made within three months of the failure, or threat of failure, to comply. The tribunal will only extend this time limit if it is satisfied that it was not reasonably practicable for the complaint to have been brought within that period (and then only for such further period as it considers reasonable).

If you succeed in this claim, you are entitled to an award of compensation of up to two weeks' pay, which has an upper limit that tends to increase slightly every tax year.

Your employer must allow your companion, whether a union representative or not, a reasonable amount of paid time off work during working hours to accompany you to a meeting or appeal meeting.

The TUC *Know Your Rights* booklet *You're Not Alone* gives further information on the right to be accompanied at other workplace hearings like disciplinarys and grievance hearings.

## Grounds for the employer refusing your request

An employer may only turn down a request for flexible working on one or more of a number of 'business' grounds. These are:

- 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 your employer turns down your request either initially or after an appeal hearing, they must state in their written notification of refusal a 'sufficient explanation' of why one or more of these business grounds (or grounds for a decision on appeal) apply. This statement is likely to be important to your case in any subsequent legal proceedings, whether under the new flexible working rights or other legal rights, as discussed later in this booklet.

## Going to an employment tribunal

Whilst the procedure for considering your request is underway, you have the right to complain to an employment tribunal only if your employer has failed to:

- hold a meeting or an appeal meeting; or
- notify you of their decision or appeal decision.

**Note: You should take proper legal advice before proceeding with any tribunal claim.**

If your request has been rejected on appeal and your employer has notified you of this, you can complain to an employment tribunal on the wider grounds that your employer:

- failed to comply with the correct procedure as set out earlier in this booklet;
- rejected your application on a ground that was not in the permitted list of 'business' grounds;
- based their decision to reject the request on incorrect facts.

You must go to an employment tribunal within three months of the date on which you were notified of your employer's decision on your appeal or the date on which the breach of procedure was committed by the employer. The tribunal will only extend this time limit if it believes that it was not reasonably practicable for you to have complained within that period (and then only for such further period as it considers reasonable).

If the employment tribunal finds your complaint to be well founded then it can make a monetary award or order your employer to reconsider your request for flexible working.



# Other rights to consider

If your application to work flexibly is disputed or refused, you may have other rights under the following laws:

- sex or disability discrimination legislation;
- health and safety law;
- negligence;
- relying on the contractual duty of employers to behave with trust and confidence towards their employees.

For example:

- **Indirect sex discrimination** can sometimes be established by women, in particular where you can show that the employer's refusal to allow you child-friendly hours is not justified. In addition, a refusal to permit a man to work child-friendly hours, when a woman would be allowed to, is direct sex discrimination.
- If you suffer from an impairment, **disability discrimination laws** may also require employers to make a 'reasonable adjustment' to practices (including working hours) in order to ensure that you are not at a substantial disadvantage compared with other persons.



- You may also have the right to **claim unfair dismissal** if you are sacked following a disputed application or resign because it has not been handled fairly by your employer.

You must get legal advice if your application becomes disputed. The compensation available is likely to be much greater under these other legal rights than under the rights described earlier in this booklet. The fact that employers are required under flexible working rights to put their reasons for refusal in writing, and to follow proper procedures, may be useful to you as evidence in any other legal action.

# Questions and answers



## What happens to my pay and benefits if I change my hours?

Your employer is likely to have the right under contract law to reduce your pay and benefits pro rata to take account of any fall in your hours. However, if you become a part-time worker you also have the right not to be less favourably treated than a full-time worker doing the same job as you, and you may also have rights under equal pay law. These rights mean that any pro rata reductions or denial of benefits to part-timers should be carefully examined. Some benefits such as, for example, health insurance, may not be capable of a pro rata application and your employer would not necessarily be entitled to deny them to you.

## What happens if my employer starts treating me badly or sacks me for asking for flexible working?

You cannot be sacked or treated less fairly by your employer simply because:

- your application to work flexibly has been granted; or
- you have made an application to work flexibly under the new right; or
- you have made or have said you intend to make a complaint to an employment tribunal about your application to work flexibly.

Unfair treatment can include harassment or denial of training or promotion opportunities. Sacking can include 'constructive' dismissal, which means circumstances where you are entitled to resign as a result of the treatment you have suffered by your employer.



## If my application is disputed should I go through my employer's own grievance procedures?

You should be able to use your employer's grievance procedure if your application for flexible working becomes disputed. By law your employer must have a formal grievance procedure and staff should be informed of how this works. You should be entitled to be accompanied at grievance hearings by a union official from outside your workplace, should you wish. If using the grievance procedure, you should be very careful about time limits for any employment tribunal claims. This means that whilst the grievance is underway, in order to protect your position, you should consider lodging a claim within the three month general deadline from when the application was rejected on appeal or the breach of procedure occurred.

In order to submit a claim to an employment tribunal based on your grievance, you **must** complete at least the first step of the grievance procedure and then wait 28 days. If you fail to do this, an employment tribunal may refuse to hear your claim. More detailed information can be found in the *Know Your Rights* booklet *Your Job and the Law*, which you can get by phoning **0870 600 4 882**.

## Can my employer extend time limits for giving notice and attending meetings?

If you or your employer are having difficulty meeting the deadlines for giving notice or attending meetings, you can agree to extend these time limits. In that case, your employer must keep a written record specifying the period of time to which the extension relates and the date on which the extension will end. They must also send you a dated copy of this record. There is also an exception where your manager or another person who would normally consider your flexible working request is absent from work or on sick leave on the day you make your application. If so, the 28-day period for your employer to set up a meeting with you does not start to run until the day on which this person returns to work or 28 days after you make the application, whichever is the sooner.

## What is the situation if my chosen companion can't attend a meeting on the employer's suggested date?

If your chosen companion is not available at the time proposed for the meeting, then the employer must postpone the meeting to a time proposed by you if that alternative time is reasonable and is within six days of the original meeting day.

Don't forget that your chosen companion must be a work colleague, but this can include a union representative working for the same overall employer, whether at the same site or not.



## When can my employer treat my application as withdrawn?

Your employer is entitled to treat your application for flexible working as withdrawn if you:

- have told the employer orally or in writing that you are withdrawing the application; or
- have failed without reasonable cause to attend a meeting or an appeal meeting more than once; or
- refuse without reasonable cause to give information that the employer needs to assess whether your request should be agreed to.

You should bear in mind that if you withdraw your application you will not be entitled to make another request for flexible working for 12 months from the date of your original application.

# Contacts

## **ACAS**

General advice for workers and employers on legal rights.

T: 08457 474 747 (9am-4.30pm)

## **Benefit Enquiry Line**

Confidential advice and information for people with disabilities, and their carers and representatives, about social security benefits and how to claim them.

T: 0800 88 22 00 (Free)

Textphone: 0800 24 33 55 (Free)

## **Citizens Advice Bureaux**

Your local CAB office will be listed in the phone book. You can also visit [www.citizensadvice.org.uk](http://www.citizensadvice.org.uk) to find advice and information online.

## **Disability Rights Commission**

Advice and support on disability discrimination.

T: 08457 622 633

E: [enquiry@drc-gb.org](mailto:enquiry@drc-gb.org)

[www.drc-gb.org](http://www.drc-gb.org)

## **Department of Trade and Industry**

The DTI has produced guidance on rights available to working parents. [www.direct.gov.uk](http://www.direct.gov.uk)

## **Employment Tribunal Service**

Information about making a claim: [www.employmenttribunals.gov.uk](http://www.employmenttribunals.gov.uk)

There is an enquiries helpline which can give general information but cannot provide legal advice.

T: 08457 959 775

## **Equal Opportunities Commission**

Advice and support on sex discrimination and maternity/parental rights legislation.

T: 08456 015 901

[www.eoc.org.uk](http://www.eoc.org.uk)

## **Fathers Direct**

Provides information for fathers, and fathers-to-be.

T: 0845 643 1328

E: [enquiries@fathersdirect.com](mailto:enquiries@fathersdirect.com)

[www.fathersdirect.com](http://www.fathersdirect.com)

## **Health and Safety Executive**

Advice on health and safety. Infoline provides access to the HSE's health and safety information, and access to expert advice and guidance.

T: 0845 345 0055 (8am-8pm).

[www.hse.gov.uk](http://www.hse.gov.uk)

## **HMRC (tax credits)**

For calls in England, Wales, Scotland:

08453 003 900 (8am-8pm)

For calls in Northern Ireland:

08456 032 000 (8am-8pm).

[www.hmrc.gov.uk](http://www.hmrc.gov.uk)

## **Law Society**

Information on specialist solicitors.

T: 020 7242 1222

[www.lawsociety.org.uk](http://www.lawsociety.org.uk)

## **Law Centres Federation**

T: 020 7387 8570

[www.lawcentres.org.uk](http://www.lawcentres.org.uk)

## **Working Families**

Free advice and information, including a helpline and a website for families including those on low incomes.

T: 0800 013 0313 (helpline number)

T: 020 7253 7243

[www.workingfamilies.org.uk](http://www.workingfamilies.org.uk)



# Unions today – your friend at work

The new rights described in this booklet – and many others such as the minimum wage – have been won by union campaigning. Without union help and assistance many workers won't get the full benefit of new rights at work.

Every day unions help thousands of people at work and every year they win hundreds of millions of pounds in compensation for their members through legal action.

Unions also help negotiate better pay and conditions, including far better provisions for family-friendly employment than the legal minimums.

To find out more about joining a union call the *TUC Know Your Rights* line on **0870 600 4 882**.

**[www.worksmart.org.uk](http://www.worksmart.org.uk)** is the one-stop site for everyone at work. The website provides a range of information about working life and your rights at work – whether you are a union member or not. The full text of this booklet, plus the whole range of rights materials, is on the site – just a click away!



**Trades Union Congress**

Congress House, Great Russell Street, London WC1B 3LS

Tel: 020 7636 4030

**[www.tuc.org.uk](http://www.tuc.org.uk)**