

Mr Chris Arundel
Principal Licensing Officer
Hackney Carriage & Private Hire Licensing
Place Directorate
Birmingham City Council
Crystal Court
50 Rocky Lane
Aston
Birmingham
B6 5RQ

Our Ref: DBW / Star Cars
Your Ref:
Date: 12 May 2015
Please ask for: David Wilson

Sent by email only to:
chris.arundel@birmingham.gov.uk

Dear Mr Arundel,

Star Cars and Coaches Ltd
Application for renewal of private hire operator's licence
Request to permit call-taking staff to work from home

With regards to the above, I refer to my former colleague's letter, dated 5 March 2015.

By way of clarification, I should like to make it clear that prior to the change in the law on 30 June 2014 only parents of children under the age of 17 (or 18 if the child was disabled) and certain carers were entitled to ask their employer for flexible working.

On 30 June 2014 the Flexible Working Regulations 2014 extended the right to request flexible working to all employees who had been employed for a minimum period of 26 weeks and an employer is only able to refuse if the reason for doing so is one on a list of business reasons.

ACAS (Advisory, Conciliation and Arbitration Service) have produced two guides, copies of which I enclose herewith, namely:

- The right to request flexible working: an Acas guide (06/14)
- Homeworking – a guide for employers and employees (05/14)

Despite the definitive nature of the aforementioned guides, I also attach a copy of the Directors' Briefing written by Jim Grieves of HR Management Solutions and John

Blackwell of John Blackwell Associates and published by Atom Content Marketing Ltd, which very helpfully and clearly summarises the position in only four pages.

Having already facilitated flexible working for an employee returning to work after maternity leave under the previous regulations, Star Cars knows that it cannot necessarily rely upon any of the valid reasons, because they have already found homeworking to work and to benefit the company and the employee.

If Star Cars were to refuse a request for flexible working / homeworking an employee may make an application to the Employment Tribunal, which could result in Star Cars having to pay up to eight weeks pay (limited to £464 per week) in compensation.

In the event that the Licensing and Public Protection Committee grants this permission, we have reconsidered how such permission might be expressed as conditions of a licence. On behalf of Star Cars I would like to respectfully suggest that:

- Mrs Jackie Markham (the licensed operator) be permitted to operate from any domestic premises in the city, subject to giving at least one calendar month's notice to Hackney Carriage & Private Hire Licensing of her intention to permit a member of her staff to operate (invite and accept bookings for a private hire vehicle) from any such domestic address.
- A list of all such domestic addresses notified to Hackney Carriage & Private Hire Licensing from which staff may operate (invite and accept bookings for a private hire vehicle) shall be kept at the main office (718 Chester Road, Erdington, Birmingham B23 5TE) and made available to a constable or an authorised officer on request.
- Within 24 hours of ceasing to operate from any such domestic address, the operator shall advise Hackney carriage and Private Hire Licensing of this in writing and update the list maintained at the main office.

If you or your lawyer colleagues would like to discuss the wording of potential conditions before this request is considered by the Licensing and Public Protection Committee, my client and I would be pleased to do so and acknowledge and appreciate that any such discussions would be entirely without prejudice as, of course, it is only Committee that could agree to the requested departure from the standard conditions of licence.

Yours sincerely,



David B Wilson

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The law on flexible working

As an employer, you need to know about flexible working. The law says you must 'consider seriously' requests to work flexibly from employees with a child aged 16 or under, a child with disabilities under 18 and employees looking after an adult dependant. This will be extended to all employees with at least 26 weeks' service on 30 June 2014.

This briefing covers:

- The different types of flexible working.
- Who qualifies to apply for flexible working.
- The procedures you must follow if you receive a request to work flexibly.
- What you need to do to introduce new working arrangements.
- Other legislation to be aware of.

1 What is flexible working?

Flexible working is any working pattern other than the normal working pattern — it can involve changes to the hours an employee works, the times they are required to work or their place of work.

1.1 There are a number of working practices that involve changes to the **hours and times** worked:

- A flexitime arrangement requires employees to be at work during a specified core period, but lets them otherwise arrange their hours to suit themselves.
- With compressed hours, employees work the same hours over fewer days.
- With annual hours contracts, employers and employees agree they will work a given

number of hours during the year, but the pattern of work can vary from week to week.

- Staggered hours contracts let employees start and finish work at different times.
- Employees may also wish to take time off in lieu, unpaid sabbaticals or career breaks.
- You may be asked to consider time off for eligible employees to undertake training.

1.2 Employees may request a **job-sharing arrangement**.

- This is where one job is shared between two people, who might work alternate days, half weeks, or alternate weeks, or one person working in the morning and one in the afternoon.

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1.3 Shift work, part-time and term-time work also count as flexible work, in that they involve variations to the normal pattern of working hours.

1.4 Flexible working may also involve changes in the location of the **workplace**, such as working from home.

- Employees may request to do some or all of their work from home. You will need to consider your health and safety obligations (see **4.3**).

2 Who qualifies?

Currently parents or carers requesting flexible working under the statutory right must fulfil certain criteria.

2.1 The employee must:

- Be the mother, father, adopter, guardian or foster parent of the child in question.
- Be the spouse, partner, civil partner or relative, or live at the same address.
- Have responsibility, or expect to have responsibility, for bringing up or caring for the adult or child.
- Make the application as a means of enabling them to care for the child.
- Have worked for you continuously for at least 26 weeks before making the application.

Business benefits

Flexible working can have a number of business benefits.

A Flexible working patterns may **attract employees** to your company.

- Having a flexible approach will also help you retain existing staff.

B It can help to reduce **employee turnover**.

C It may boost **employee morale** and commitment.

D The introduction of more flexible working arrangements can also reduce **absenteeism**.

E It has also been proven that flexible working provisions can lead to noticeable improvements in **employee productivity**.

- Have made no other application in the preceding 12 months.
- Be willing to agree a change in their working pattern, with a corresponding drop in pay if necessary.
You can agree that it should only be a temporary or transitional change.

2.2 If the employee is requesting **flexible working** in order to look after a child, the child must be 16 or under, or under 18 in the case of a child with disabilities.

The right to request flexible working will be extended to all employees with at least 26 weeks' service on 30 June 2014.

Note: Employees who have adopted 'employee-owner' or 'employee-shareholder' status under The Growth and Infrastructure Act 2013 do not have the right to request flexible working. See margin note.

3 Implementation procedure

Under the law on flexible working, both sides are required to follow the correct procedure.

3.1 It is up to the employee to prepare a **detailed application** well in advance of when they want to change their working pattern.

- The application must be in writing and clearly state what the application is for and when it will be effective from.
- The employee should be able to come up with a clear plan of how the new pattern would work and must show that the changes will not harm your business.
- It must also explain how the employee feels he or she meets the relationship criteria.

3.2 It is **good practice** to acknowledge an application to work flexibly in writing. Once you have received an application from an employee you must:

- Arrange a meeting with the employee within 28 days of receiving it.
This is to decide a start date (if you agree), or to consider alternatives (if you do not).
The employee has the right to be accompanied at the meeting. The companion must be a worker also employed by you.
- If you agree, write to the employee within 14 days of the meeting detailing the new working pattern and confirming the start date.

➔ Employees adopting 'employee-owner' or 'employee-shareholder' status give up some of their employment rights in return for shares in the business. This includes the statutory rights to request flexible working or in relation to training or study. They will not be protected against dismissal for making either of these requests, except to request to work flexibly on return from parental leave. Nor will they benefit from ordinary unfair dismissal protection after two years' continuous employment.

“The most common problem employers have with requests to work from home concern trust. This is best achieved by good communication and effective monitoring — task completion rather than time management.”
Jim Givens,
HR Management Solutions

- If you do not agree, you must write to the employee within 14 days with business reasons why the proposed arrangement will not work.
You must date your refusal and set out your appeals procedure.

3.3 You can **refuse an application** to work flexibly only if there is a clear business reason.

Valid reasons as set out in the legislation are:

- The burden of additional costs.
- A detrimental effect on the ability to meet customer demand.
- An inability to reorganise work among other employees.
- An inability to recruit additional employees.
- A detrimental effect on quality.
- A detrimental effect on performance.
- Insufficient work when the employee proposes to work.
- Planned structural changes.

3.4 If you refuse an application to work flexibly, the employee may **appeal**.

- They must write to do so within 14 days of you sending your letter of refusal.
- You must have an appeal meeting within 14 days of receiving this letter.
You must write, accepting or refusing the appeal, within 14 days of this meeting.

Individual cases

The requests you receive from individuals will often involve forms of flexible working tailored to their specific circumstances. For example:

- A** Parents (or those with responsibility for bringing up children) may wish to **work hours** that allow them to drop off a child at school in the morning.
- B** A person who is caring for a disabled relative may need some sort of **flexitime arrangement** to take the relative to medical appointments.
- C** The mother of a young baby may need the flexibility to **work from home** at short notice.

Individual requests for flexible working don't necessarily entail a reduction in the total hours worked.

3.5 If you still refuse the application, and the employee feels that their application has not been considered seriously, they may want to take **further steps**.

- Try to deal with the problem internally at this stage. An informal discussion between you and the employee may clear up any misunderstandings.

Or, encourage them to use a formal grievance procedure. It will also be much quicker than involving external parties.

- If it is still not possible to resolve the dispute, the employee may decide to involve an external third party.
This might be someone from Acas or some other mediator or conciliator.
They will try to resolve the problem in an informal manner by mediating discussions between you and the employee.

3.6 In some circumstances, the employee may decide to make a **formal complaint** to an employment tribunal or to the Acas arbitration scheme.

- The employee can only do this if you have failed to follow the correct procedures, if your decision was based on incorrect facts, or, perhaps, if the employee is caring for a disabled relative, and the employee claims the refusal amounts to disability discrimination.
- If it is shown that you have not followed the correct procedure, you will have to reconsider the application.
- You may also have to pay compensation to the employee.

The amount payable will be decided by the employment tribunal or the Acas arbitrator and will be limited to a maximum of eight weeks' pay. Each week's pay is currently limited to £464. If a discrimination claim succeeds, compensation is not capped.

3.7 The **timescales** may be extended by mutual (written) agreement. If the employee fails to attend two or more meetings (without a reasonable explanation), you may treat the application as withdrawn.

3.8 The current statutory procedure will be removed when the right to flexible working is extended to all employees on 30 June 2014.

- Employers will have a duty to consider all requests in a reasonable manner.
- They will retain the right to refuse requests on business grounds.

“Employees must be able to request changes to their working patterns without fear of dismissal, detriment, or other disadvantage to their career opportunities.”
John Blackwell, John Blackwell Associates

4 Moving into flexible working

Once you have accepted a request for flexible working you may need to make some changes.

4.1 You will need to amend the employee's **contract of employment**.

- You may want to agree a trial period.

4.2 If the new arrangement changes the number of hours worked, you will need to amend the employee's **pay** and **holiday entitlement**.

4.3 If the employee will be working from home, **health and safety** requirements will still apply.

An initial risk assessment must be carried out although this can be done by the employee. Areas to consider are:

- The seating and layout of the employee's computer workstation.
- Electrical equipment. Has it been tested and certified?
- Make sure there are no trailing extension leads.
- Adequate lighting levels, ventilation and room temperature.

Give employees simple, specific health and safety advice and record what has been done.

4.4 Consider the impact of the changes on **other employees**.

- If an employee will be working fewer hours, make sure you have adequate cover in place. Other employees may become resentful if their workload increases.
- You should inform other employees as early as possible.
- You also need to make sure work is allocated fairly. For example, in a job share you need to make sure that both parties have equal responsibilities.

4.5 Make sure you are **consistent** in your approach. Keep records of who has applied to work flexibly, and what your response was. Monitor and evaluate how the new arrangements are working so you can put changes in place if necessary.

5 Other legislation

In general, the same legislation applies to employers offering flexible working patterns as to those adopting more conventional arrangements.

You should also take account of some specific protection for employees working flexibly.

5.1 The employee is protected against **dismissal** or constructive dismissal under the flexible working rights. It is unlawful to dismiss an employee because:

- They have applied to work flexibly and it has been granted.
- They have made or intend to make a complaint to an employment tribunal.
- In such a case, the qualifying period of employment is waived and dismissal will be classed as automatically unfair.

5.2 If you are making employees **redundant**, make sure this has nothing to do with their right to work flexibly.

- Employees are protected from dismissal on these grounds.

5.3 When implementing flexible working arrangements you will need to make sure you are not **discriminating** against the employees concerned.

- Fixed-term and part-time employees are legally entitled to be treated 'no less favourably' than their permanent, full-time colleagues.
- If you place a requirement on an employee to work full time, the employee may be able to make a claim against you for indirect discrimination under the Equality Act 2010. If the employee is caring for a disabled relative, the refusal may amount to disability discrimination. There is no ceiling on the amount of compensation that can be awarded in such cases.

5.4 People who work on annual hours or term-time contracts are protected by the **working time** and **minimum wage** regulations, just like full-time employees.

6 Further help

6.1 **Acas** has a good guide to forms of flexible working, plus an advice leaflet and various forms on its website at www.acas.org.uk or for further advice call 08457 47 47 47.

6.2 Visit www.gov.uk/flexible-working for an **interactive guide** to flexible working rights.

Expert contributors

Thanks to **Jim Givens** (HR Management Solutions, 01268 565 007, www.humanresourcesclick.net) and **John Blackwell** (John Blackwell Associates, 01491 628654).

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