

## Flexible Working Policy Statement

J Breheny Contractors Ltd recognises the contribution of all its employees and also understands that at some time in their working lives, employees may find it difficult to fulfil domestic, family and working commitments due to having caring responsibilities. Where this occurs, the organisation will always consider practical help through the flexible working policy.

The flexible working policy outlines the Company's commitment to consider flexible working arrangements for eligible employees who have caring responsibilities. No employee will be treated less favourably, suffer detriment, or be dismissed because they request flexible working or move to flexible working.

Flexible working is about reviewing employees' working patterns to see whether it is possible to implement different arrangements: any arrangements must, however, always take into account the need for the organisation to achieve its core business purpose as efficiently as is possible.

A request for flexible working can be a request to change:

- The number of hours the employee works
- The times at which the employee is required to work
- Where the employee works, usually a request to work fully or partly from home.

J Breheny Contractors Ltd will:

- Consider requests for flexible working by eligible employees who put in a written request
- Follow the correct procedure as outlined in the procedures
- Reject an application where it is considered that granting flexible working would be detrimental to the business needs of the organisation

Employees should be aware that if they request and are granted flexible working, this can at the discretion of J Breheny Contractors Ltd represent a permanent variation to their contract of employment. In certain circumstances, the Company may agree to the change on a trial basis. If an employee's circumstances subsequently change in relation to the need for flexible working, there is no statutory right for a return to the terms and conditions that applied to them prior to flexible working being granted.

For an employee to be eligible to make a request for flexible working, they must satisfy the relevant conditions as laid out in the Company's Flexible Working Procedure. These same procedures should be consulted for the correct process of making a request.

Where a request for flexible working is refused, the employee will be granted the right of appeal.

This Policy is to be reviewed no later than 31<sup>st</sup> December 2010.



JNE Breheny  
Chairman and Chief Executive  
December 2009

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## **Flexible Working Policy Procedure**

This policy sets out the statutory minimum requirements of the right for employees to request to work flexibly in order to meet their childcare or adult care needs. The Company is free to operate the right to request to work flexibly within the statutory minimum rights or offer improved rights and flexibility.

### **What is the Right to Request to Work Flexibly?** [See note 1]

Employees who are parents of children under the age of six (or 16 if the child is disabled) have the right to make a request to J Breheny Contractors Ltd to work flexibly and for the Company to seriously consider that request.

It is important to understand that this is not a right to work flexibly but to ask J Breheny Contractors Ltd to consider whether such a way of working is an appropriate alternative to the way in which the employee currently works.

### **Definition of a Parent** [See note 2]

A "parent" is defined as the child's mother, father, adopter, guardian, special guardian or foster parent; or someone who is married to, or the partner/civil partner of the child's mother, father, adopter, guardian, special guardian or foster parent.

### **Definition of a Carer** [See note 2]

The statutory right to request flexible working also covers employees who are caring or expect to be caring for an adult (i.e. a person aged 16 years or over) who is a spouse (or partner/civil partner), relative or someone else living at the same address.

### **Eligibility** [See note 3]

The employee must meet the following criteria to be able to make a request to work flexibly.

1. Be a parent of a child under the age of six years or under 16 years if the child is disabled (an application must be made at least 14 days before the child's sixth (or 16th birthday).
2. Such an application must be made before the child's sixth birthday (or 16th birthday in the case of a child who is entitled to a disability living allowance).
3. Have or expect to have responsibility for bringing up that child and be making the application to enable them to care for the child.
4. Be caring or expect to be caring for the adult where the flexible working request is made in relation to caring for that adult.
5. Have 26 weeks' continuous service with the Company.
6. Not have made another application within the previous 12 months.

The employee must be able to prove that he or she meets the above criteria in particular with regard to his or her relationship with the child or the adult.

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### **Making an Application** [See note 4]

An application to work flexibly must be in writing and specify the following.

1. That the request is made under the terms of the flexible working legislation.
2. How the employee meets the eligibility criteria of service and parenthood.
3. The requested change and the date the employee would like this to be effective.
4. Any impact this change may have on his or her employment and suggestions of how this may be overcome.
5. Whether any previous request to work flexibly has been made and, if so, when.

The terms and conditions the parent can request to change only relate to hours, start/finish times and place of work.

An application must be made in writing. However it can be submitted via letter, email or fax.

### **Consideration of the Request** [See note 5]

The Company will give serious and full consideration to all requests to work flexibly from eligible parents.

If a request cannot be agreed without further discussion a meeting will be arranged within 28 days to discuss this and consider alternative flexible options.

The employee is entitled to be represented at that meeting by a work colleague. If the employee or his or her representative is not available for the meeting then an alternative time suitable for all parties will be agreed and held within seven days.

If the Company cannot meet the employee's request it will be on one or more of the following grounds.

1. The burden of additional costs.
2. The detrimental impact on meeting customer/service demands.
3. An inability to re-organise or re-distribute work among other existing staff.
4. An inability to recruit additional staff (this may particularly be the case where the request leaves 'odd' hours to be filled by another employee).
5. A detrimental impact on quality or performance.
6. There is insufficient work available during the hours the employee is requesting to work.
7. Other structural changes are planned.

Whatever the outcome of the meeting, the result will be confirmed to the employee in writing within 14 days of the meeting, unless an extension is agreed.

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If the requested change of working arrangements is accepted, the new terms and conditions that apply are permanent. The employee has no right to return to his or her old terms and the Company has no right to enforce a return unless a trial of the new terms has not proved successful.

### **Trial Period** [See note 6]

The Company may decide to offer the new way of working on a trial basis initially if it is not sure what the impact of it will be on the business. In such circumstances, the change to the employee's terms and conditions of employment during the trial period is a temporary change to his or her terms and conditions of employment.

If the trial is not successful, the employee will revert back to his or her previous terms and conditions of employment. If the requested change of working arrangements is accepted at the end of the trial then the temporary terms and conditions will become permanent.

### **The Appeals Process** [See note 7]

The employee has the right of appeal if his or her application to work flexibly is declined and must put his or her appeal in writing within 14 days of receipt of the Company's decision, unless an extension is agreed.

The letter of appeal must clearly state the grounds for appeal and a further meeting will then be arranged in the same manner as the original hearing giving the employee the right to be accompanied.

Following the appeal hearing, J Breheny Contractors Ltd will confirm the outcome in writing within a further 14 days (unless an extension has been agreed) detailing any agreement that has been met or an explanation of the grounds for dismissing the appeal.

The decision at the appeal hearing stage is final.

### **Withdrawing an Application** [See note 8]

A request to work flexibly can be withdrawn at any time before it has been accepted and any new terms and conditions agreed and put in place. An employee who withdraws his or her application will not be eligible to make another flexible working request for a further 12 months.

If an employee fails to attend more than one meeting arranged to discuss the request and does not provide a reasonable explanation, the Company may assume that the application has been withdrawn.

The Company may also treat an application as withdrawn if the employee does not provide the required information.

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## Notes

1. The legislation relating to flexible working requests is contained in the Employment Rights Act 1996 and supplementary regulations.

The essential ingredient of this legislation from the Company's point of view is that employees do not have a right to work flexibly but simply have a right to put a request to the Company and for the Company to seriously consider it.

The Company is aware that women seeking to return to work on adjusted hours after maternity leave can still claim unlawful indirect sex discrimination if the Company refuses outright to consider a request to work flexibly.

2. The Company is free to offer this right to employees other than those with parental responsibilities or those with caring responsibilities for an adult.
3. The Company is free to:
  - i. Remove or increase the maximum age requirements of the child
  - ii. Allow applications from employees more than once in a 12 month period
  - iii. Reduce or remove the period of service eligibility criteria but not increase it.

The Company is not expected to pursue parents for evidence of eligibility but to implement the right 'in the spirit' in which it was intended.

Care of the child can include a range of circumstances, e.g. spending more time with the child or making it easier for the parent to drop his or her child off at school

4. The Company will implement this right "in the spirit it was intended and support employees to meet the application process requirements"
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5. Unlike the rules under grievance and dismissal/disciplinary hearings, where an employee is entitled to be accompanied by a colleague or appropriate trade union representative the employee has the right only to be accompanied by a colleague. However, the Company is free to allow trade union representatives to attend if they wish.

If the proposal the employee has made is acceptable, the Company will confirm this in writing stating the date from which it will become effective.

Timescales are critical to the process and may only be extended by mutual agreement of both the employee and the Company. The Company will confirm any time extensions in writing, setting out what the extension is for and when it ends. The letter will be dated and sent to the employee.

Adjustments to the timescales are also allowed where the supervisor/manager who would normally consider the request is absent from work due to for example sickness or holiday.

If the request is declined, the Company will notify the employee in writing, setting out the business grounds and why they apply, and the employee's right to appeal. The letter will be dated. The reason(s) given will be set out clearly, and be accurate and relevant. A decision which is based on incorrect facts can allow an employee to bring a tribunal claim.

Involving other members of the team in the decision to accept a request or not can be a very effective way of resolving any conflict from colleagues at an early stage.

6. Where the Company is unsure how successful a new way of working will be the Company may wish to offer the change initially on a trial basis.

In such circumstances the Company will clearly spell out:

- i. That its agreement to the employee's flexible working request is subject to the outcome of the trial period
- ii. The length of the trial period (i.e. when the period starts and when it ends)
- iii. That the change to the employee's terms and conditions of employment during the trial period is a temporary change to his or her terms and conditions of employment
- iv. The temporary changes to the employee's terms and conditions of employment during the trial period (e.g. a change in working hours)
- v. The date that the employee will revert back to his or her previous terms and conditions of employment if the Company disagrees with his or her flexible working request.

The period between that date and the expected date that the employee will be notified of the Company's decision about his or her flexible working request will give that employee sufficient time to re-adjust to his or her previous terms and conditions of employment.

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7. Timescales are critical to the process and may only be extended by mutual agreement of both the employee and the Company. The Company will confirm any time extensions in writing.
8. The Company can consider an employee's application has been withdrawn if:
  - i. The employee notifies the Company as such either verbally or in writing
  - ii. The employee fails to attend an arranged meeting or appeal hearing on more than one occasion
  - iii. The employee refuses to provide the Company with information needed by the Company to assess whether the employment terms & conditions should be varied.

In these circumstances the Company will confirm the withdrawal in writing to the employee.

### Warnings

- An employee may complain to an employment tribunal (ET) that his or her employer has refused to allow him or her to be accompanied at any of the meetings associated with his or her request. This complaint must be lodged within three months of the failure and, if founded by the ET, compensation of up to two weeks' pay (capped at the statutory limit on a week's pay) may be ordered.
  - The employee and/or any colleague who has accompanied him or her has the right not to be subject to any detriment for exercising his or her right to be accompanied or acting as the colleague or bringing a flexible working request.
  - Any dismissal relating to the right to request to work flexibly is automatically unfair and the employee does not need the usual one year's continuous service to qualify to make a claim.
  - If the Company fails to follow the statutory procedure to consider an employee's request to work flexibly the employee can complain to an ET. This would include failing to meet timescales, hold meetings, follow up in writing or provide reasonable grounds for refusal. It also includes basing a refusal on inaccurate facts.
  - No complaint can be brought until the Company is in actual breach of the procedure nor can the employee complain if his or her flexible working request has been withdrawn.
  - The complaint must be submitted within three months of the breach occurring and if successful the tribunal can make an award of up to eight weeks' pay in compensation (capped at the statutory limit on one week's pay).
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