

## **EMPLOYMENT MATTERS COMMITTEE**

**3 SEPTEMBER 2014**

### **REVIEW OF THE RIGHT TO APPLY FOR FLEXIBLE WORKING POLICY**

Report from: Tricia Palmer, Assistant Director, Organisational Services

Author: Carrie McKenzie, Head of HR and Organisational Change

#### **Summary**

The report seeks agreement to the revised Right to Apply for Flexible Working Policy

#### **1. Budget and Policy Framework**

1.1 The Policy lies within the Council's policy and budget framework and the Committee's terms of reference. Therefore, this is a matter for the Employment Matters Committee.

#### **2. Background**

2.1 The Policy has been revised to incorporate a broadening of the scope of those employees who have the right to apply as provided for in a recent change to legislation (The Children and Families Act 2014, "the Act").

2.2 The right to apply for flexible working was previously restricted to only those employees with Child or Adult Care commitments, this requirement has now been deleted from "the Act" and amended to now include all employees who have 26 weeks continuous service.

#### **3. Advice and analysis**

3.1 This Policy applies to permanent and temporary employees of Medway Council. This Policy does not apply to the following employees:

(1) The Chief Executive, the Section 151 Officer or the Monitoring Officer who are subject to statutory regulations

(2) School based staff and centrally employed teachers who are covered by a separate procedure

#### **4. Consultation**

4.1 Consultation on these changes has taken place involving the trade unions and the employee forums.

4.2 At the time of writing this report we have received no comments

#### **5. Risk Management**

5.1 It is important that all staff are made aware of this Policy and their responsibilities within it.

5.2 Failing to implement the Policy in a fair and consistent manner may result in successful legal challenges.

5.3 Failing to adhere to the Council's responsibilities under "the Act" could pose a legal challenge at employment tribunal.

5.4 It is therefore necessary for the new Policy, included at Appendix 1 to the report, to be promoted throughout the Council.

#### **6. Diversity Impact Assessment (DIA)**

6.1 A Diversity Impact screening has been undertaken and it is considered that a full DIA is not required. The DIA is attached at Appendix 2 to the report.

#### **7. Financial and legal implications**

7.1 It is not envisaged that there will be any additional financial implications with the implementation of this Policy.

7.2 Implementation of this Policy enables the Council to comply with its various statutory obligations. Implementation of the Policy is within the council's powers. In the application of this Policy it is essential that a fair and consistent approach is to be applied to all staff in order to minimise successful legal challenges. The council must ensure that in the application of the policy due regard must be given to all relevant legislation and in particular "the Act".

#### **8. Recommendations**

8.1 That the Employment Matters Committee approves the revised Policy as set out in Appendix 1 to the report.

8.2 That this Policy is reviewed in two years time and any proposed changes are referred to this Committee.

**Lead officer contact**

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**Background papers**

None





# **Medway Council**

## **The Right to Apply for Flexible Working**



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## **1.0 Introduction**

- 1.1 The procedure for requesting flexible working for parents under the Right to Apply was implemented via the Employment Act 2002. From 30 June 2014, the right to request flexible working is extended to all employees with at least 26 weeks continuous service. The aim of the legislation is to encourage open discussion between managers and employees about flexible working issues.
- 1.2 Before making an application to work flexibly employees must think carefully about their desired working pattern and you should encourage them to speak to you for your views on their proposals. When making an application, employees will be asked to explain what they believe to be the impact of the new working pattern in terms of how it will affect the service, their colleagues and how these may be dealt with.
- 1.3 Any agreement to Flexible Working is a permanent variation to the employee's contract and without a subsequent agreement, there is no automatic right to revert back to the original contract.

## **2.0 Equalities Statement**

- 2.1 Medway Council is committed to providing equal opportunities and access to all. This policy embraces the spirit of managing a diverse workforce and supports the core value that no employee is discriminated against either directly or indirectly or victimised on the grounds of their race, disability, sex, sexual orientation, religion or belief, age, marital or civil partnership status or any stage of gender reassignment. Likewise the council expects all employees to treat their colleagues and customers with dignity and respect.

## **3.0 Eligibility Criteria under the Right to Apply Legislation**

### **3.1 To be eligible under the law, applicants must:**

- Be an employee of the Council
- Have worked for Medway Council continuously for 26 weeks at the date the application is made
- Not have made a formal request to work flexibly during the past twelve months

### **4.0 Employees who fit the criteria will be able to request:**

- A change to the hours they work
- A change to the times when they are required to work
- To work from home

## **5.0 The procedure**

- 5.1 The initial onus will be on the employee to make a considered application in writing to their line manager using the Flexible Working Application form (this can be found in the Employee Guide to Flexible Working booklet). In normal circumstances, only one application a year can be made and an accepted application will mean a permanent

change to the employee's own terms and conditions of employment. However, if there has been a significant change in the individual's personal circumstances, managers have the discretion to consider a further application within the year.

- 5.2 If you (the manager) agree with the proposal you must notify the employee of the variation that has been agreed and the date on which it will take effect. This should be done in writing (an e-mail is acceptable) within 21 days of receiving the application.
- 5.3 Should you disagree with the proposal, you must notify the employee within 21 days and arrange to meet to discuss the issue, any problems and consider alternatives, the aim being to reach an acceptable mutual solution. The employee has the right to be accompanied at the meeting by a trade union representative or work companion who must be a fellow council employee (The trade union representative/'companion' will have the right to address the meeting and confer with the employee but will not be allowed to answer questions on the employee's behalf).
- 5.4 Under the Right to Apply legislation the only valid grounds for rejecting a request are shown below. These criteria should be used when determining all requests for flexible working and any requests that are refused should be supported by a concise explanation for your decision.
- 5.5 These are as follows:
- The burden of additional costs
  - Detrimental effect on ability to meet customer demand
  - Detrimental impact on quality
  - Detrimental impact on performance
  - Inability to reorganise work amongst existing staff
  - Inability to recruit additional staff
  - Insufficiency of work during the periods the employee proposes to work; and/or
  - Planned structural changes
- 5.6 Within 14 days of the meeting you must inform the employee of your decision in writing.
- 5.7 You may wish to extend the time limits, for example, more time may be needed to explore an alternative working pattern. In which case you will need to agree this with the employee and follow up in writing confirming the extension period and its end date.
- 5.8 NB: Time limits will be automatically extended should you be absent because of annual leave or sick leave when the application is received. In these cases, the 21-day period begins when you return to work or 21 days after the application is made, whichever is the sooner.

## **6.0 Process of appeal**

- 6.1 An employee can appeal against their manager's decision. This should be made in writing (an e-mail is acceptable) within 14 days of it being notified to them.



- 6.2 The manager will consider all aspects of the appeal and discuss this with the employee including alternatives and only when no solution can be found or as the result of a valid ground for rejection being identified (as at 5.5) will the appeal be rejected and 6.3 invoked
- 6.3 If you still cannot agree, you should discuss the matter with your HR representative and arrange an appeal meeting between your Service or Senior manager, HR representative and the employee within 14 days after receiving the employee's notice of appeal. The employee may be accompanied by a trade union representative or companion at the meeting as described in 5.3.
- 6.4 Within 14 days after the meeting the employee must be notified in writing of the decision.

## 7.0 Risk Management

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>	<b>Risk rating</b>
Failure to comply with statutory legislation	The right to request flexible working arrangements now extends to all employees with 26 weeks continuous service	Ensure that the flexible working policy is updated to reflect the new arrangements	E4



## Appendix 2 - Diversity impact assessment

<b>TITLE</b> <i>Name/description of the issue being assessed</i>	<b>The Right to Apply for Flexible Working Policy</b>
<b>DATE</b> <i>Date the DIA is completed</i>	<b>19<sup>th</sup> August 2014</b>
<b>LEAD OFFICER</b> <i>Name of person responsible for carrying out the DIA.</i>	<b>Carrie Mckenzie Head of HR and Organisational Change</b>
<b>1 Summary description of the proposed change</b> <ul style="list-style-type: none"><li><i>What is the change to policy/service/new project that is being proposed?</i></li><li><i>How does it compare with the current situation?</i></li></ul>	<p><b>The Right to Apply for Flexible Working Policy has been revised to incorporate legislative changes around extending the scope of employees who have the right to apply for flexible working.</b></p> <p><b>Prior to the change, employees needed to be able to demonstrate a minimum of 26 weeks continuous service and that the primary reasons for the application was for child or adult care purposes.</b></p> <p><b>The new legislation maintains the service requirement but the request can now be made for any reason</b></p>
<b>2 Summary of evidence used to support this assessment</b> <ul style="list-style-type: none"><li><i>Eg: Feedback from consultation, performance information, service user records etc.</i></li><li><i>Eg: Comparison of service user profile with Medway Community Profile</i></li></ul>	<p><b>The primary assessment is based on the change to the legislation.</b></p> <p><b>Consultation was invited from the Trade Unions and Staff Forum's between the period 3 July 2014 to 31 July 2014, no comment was received.</b></p>

## Appendix 2 - Diversity impact assessment

### 3 What is the likely impact of the proposed change?

Is it likely to :

- Adversely impact on one or more of the protected characteristic groups?
- Advance equality of opportunity for one or more of the protected characteristic groups?
- Foster good relations between people who share a protected characteristic and those who don't?

(insert ✓ in one or more boxes)

Protected characteristic groups	Adverse impact	Advance equality	Foster good relations
Age			X
Disability			X
Gender reassignment			X
Marriage/civil partnership			X
Pregnancy/maternity			X
Race			X
Religion/belief			X
Sex			X
Sexual orientation			X
Other (eg low income groups)			X

### 4 Summary of the likely impacts

- Who will be affected?
- How will they be affected?

The policy covers all Medway employees and the changes broadens the eligibility to a wider employee group.

## Appendix 2 - Diversity impact assessment

**5 What actions can be taken to mitigate likely adverse impacts, improve equality of opportunity or foster good relations?**

- *Are there alternative providers?*
- *What alternative ways can the Council provide the service?*
- *Can demand for services be managed differently?*

**Not applicable**

**6 Action plan**

- *Actions to mitigate adverse impact, improve equality of opportunity or foster good relations and/or obtain new evidence*

Action	Lead	Deadline or review date
Not applicable		

## Appendix 2 - Diversity impact assessment

### 7 Recommendation

*The recommendation by the lead officer should be stated below.*

*This may be:*

- *to proceed with the change implementing action plan if appropriate*
- *consider alternatives*
- *gather further evidence*

*If the recommendation is to proceed with the change and there are no actions that can be taken to mitigate likely adverse impact, it is important to state why.*

**Not applicable**

### 8 Authorisation

*The authorising officer is consenting that:*

- *the recommendation can be implemented*
- *sufficient evidence has been obtained and appropriate mitigation is planned*
- *the Action Plan will be incorporated into service plan and monitored*

**Assistant  
Director**

**Date**

Contact your Performance and Intelligence hub for advice on completing this assessment

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Send completed assessment to the Corporate Performance & Intelligence Hub (CPI) for web publication