

# Flexible Working Policy

*February 2021*



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# 1 Summary and Key Points

This policy aims to restore the balance between paid and unpaid work, so that important activities and responsibilities can be given the time and attention they need.

We start from the belief that people who work for an employer should not be forced to fit all other aspects of their lives around their employment and should not be required to put paid work before all the other aspects that give their lives meaning. Caring for children and older relatives, and contributing to community life, are not usually paid, but are more important for personal and societal well-being than many paid employments. Creative activity and looking after one's physical and mental health also need to be given space in our lives.

The ability to do paid work on a flexible basis is essential for the elimination of inequalities, especially based on family status and gender. Flexibility can also reduce the stress of commuting, as workers can choose off-peak times to travel, or times that fit with other commitments (e.g., school runs), or avoid commutes completely by working at home.

The policy provides for the following rights for employees:

- a) All employees, both full and part time, will have the right to request flexible working conditions.
- b) What constitutes "flexible working" will be defined by the employee, according to the needs of their job and their other responsibilities and activities. Illustrative examples could include flexible start and finish times, working fewer and longer days, working from home, job sharing, or phased retirement (part time work for a period preceding retirement).
- c) There will be no requirement for the employee to state their reason for requesting flexible working, although they may volunteer this information if they wish.
- d) An employer can refuse an application for flexible working only for a well-defined and clearly justified business or operational reason, which must be explained clearly and in writing to the employee. In particular, the reason (if any) that the employee gives for the request cannot be a ground for refusal.
- e) The employee can appeal any such refusal to the Workplace Relations Commission. As with claims for unfair dismissal, the burden of proof in such an appeal will lie with the employer; by default, a refusal will be assumed to be unjustified until the employer has proved it is reasonable.

- f) As with complaints under equality legislation, workers will be protected from victimisation (i.e., adverse consequences resulting from having applied for flexible working, or having taken a flexible working case to the WRC).
- g) Flexible working may be requested for a defined period, or an indefinite period. The employee will retain the right to return at any time (on giving reasonable notice to the employer) to the previous, non-flexible working pattern if they so desire. A refusal by the employer to allow return to the previous working pattern can be appealed by the employee to the WRC.
- h) All new posts should be advertised as available for flexible working, unless a good business or operational reason to the contrary can be given.
- i) Positive action will be taken to encourage the uptake of flexible working arrangements, especially at senior levels within organisations, and to ensure that uptake is balanced across genders.
- j) In order to monitor the effectiveness of the policy, regular reporting will be carried out on the uptake of flexible working arrangements among different groups of employees (particularly with respect to gender, family status, age and seniority), and their effect on gender and parental/carer pay gaps, retention of experienced staff, job satisfaction and employee well-being.

## 2 Policy

### 2.1 Introduction

Most of us have to find a balance between earning a living and looking after the people who matter to us. This can be extremely difficult when we are in jobs that require presence in a workplace, at specific times that are defined by the employer. The traditional model of work has been based on an employer effectively “owning” the employee’s time, for certain hours of the day. This policy is an attempt to redress the balance and empower employees, by giving the employee the right to work flexibly in a way that suits them (as far as the nature of the work allows).

#### **The work we have to do**

To keep ourselves and our families alive and happy and ensure that our human communities survive into the future, there are certain tasks that we have to do. We need to produce and prepare food, to build houses and make them warm, to keep them clean and make them beautiful, to bear children and feed them, to care for and educate them, to build friendships and families, to entertain ourselves and each other, to create a culture and record its history, to learn from older members of our families and communities, to care for these older ones as they become less able to care for themselves, and to make collective decisions about how to run our society.

Some of these tasks are usually organised for profit, and people are employed to do them. Others are usually carried out voluntarily or necessarily on an unpaid basis. Childcare, early education and caring work are examples of extremely important tasks that are often done without payment, providing the person doing it has time. Most employees struggle to create that time, or to extract that time from the demands of their employer.

Fixed working hours and the requirement to be present at the workplace during these hours can thus make it impossible to combine paid work with the unpaid work that fulfils our other responsibilities, especially the care of younger, older or weaker members of our families and circles of friends.

Work that is highly paid is usually done on a “full time” basis (about 35-45 hours per week, but often much more), and normally requires fixed working time commitments or long working days. In many occupations, a period of continuous training is needed to get established and progress towards more senior (and lucrative) roles. This usually requires a commitment that is difficult to balance with caring for children or older relatives. Many of us find that we are faced with an uncomfortable choice between three alternatives: to concentrate on career and earning and leave the majority of the caring role to someone else (probably a partner who has more flexibility); conversely, to take on the majority of the caring roles and leave most of the money-earning to our partner; or to try to combine the

two, doing well-paid work that is able to support a family while still caring for our children or other dependents.

The third option is usually absolutely exhausting, and many of us who have made our way along this path have found it leads to friction both at work and in the home; to personal dissatisfaction when we feel that we are not doing either task adequately; to an exaggerated version of the universal guilt that parents feel; and to stress and illness caused by trying to balance these conflicting demands.

It also frequently leads to the employee being stuck in a job at a lower level of seniority than others who do not have these commitments, and correspondingly to a loss of income and other rights, notably pension rights.

### **The origins of the problem**

The basic problem is the dominant model of paid work that is not designed to allow it to be combined with caring and family responsibilities. Our model of paid work is a legacy from a time when there was a rigid split along gender lines: paid work was full-time and done mostly by men (and unmarried women), while caring for children or older or dependent relatives was done mostly by women. This model assumes an economy designed around profit rather than the needs of people. As gender divisions in our society are gradually undone, we are moving towards a situation where the majority of people of any gender are combining paid work with caring work, at least to some degree (although especially in heterosexual couples the sharing of tasks can still be very unequal). But the model of paid work has hardly changed.

To fit into the profit-based, industrial model of paid work, we are more and more coerced into paying others to care for those closest to us, in order to be able to earn the money to look after them. This is encouraged by State initiatives such as childcare payments made to employed (but not stay-at-home) parents. At the same time, there is a tacit assumption that a large part of the caring work will be done without pay: small children being cared for by grandparents, older people being cared for by their adult children, and dependent relatives (e.g. with disabilities) being cared for by people of all ages including young carers. At a certain stage of life, many of us have caring responsibilities towards three generations: our parents, now very elderly; our children, often in their teens; and our small grandchildren. This is most likely in our fifties and early sixties, when most of us are still employed.

For those of us who choose not to leave the care of our nearest and dearest to others paid to do it, or who quite simply have to take on unpaid caring responsibilities, having to fit into a fixed working pattern that derives from history can place an intolerable extra burden on top of an already difficult situation. People often have to leave their jobs as a result, or take on low-paid roles that allow at least a little flexibility. This entails a huge loss of talent and experience to employers, as people leave senior jobs, that they could be doing well if they could only arrange the work around their more important personal circumstances.

This situation also creates and sustains inequalities based on family status and on gender, as the greater number of those so affected (eg around 60 % of those caring for dependent relatives) are women.

### **Towards a solution**

The Green Party suggests that we need to take radical action to redress the balance between employer and employee, and to move beyond a model of paid work that derives from past views of rigid gender roles. We suggest that employees should have the right to arrange their paid work in such a way that they can do it while still attending to all the other responsibilities of life. We need to give an appropriate importance to unpaid work, in recognition of the fact that most of the work that really matters in our society is done for love and not for money. That is what we attempt to do with this flexible working policy.

Because of the gendered roles that are still widespread in our society, it remains the case that the majority of the unpaid work is done by women. Within the world of paid work, women earn on average substantially less than men. The second of these facts is to a large degree a result of the first. One of the important aims of this policy is to contribute to solving these problems. If flexible working is made the norm for paid work of all kinds, including at the most senior levels, it will both be easier for women (and men) with parental and caring responsibilities to move into or remain in these jobs, and for men (and women) already in such jobs to take on a full share of parental and caring responsibilities.

It is our hope that the combination of these factors will help to undo the gendered split in our society, so that people of all genders are more genuinely free to share their time and energy as they want to between paid and unpaid work, between earning money and caring for their loved ones and their (and our) communities.

It should be noted that much of this policy is already in operation in the UK, where all employees have the right to request flexible working. The present policy would enact the UK model, adding developments and improvements that have been suggested by organisations working in employment and equality matters. Details of the UK model can be found in the relevant UK Government web pages (<https://www.gov.uk/flexible-working>), and a guide for employers gives an overview of how the law works in a variety of situations (ACAS, 2014a). A newspaper article gives a very concise overview (Guardian, 2014) and a briefing paper by the UK House of Commons Library gives a more detailed treatment of the background and content of the UK law, as well as some suggestions for improvement that have been incorporated in the present policy (House of Commons Library, 2017). Finally, an article from 2018 compares the UK law with other models and proposes it as a model that could be adopted by the European Union as a whole (Bird and Brown, 2018).

Ireland's present law on the right to request flexible working is contained in S.I. 81 of 2013, which implements EU Directive 2010/18/EU on parental leave. It is extremely limited. It creates a right for an employee to request "a change to working hours or patterns" for a

limited period of time, only on returning to work after a period of parental leave (and in no other situation). The employer is obliged to consider this request but can refuse without giving reasons, and there is no appeal mechanism for an employee whose request is refused.

## 2.2 Policy Details

### **(a) All employees, both full and part time, will have the right to request flexible working conditions.**

The right to request flexible working conditions is already emerging in jurisdictions around the world and may completely transform work-life patterns for millions of employees. This right is a conditional right granted to an employee to have the ability to request flexible work scheduling. This puts the onus on the employer to respond to the request, discuss the request with the employee, and either accept or refuse it (Bird and Brown, 2018).

### **(b) What constitutes “flexible working” will be defined by the employee, according to the needs of their job and their other responsibilities and activities. Illustrative examples could include flexible start and finish times, working fewer and longer days, working from home, job sharing, or phased retirement (part time work for a period preceding retirement).**

The onus would be on the employee when making their initial flexible working application to specify: 1) what they mean by ‘flexible working’, 2) what specific arrangements the employer must make for them, and 3) address how their application will affect the employer. These points are already in operation in the UK (House of Commons Library, 2017).

Our rationale here is that the employee knows the detail of their work better, in many cases, than the employer or line manager, and a person who needs to work flexibly will probably have given a considerable amount of thought already to how it could be managed. Obviously the employee knows the detail of their personal life and the employer does not. So the one best placed to suggest creative means to balance job and personal life is the employee.

### **(c) There will be no requirement for the employee to state their reason for requesting flexible working, although they may volunteer this information if they wish.**

The employee is under no obligation to disclose the motivation behind their application and the employer cannot refuse the application on the basis that no reason was provided. This both protects the employee against discrimination and protects their privacy (Bird and Brown, 2018). While an understanding employer may make efforts to accommodate a request for flexible working for an employee in difficult family circumstances, some



employers may not, or may take a prejudiced approach (“Why are you asking for flexible work? Can’t your wife look after the kids?”). The employee is best placed to judge how sympathetic or understanding their employer is likely to be, thus, how much to divulge about the reason for applying.

**(d) An employer can refuse an application for flexible working only for a well-defined and clearly justified business or operational reason, which must be explained clearly and in writing to the employee. In particular, the reason (if any) that the employee gives for the request cannot be a ground for refusal.**

Such a business or operational reason may include: burden of additional costs; detrimental effect on the ability to meet customer demand; inability to organise work around existing staff; inability to recruit new staff; detrimental impact on quality or performance; insufficiency of work during the periods the employee proposes to work; or planned structural changes (House of Commons Library, 2017). The exclusion of the reason for the request as a ground for refusal protects the employee against possible discrimination without their having to make a claim under equality legislation after the event.

**(e) The employee can appeal any such refusal to the Workplace Relations Commission. As with claims for unfair dismissal, the burden of proof in such an appeal will lie with the employer; by default, a refusal will be assumed to be unjustified until the employer has proved it is reasonable.**

The two major types of employment law case dealt with by the WRC are unfair dismissal and constructive dismissal. Under unfair dismissal law, a dismissal is assumed to be unfair until the employer shows why it was justified; the burden of proof is on the employer. In contrast, the burden of proof for constructive dismissal is on the employee (to show that they had no alternative but to leave); this is in practice an extraordinarily difficult thing to prove and constructive dismissal cases thus rarely succeed.

Similarly in flexible working cases, we propose that it would be the job of the employer to prove that the employee’s proposal would hinder business. An employee’s request for flexible working would be assumed to be reasonable unless the employer can show that it would harm the business. It is much easier for the employer to show harm to the business than for an employee to show that their request would not harm the business: the employee may not have access to the detailed information on business practice within their organisation that would be required to prove this, and may not be able to satisfy the burden of proof.

Placing the burden of proof on the employer also protects the employee from undue legal costs that they may not be able to shoulder, or at least reduces the likely legal costs they would incur.

**(f) As with complaints under equality legislation, workers will be protected from victimisation (i.e. adverse consequences resulting from having applied for flexible working, or having taken a flexible working case to the WRC).**

If an employee takes a case to the WRC or makes an application for flexible working, they will be protected under legislation from victimisation in the workplace. This could take the form of bullying, harassment, exclusion from important workplace discussions, or exclusion from consideration for promotion. This protection already applies to complaints under equality legislation and the same protection would apply here.

**(g) Flexible working may be requested for a defined period, or an indefinite period. The employee will retain the right to return at any time (on giving reasonable notice to the employer) to the previous, non-flexible working pattern if they so desire. A refusal by the employer to allow return to the previous working pattern can be appealed by the employee to the WRC.**

This measure protects employees from suffering consequences from taking a period of flexible working and ensures, subject to a WRC ruling, that the employee will be welcomed back to the workforce. This assurance would also ease employees' minds when considering whether to request flexible working if they are afraid of losing work (House of Commons Library, 2017). The period of "reasonable notice" would take into account any alternative arrangements that the employer had made, eg re-allocation of staff covering duties, where it may not be reasonable to move them immediately to accommodate a return to the employee's previous working pattern.

**(h) All new posts should be advertised as available for flexible working, unless a good business or operational reason to the contrary can be given.**

This provision is not currently in UK law but has been recommended by the UK Equality and Human Rights Commission (Equality and Human Rights Commission, 2017). It is aimed to encourage job seekers to apply for jobs that they may not otherwise apply for because of their personal circumstances (eg., being an at-home carer for a family member or having recently had children). This would encourage workers not to settle for lower-paying jobs or part-time work so that they can gain flexibility. It is also suggested that it would help to create a culture of flexible working in workplaces, by normalising the arrangement, so that gradually every job would by default be flexible.

**(i) Positive action will be taken to encourage the uptake of flexible working arrangements, especially at senior levels within organisations, and to ensure that uptake is balanced across genders.**

This would help ensure that flexible working is encouraged at senior levels in organisations, where the workplace culture may currently emphasise long periods of presence and long working hours to demonstrate dedication to the organisation. Increased adoption of flexible working at senior levels would also ensure it is seen to be a viable option for lower-level workers, who may be more hesitant in applying for flexible working. Balanced uptake across genders has been a priority of the development of the UK law, in

order to counteract the perception of the “mummy track” in career pathways. It is aimed that flexible working is not only for parents and carers, but would also help employees to engage meaningfully in society outside of the workplace through flexible working – whether as a carer, parent, or community volunteer (House of Commons Library, 2017).

**(j) In order to monitor the effectiveness of the policy, regular reporting will be carried out on the uptake of flexible working arrangements among different groups of employees (particularly with respect to gender, family status, age and seniority), and their effect on gender and parental/carer pay gaps, retention of experienced staff, job satisfaction and employee well-being.**

The policy has a clear intention to foster equality of all kinds but particularly the legally defined grounds of gender, family status, and disability. The policy is expected to allow jobs at senior level to be carried out more easily by people with family care responsibilities (of whom a larger proportion are women), and may also allow a demanding job to be carried out more easily by a person whose physical capacity is limited by disability or chronic illness. The policy is also expected to allow employees to stay in a job rather than leave because it is incompatible with increased family responsibilities or reduced physical capacity. The policy is intended to be useful for employees at all levels of seniority and the uptake of the policy would be monitored accordingly.

The effect on pay gaps is an important intended outcome of the policy. It is already Green Party policy that pay gap reporting should be extended from gender only to include other protected grounds under equality legislation (e.g., disability, ethnicity, and family status). The effects of flexible working on gender and family status pay gaps would be an especially important target for monitoring.

## 2.3 Costing

A thorough costing exercise was carried out by the UK Government prior to the introduction of flexible working legislation there (HM Government, 2011, page 2), and here we carry over the costings, owing to the similarity of the Irish and UK economies and working models. The original UK costings are given indicatively, and the reader will be able to scale them appropriately to Ireland’s smaller population. In brief, the cost to the State is minimal, comprising a slightly increased workload for the WRC. The cost to employers is negative, i.e., there is an overall net benefit to employers (as explained below).

### Costs and benefits to employers

The overall cost to employers was assessed in the UK Government’s impact assessment as negative (ie there would be an overall net financial benefit to employers). This was calculated as follows.

A one-off cost on establishing flexible working legislation is estimated as £17.1 million, and in addition there would be a £53.4 million annual cost for administration and changed working patterns (which would be proportionally smaller for Ireland).

The benefits to employers would be higher productivity (as employees are able to manage their work more efficiently in balance with their personal needs); lower labour turnover (as employees no longer need to leave their jobs to ensure flexibility); and reduced absenteeism (as employees no longer need to take unauthorised time off / “sick leave” for family needs). These annual benefits are quantified as £55.0 million for higher productivity, £11.8 million for reduced labour turnover, and £2.5 million for reduced absenteeism, making a total benefit of £71.3 million. (A UK benefit not included here is the move to a statutory from a voluntary code; this is not relevant in Ireland which has no code at all). An additional benefit, likely to be very substantial but very difficult to quantify, is the retention of experience within an organisation, especially at the more senior levels, as senior staff are able to remain in their roles and bring their experience to bear in the organisation.

The net benefit to employers would therefore be £17.9 million per year, set against an initial cost of £17.1 million, giving an overall net benefit to employers over ten years of just under £162 million. This benefit would of course be proportionally smaller for Ireland.

### **Cost to the State**

The cost to the State would be minimal and would comprise chiefly the slightly increased workload of the WRC as cases are brought under this law. The UK estimate of this cost was £45,000 annually (HM Government, 2012); again, the amount would be proportionally smaller for Ireland.

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