
Flexible working in the NHS

Joint statement on behalf of the NHS Staff Council

The NHS Staff Council, on behalf of NHS trade unions and employers, has jointly agreed revisions to Section 33 of the NHS terms and conditions of service handbook, which will include a new day one right to request flexible working. The improvements are designed to support and facilitate a cultural change to ensure flexible working is available to all NHS staff. The contractual changes will take effect on 13 September 2021 in England and Wales, with similar provisions expected to follow in Northern Ireland. Scotland will introduce these changes in line with its ongoing 'Once for Scotland' Workforce Policies Programme.

The agreed provisions will also support the commitments made in the People Plan for England around moving to flexibility by default. The new Section 33 of the NHS terms and conditions of service handbook will provide for a contractual day one right to request flexible working, with no limit on the number of applications and regardless of the reasons for a request.

There are also new requirements for better centralised oversight of processes to ensure greater consistency of access to flexible working. This includes an escalation stage for circumstances where a line manager is not initially able to agree a request. Employers will be expected to promote flexibility options at the point of recruitment and through regular staff engagement through one-to-ones, appraisals and team discussions.

To help local joint employer-union partnerships prepare for when the changes take effect, the NHS Staff Council Executive has established a joint working group who will develop guidance on how to implement the contractual changes in the following areas:

- guidance to support local partnership discussions for updating local flexible working policies
- signposting and supporting resources for employers, line managers and staff to help deliver the cultural changes needed to make flexible working much more widely accessible
- guidance to support the monitoring and reporting of flexible working practices within organisations.

For England, this work will include collaboration with NHS England and Improvement and will be published in the coming weeks in time to support local discussions and preparation.

A copy of the revised Section 33 taking effect from 13 September can be viewed in the attached Annex A.



Sara Gorton, Staff Side co-chair



Jon Lenney, Employer Side co-chair

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ANNEX A

Section 33: Balancing work and personal life

General

33.1 A positive work/life balance benefits both NHS employees through improved health and wellbeing, and employers because staff are more productive and satisfied at work. Employers should have a strategic response, ensuring policies which support and promote a work/life balance are agreed in partnership.

33.2. Key to achieving work life balance is the provision and availability of flexible working opportunities accompanied by policies which support managers to take the time to understand what each person needs. Flexible working is part of a wider commitment by the NHS to improve the quality of working life. It also supports the retention of existing staff including those returning to work after family-related leave.

Flexible working arrangements

Aim

33.3 In order to meet the evolving needs of patients, the NHS needs to be able to attract, recruit and retain a diverse workforce. Individual working needs are variable, and where possible we need working practices which ensure staff can work in a manner that best suits their personal needs and preferences. Having appropriate working arrangements which are adaptable and flexible both to employees and employers will ensure that we will continue to have the workforce we need to deliver excellent patient care for the future.

33.4 The following national principles have been established to support employing organisations develop their local policies.

Right to request flexible working

33.5 All NHS employees covered by this section and who are employed by an organisation listed in Annex 1 have the contractual right to request flexible working from day one of employment.

33.6 Employees can make more than one flexible working request per year and can do so regardless of the reasons for them. This does not preclude other statutory or handbook entitlements where flexible working may be relevant.

Encouraging flexible work

33.7 When advertising any job, employing organisations will need to consider how they promote the right to request flexibility from day one and the availability of flexible working options.

33.8 To support a positive culture of flexible working, employers will need to consider how they support and encourage open conversations about flexible working. Examples of opportunities to

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talk about flexible working include at one-to-one line management/supervision meetings, team/departmental meetings, as part of wellbeing conversations, or as part of recruitment, induction, and annual appraisal processes.

33.9 Local flexible working policies developed in partnership will need to ensure equality of access to flexible working, as far as practicable, regardless of role, shift pattern, team or pay band.

Flexible working options

33.10 Employers and trade unions should work through local partnership arrangements to develop and communicate options for flexible working including, but not limited to, the following:

- Fixed working patterns to give certainty over hours worked and/or location.
- Part-time working (any number of hours under 37.5).
- Flexi-time around core hours including staggered start and finish times.
- Compressed/elongated hours to allow work to be condensed or stretched in a regular pattern or over a specific time period, such as seasonal working.
- Average hours working patterns to allow a set number of hours to be averaged out over an agreed reference period e.g., annualised; bi-annualised; quarterly; monthly.
- Term-time working.
- Job-share.
- Flexible retirement.
- Team self-rostering.
- Homeworking for some or all of the working pattern.

33.11 Employers will need to consider how these options are communicated to all staff at recruitment, induction, and in regular one-to-one meetings.

Applications for flexible working

33.12 Employers and trade unions should work in partnership to agree arrangements for considering applications for flexible working in a fair and consistent manner.

33.13 The standardised process should:

- cover all requests and incorporate the provisions for doing so, including the timescales set out in the statutory requirements
- encourage applicants to identify if their request is to facilitate a reasonable adjustment for a disability as set out in the Equality Act 2010
- promote the support that trade union representatives can provide to individuals in completing their application.

Employer consideration of requests

33.14 Employers will need to ensure that all requests are treated with due consideration, including any equality implications, and with an emphasis on exploring and mutually agreeing solutions.

33.15 Local partnerships should agree an appropriate policy process and supportive guidance for line managers which sets out how flexible working requests are managed.

33.16 Local policy processes should include:

- An initial exploratory stage with the employee to look at all the options for reaching a mutually agreeable outcome.
- Where – following full exploration – requests have not been agreed, an escalation stage to see if there are any further options beyond the immediate team within the organisation that could be mutually agreed.
- A final stage which:
 - for agreed solutions will confirm and document with the employee agreed implementation arrangements to include timeframe and duration or permanence of the change and any review dates if applicable
 - for requests that have not been agreed will provide objectively justified and specific written reasons, including alternatives considered, together with details of the appeals process.

All policies should be supported by:

- A central means for logging and monitoring requests for flexible working.
- Appropriate training, clear supporting materials and ready access to advice for line managers.

Appeals

33.17 Employers and trade unions should work in partnership to agree arrangements for a standard appeal process which is accessible to all staff. Employees have the right to be represented by a trade union representative in the appeal meeting.

33.18 Considerations for those hearing appeals would include:

- whether the local process had been appropriately followed
- whether all appropriate options had been fully considered.

Oversight and monitoring

33.19 Policies and processes agreed to support flexible working should be subject to an Equality Impact Assessment.

33.20 Organisations should ensure that data relating to applications for flexible working and outcomes of decisions are recorded and regularly reported through the usual joint partnership and governance structures. This information should be included in an organisation's published annual statutory public sector duty reports. The published information should demonstrate outcomes for flexible working applications disaggregated by each protected characteristic of the Equality Act 2010. In addition, organisations should consider reporting outcomes by occupational group and also by department.

33.21 The results should be used for regular joint review and revision where necessary of policies and procedures to ensure continuing effectiveness and equity of access.

33.22 Over time, organisations should also assess the data on flexible working to identify any unintended impact of flexible working on career development and progression.

Supporting Carers

General

33.13 All NHS employers must have a carer's policy to address the needs of people with caring responsibilities and to meet the requirements of the 'right to request' flexible working legislation for carers of children and dependant adults (see Employment Relations Act for definition of carer). This policy should emphasise the benefits of flexible working arrangements, balancing work and personal life and employment breaks (section 34).

33.14 A carer's policy will cover both child and dependant care.

33.15 Childcare covers a range of care choices for children from birth up to age 14 years and a child with disabilities up to the age of 18 years.

33.16 Dependant care covers a range of options to meet the needs of dependant adults including the needs of dependant young people over the age of 14, where an employee is involved in substantial and regular care sufficient for them to seek a change in their permanent contract of employment.

33.17 Dependant care should also cover (but not be restricted to) care of older relatives, a civil partner, spouse, or a partner, those with a disability who may require hospital or care appointments/assessments and such related matters.

33.18 The policy should be drawn up jointly between employers and local staff side representatives. This should cover:

- the needs of those with caring responsibilities relative to matters such as place of work, working patterns (including shift patterns) and hours worked
- support for those with caring responsibilities particularly related to specific difficulties in recruiting and retaining people in certain job categories
- equality of access to care and affordability, respecting the diversity of personal domestic circumstances
- guidelines on eligibility
- how the policy relates to other sections in this part, in particular those covering leave and flexible working arrangements
- the range of options open to carers, i.e. crèche facilities, childminders, workplace nurseries, allowances, school and holiday play schemes, term-time contracts, home working, annualised hours, compressed hours, and other options as outlined in flexible working arrangements. The policy should be clear as to why certain options are available
- partnership options with other employers and trades unions
- allocation of senior management responsibility for the operation and monitoring of the policy.

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33.19 Where a decision is taken not to offer particular forms of support, the policy should indicate where other arrangements are available to help people with caring responsibilities, and what alternative ways of working exist. In addition, employees have the right to appeal against the decision.

33.20 Applications and outcomes should be monitored annually, in partnership with local staff representatives.

33.21 Monitoring information should be analysed and used to review and revise policies and procedures to ensure their continuing effectiveness.

33.22 Applications and outcomes, from both employer and employees, should be recorded and kept for a minimum of one year.

Other forms of leave

33.23 When developing local arrangements for other forms of leave they are based on the principles of equity of access and communication, they should be wide ranging, facilitative and ensure no detriment for pay progression.

Parental leave

33.24 This should be a separate provision from either maternity or maternity support (paternity) leave, adoption leave (see section 15), and Shared Parental Leave (SPL), and should provide a non-transferable individual right to at least 18 weeks' leave. Leave is normally unpaid, but may be paid by local agreement.

33.25 Parental leave should be applicable to any employee in the NHS who has nominated caring responsibility for a child under the age of 18.

33.26 Leave arrangements need to be as flexible as possible, so that the leave may be taken in a variety of ways, by local agreement. Parental leave can be added to periods of maternity support (paternity) leave, maternity leave, adoption leave, and Shared Parental Leave.

33.27 Notice periods should not be unnecessarily lengthy and should reflect the period of leave required. Employers should only postpone leave in exceptional circumstances and give written reasons. Employees may also postpone or cancel leave that has been booked with local agreement.

33.28 During parental leave the employee retains all of his/her contractual rights, except remuneration and should return to the same job after it. Pension rights and contributions shall be dealt with in accordance with NHS Superannuation Regulations. Periods of parental leave should be regarded as continuous service.

33.29 It is good practice for employers to maintain contact (within agreed protocols) with employees while they are on parental leave.

Shared Parental Leave

33.30 Information on shared parental leave in the NHS can be found at Section 15.

33.31 Staff not eligible for occupational shared parental pay may be entitled to statutory pay during shared parental leave. To qualify for statutory pay the employee and their partner must

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first meet certain qualifying conditions as described in the relevant legislation. Details of the qualifying conditions can be found on the www.gov.uk.

Leave/time off for domestic reasons, civic/public duties

33.32 This form of leave should cover a range of needs as described at the beginning of this section, from domestic emergencies through to bereavement/compassionate leave (see below).

33.34 These provisions should cover all employees.

33.35 Payment may be made by local agreement, but the expectation is that relatively short periods of leave for emergencies will be paid.

33.36 If the need for time off continues, other options may be considered, such as a career break.

33.37 Applicants for the above forms of leave should be entitled to a written explanation if the application is declined.

33.38 Appeals against decisions to decline an application for leave should be made through the grievance procedure.

Bereavement/compassionate leave

33.39 Bereavement/compassionate leave is leave that is granted to an employee if they experience the bereavement of a dependant. Also see Section 23.

33.40 Employees have a statutory right from day one of their employment to bereavement/compassionate leave.

33.41 Policies developed in partnership with local staff side representatives should entitle employees to paid bereavement/compassionate leave including for funeral/memorial services taking into account all religious or belief obligations. The policy should be used in conjunction with other relevant policies for example sickness absence and flexible working.

See section 15 regarding statutory legislation for employees who suffer a stillbirth after 24 weeks.

Monitoring and review

33.42 Employers will need to ensure that their leave policies and procedures regarding balancing work and personal life operate fairly and transparently and do not advantage any group of staff over another.

33.43 All applications and outcomes should be recorded, and records should cover all information necessary to ensure that there is equitable access to leave provisions. Each leave provision, including applications for and decisions about, should be reviewed annually by employers in partnership with local staff representatives.

33.44 Applications and outcomes should be recorded and monitored in partnership with local staff side representatives, and data analysed and used to review and revise policies and procedures to ensure their continuing effectiveness and equity of access.