Right to Request Flexible Working

Purpose

This policy provides guidance on flexible working requests, including the legal framework, key principles and points for consideration.

Key Points

- This policy is applicable to all functions within the business. All references to People Manager relate to the individual responsible for People within the function.

- Colleagues with 26 weeks’ continuous service (not including agency workers, consultants or self employed contractors) who have not made a flexible working request within the last 12 months, have the right to make a flexible working request. However applications from all colleagues will be considered.

- Each request will be considered fairly and on a case by case basis taking into account the needs of the requesting colleague, the business, customers and/or other colleagues.

- A change to a colleague’s working arrangements following a formal flexible working request will constitute a permanent change to the colleague’s terms and conditions.

- If in the future, there is a business reason for reviewing a colleague’s working arrangement, a fair consultation process will apply.

- A People Manager should be present during formal flexible working meetings to take notes. Where this is not possible an alternative trained note taker must be present.

- Any decision will take account of the impact upon the business which may vary upon the format, size and function.

- Colleagues have the right to be accompanied at formal meetings by either:
  - A trained colleague representative
  - A work colleague
  - A trade union official

- Colleagues have the right not to be subject to any detrimental treatment as a result of making a flexible working request.

- For specific information on any of Asda’s flexible working schemes refer to the specific policy e.g. Part Time Working Policy etc.

Informal vs. Formal Flexible Working Requests

Informal – ‘as and when’

- An informal flexible working arrangement may support a colleague with a short term need to work flexibly, on an ad hoc basis.

- Informal short term arrangements do not require a change to the colleague’s terms and conditions of employment.

- A formal flexible working application form is not required, however, a discussion must be held between the colleague and their line manager to talk through the proposed arrangement.
• The colleague’s line manager must approve the arrangement and they have the authority to stop the arrangement at anytime. However a discussion should first be held with the colleague to discuss the reasons for the decision

• Any informal working arrangement should not last longer than 2 months and should be file noted and details of the agreement held on the colleague’s file. The line manager is responsible for planning in a review

• A regular change in a colleague’s working pattern that exceeds 2 months must be addressed through a flexible working request

Formal - ‘a permanent change’

• A formal flexible working request provides colleagues with longer term needs an opportunity to request flexible working on a permanent basis (i.e. a change to terms and conditions of employment)

• A formal process must be followed (stated below under the ‘Formal Request Process’ section of this policy)

• Although the change is permanent, Asda reserves the right to review the arrangement on a regular basis to ensure the change remains suitable for the business. Should the arrangement need to be changed for business reasons, a fair consultation process will be followed

Formal Request Process

This process must be followed, refer to the flow chart on page 6. The timelines below can be extended by agreement between the colleague and line manager, revised timelines must be file noted and held on the colleague’s file.

Making a request

• If a colleague would like to change their working arrangements on a permanent basis, the Flexible Working Request form must be completed; this will help the colleague consider how the proposed change may affect their role and the business and to clearly set out the details of their request

• Where possible the request should be submitted at least 2 months before the colleague wishes the change to take place

• Before continuing with the formal process outlined below, consider if the request can be mutually agreed without further formal meetings. If this is the case the arrangement must be confirmed in writing using the toolkit letter

• If the request cannot be agreed at this point, the formal process must continue and the line manager must formally invite the colleague to a meeting, using the template letter, to discuss their request in more detail

• The flexible working meeting must be held within 28 days of receiving the application form, unless otherwise agreed between the parties in writing

First meeting – discussing the request

• The colleague’s line manager will conduct this meeting with a note taker present.

• The colleague has the right to be accompanied at this meeting.

• The purpose of this meeting is to:
  o Discuss the details of the request and how the request may be accommodated (see Considerations section)
  o Discuss some of the potential barriers to the proposed working arrangement and how these may be overcome, as well as any benefits that support the case for flexible working
Explore how the change may impact performance, delivery, customers/other colleagues and how this may be managed
Discuss alternative arrangements that could satisfy the desire to work flexibly, to ensure all options have been explored
Discuss how the change may affect the colleague’s terms and conditions of employment
Discuss the possibility of a trial period and how this may work e.g. how long to trial the arrangement and how the success of the trial will be measured etc.

Considering the request
- The meeting must be adjourned for a maximum of 14 days to consider the request
- Every request must be considered on its own merits, fairly and thoroughly. The ‘Considerations’ section of this policy provides some guidance and key points to take into account when deciding on the outcome

Responding to the request
- The line manager must formally invite the colleague to a meeting to confirm the outcome within 14 days of the original meeting
- The line manager will conduct this meeting with a note taker present
- The colleague has the right to be accompanied at this meeting
- Granting the request:
  - The outcome must be communicated to the colleague within 14 days and in writing using the toolkit letter. Remind the colleague that the changes will be permanent and their terms and conditions of employment will adjust accordingly.
  - If the request can be granted but is subject to a successful trial period, the terms of the trial must be agreed upfront and confirmed in writing by the line manager.
  - If the colleague will be changing roles or taking on any new tasks as a result of the change, any relevant training, risk assessments, health/night worker assessment etc must be completed before the change commences.
  - The People Manager must ensure PeopleSoft is updated to reflect the change and to ensure the colleague’s pay and benefits are adjusted accordingly.
- Refusing the request:
  - If the business is not able to accommodate the request, its grounds for refusal must fall within a range of justifiable business grounds:
    - Burden of additional costs
    - Detrimental effect on ability to meet customer demand
    - Inability to re-organise work among existing colleagues
    - Inability to recruit additional colleagues
    - Detrimental impact on quality
    - Detrimental impact on performance
    - Insufficient work during the periods the colleague proposes to work
    - Planned structural changes
    - The request to for time off to train or study would not improve the colleague’s effectiveness in Asda or Asda’s performance
  - The line manager must explain the business reasons why the request cannot be granted and the colleague’s right to appeal. The outcome must be sent to the colleague, using the template letter
- If a request is refused on the grounds of business/service grounds and these subsequently change within a period of 3 months, the line manager has the discretion (but is not obliged) to review their decision
**Appeal**

- Colleagues have the right to appeal following the outcome of their request. This must be on the grounds of procedure, facts or severity (in line with the Appeals Policy).

- Appeals must be submitted to the People Manager within 14 days of the date the colleague received the outcome letter. The appeal letter must detail the grounds for appeal.

- The appeal hearing manager must invite the colleague to an appeal hearing which must be held within 14 days of receiving the appeal letter from the colleague.

- The colleague has the right to be accompanied.

- A manager of a more senior level than the manager who originally heard the colleague’s request must hear the appeal with a note taker present. If this is not possible, an independent manager of the same grade may hear the appeal.

- A colleague may present new information for consideration, challenge and request an explanation of any facts presented to them previously.

- An outcome must be presented to the colleague within 14 days of the appeal meeting and followed up in writing.

- The decision of the appeal manager is final and the matter cannot be subsequently raised separately as a grievance.

- For more information and toolkit template letters, refer to the Appeals Policy.

**Trial Periods**

- A trial period is a great way of testing if a new arrangement could work in practice, giving both the colleague and the line manager an opportunity to monitor the arrangement over a period of time.

- The length of the trial can vary depending on the scale of change, the nature of the role etc. It’s crucial that the trial lasts for a sufficient time to be able to determine whether or not the change can continue on a permanent basis.

- Regular reviews throughout the trial period must be held between the colleague and their line manager to assess how the trial is going. These discussions should be filed noted.

- If the trial is successful and all parties are happy and confident that the arrangement is suitable, the line manager must confirm this in writing to the colleague and the change will be a permanent change to the colleague’s terms and conditions of employment.

- If at the end of the trial period the arrangement is not suitable, the line manager must confirm this in writing to the colleague, clearly setting out why the arrangement isn’t suitable and the colleague will revert back to their original working arrangements.
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<tr>
<th>Considerations</th>
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<tr>
<td>When reviewing a flexible working request (informal or formal) consider the following before reaching an outcome. Depending on the circumstances, other factors may need to be considered too.</td>
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<tr>
<td>• Will the proposed change have a negative impact on the business, customers and/or other colleagues within the team/department?</td>
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<tr>
<td>• Will others continue to be treated fairly if the proposed work arrangement is agreed? Colleagues or customers should not be negatively impacted as a result of a colleague working flexibly. Consider what measures could be put in place to ensure this is not the case</td>
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<td>• Is the proposed arrangement cost effective?</td>
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<td>• Does the colleague have line management responsibilities? How will the proposed changes affect their ability to manage a team and what support may be put in place to ensure an appropriate level of team supervision?</td>
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<td>• Is the role a specialist role that no one else in the team has the skills to do? If so, what training and support could be put in place to enable other colleagues to learn these skills and complete necessary tasks?</td>
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<td>• If the change will impact pay and benefits, ensure the colleague is fully aware of this</td>
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<td>• Are there a significant number of colleagues in the department already under flexible working arrangements? If so, consider factors such as workload, team cover etc.</td>
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<td>• How will communication (e.g. when working part time) with other colleagues and customers be maintained? What communication methods need to be in place?</td>
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<td>• Would working remotely or other alternatives help accommodate the request?</td>
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<td>• How will busy/peak periods in the business be managed? Are the colleague and line manager satisfied the role will be sufficiently covered during such times?</td>
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<td>• Does the role involve a lot of travelling, overnight stays etc and if so, how will this be maintained given the new working arrangement?</td>
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<td>• How will the proposed arrangement be monitored to ensure it remains effective?</td>
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<td>• Would a trial be beneficial to determine if the arrangement will work in practice? Consider what will happen if the trial is not successful. If the colleague is trialling the arrangement in a new role, both line managers must remain in contact to discuss progress and plans should the trial be unsuccessful i.e. the colleague must be able to return to their original role</td>
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<td>• Where part time hours have been rejected, consider whether job sharing would be suitable</td>
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<td>• If job sharing is feasible, granting the request will still be dependant on finding a suitable job share partner within a reasonable timeframe and may still be subject to a trial</td>
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The Process

Colleague submits both flexible working assessment and request form to their line manager/People Manager

Line manager invites the colleague to a flexible working meeting (hold meeting within 28 days)

Line manager holds meeting to discuss the request

Can the request be granted at this stage or is further consideration needed?

Line manager confirm decision and sends confirmation letter

Yes

No

Adjourn the meeting for a maximum of 14 days to consider the request further

Reconvene the meeting to confirm decision

Can the request be granted?

Yes

Line manager confirms the decision in writing and advised of right to appeal

No

Does the colleague appeal?

Yes

Appeal hearing held within 14 days of receiving the appeal letter. Outcome communicated within 14 days of the meeting. Decision is final

No

End of process
What happens if a colleague fails to attend meetings?
If a colleague fails to attend a meeting without reasonable explanation they should be advised in writing that if they fail to attend a second meeting without good cause, we may decide to treat their application as having been withdrawn. This should be confirmed to the colleague in writing after failure to attend the first arranged meeting, assuming that their failure was without good cause. If the application is treated as being withdrawn and the colleague re-applies within 12 months of the first application, consult the SMP/Business Partner for further advice.

A colleague withdraws their application; can they make a further request?
It should be explained that despite withdrawing their request the colleague will not legally be able to make another application for 12 months. However each request should be considered on a case by case basis.

If a flexible working request is granted, can a further request be submitted to change the working pattern at a later date?
Yes. A colleague can make a further application, but this must be after 12 months of the initial request. If the change is mutually agreed though and this fits the needs of the business then this may be accepted. There is no legal obligation to consider more than one request in a 12 month period.

A colleague is due to go on maternity leave and submits a flexible working application form, should this be considered now or when the colleague returns?
It may be too early to grant a request at this stage. However, it may be advantageous to hold an initial discussion to explore what working arrangements the colleague may want to be considered for when they return to work, so their manager has as much time as possible to plan how the request may be accommodated.

The arrangement has been trialled for a period of 8 weeks but is unsuccessful, what do we do?
At the start of the trial the timescales and expectations must be agreed up front so both the colleague and manager understand how the success of the trial will be measured. This should be recorded on file to ensure a record is held, outlining the trial arrangements. If the trial is not successful, the colleague will have the right to revert back to their original role and original hours.

A colleague has requested to work from home every Friday for the next 4 weeks to enable them to be home earlier to pick up their children from school, do they need to submit a formal flexible working application form?
Colleagues may work flexibly on an ad hoc basis or to attend to short term demands. This must be discussed and arranged informally between the colleague and their line manger i.e. no formal process needs to be followed as the change is short term and will not affect the colleague’s terms and conditions. If the arrangement is required on a more permanent basis, the colleague must follow the formal request process for the change to be written into their terms and conditions.

Can a colleague make a request to compress / condense their hours e.g. compress their 5 days (37.5 hours) into 4 days?
No, Asda doesn’t recognise this as a long term flexible working option.
The following template letters are available and should be amended to suit each set of individual circumstances relating to the case.

**Letters:**
- Invite to first meeting
- Invite to second meeting
- Flexible working request granted
- Flexible working request granted (Home Office use only)
- Flexible working request refused
- Invite to discuss outcome of flexible working trial
- Outcome of flexible working trial

**Forms:**
- Flexible working request form