

Lead Employer Flexible Working Policy

Type of Document	Trust Policy
Code:	
Policy Sponsor	Deputy Director of Human Resources
Lead Executive	Director of Human Resources
Recommended by:	Assistant HR Director Lead Employer
Date Recommended:	January 2018
Approved by:	Workforce Council
Date Approved :	24.01.2018
Author(s):	Senior HR Project Manager
Date issued:	
Review date:	31.01.2020
Target audience:	Clinical Supervisors, Trust Management, Host management, University management, Lead Employer HR, Health Education England and Trainees
Document purpose	To provide a clear procedure for applying and responding to Trainee requests for flexible working and the procedure to appeal against any decision.
Training requirements	N/A
Associated documents and Key References	Maternity, Paternity and Adoption Leave Policy Special Leave Policy Annual Leave Policy Equality and Diversity Policy Less Than Full Time Training Policy and Guidance (Health Education England) Equality Act 2010
Financial Resource Implications	Potential Financial Implications for Host Organisations

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Consultation, Communication and Implementation

Consultation Required	Authorised By	Date Authorised	Comments
Analysis of the effects on equality	Patient & Workforce Equality Lead	19 th November 2014	
External Stakeholders	None		
Trust Staff Consultation	Start date: 31st January 2018		End Date:

Describe the Implementation Plan for the Policy (and guideline if impacts upon policy) (Considerations include; launch event, awareness sessions, communication / training via Divisions and other management structures, etc)	Timeframe implementation	for RAG	Who is responsible for delivery
This policy will be communicated to Trainees via the Lead Employer webpage on the STHK website. Lead Employer HR Service Managers and HR Advisor will receive additional awareness training.	15 th January 2015		HR Team

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Monitoring Compliance with the Policy

Describe Key Performance Indicators (KPIs)	Target	How will the KPI be Monitored?	Which Committee will Monitor this KPI?	Frequency of Review	Lead
All requests are dealt with within 3 months of the initial application	100%	Reviewing the documentation provided by the LE HR.	Workforce Council	Annual	LE Head of HR
LE HR. are considering requests appropriately in-line with the policy and if declining applications are giving full details to the Trainee.	TBD	Reviewing the appeals submitted by Trainees and the reasons for these appeals.	Workforce Council	Annual	LE Head of HR
LE HR. are dealing with appeals appropriately.	TBD	Reviewing the appeals documentation submitted by LE HR.	Workforce Council	Annual	LE Head of HR

Performance Management of the Policy

Who is Responsible for Producing Action Plans if KPIs are not met?	Which committee will monitor these action plans?	Frequency of Review (To be agreed by Committee)
Head of HR, Lead Employer	Workforce Council	Annual

How will Learning occur?	Who is responsible
Following analysis a management action plan will be produced if KPIs are identified as not being met and additional instruction, coaching and training will be put in place. If the analysis identifies it as necessary this policy will be revised to ensure the required improvements are made.	Lead Employer HR
Archiving including retrieval of archived document	By whom will policy be archived and retrieved
Archiving should be done in line with the 'Trusts Document Control Policy'.	Senior Web Administrator

Document Version History

Date	Version	Author Designation	Summary of key changes
Nov 2014	1	Senior HR Project Manager	First version of the new policy therefore N/A
Feb 2016	3	HR Project Manager	Inclusion of Student Physician Associates
May 2016	4	HR Project Admin	Updated HEE references
Oct 2017	5	HR Project Admin	Extended review date to 31.01.18 and amended the Content page numbering
<u>Jan 2018</u>		<u>HR Business Partner</u>	<u>Amended wording 5.2.</u>

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Executive Summary

1. Policy Aim

The aim of this policy is to ensure there is an agreed procedure for asking and responding to Trainee's requests for flexible working and that they are aware of the Lead Employer's arrangements for authorising flexible working practices. A Flow Chart detailing the Flexible Working Process appears at **Appendix 1**.

2. Policy Description

This policy sets out the eligibility criteria for flexible working requests, the processes that should be followed and how to appeal against any decisions to ensure a consistent and equitable approach.

SECTION 1

1. Introduction

Under provisions set out in the Employment Rights Act 1996 and regulations made under it, most recently the Flexible Working Regulations 2014, all employees have a statutory right to ask their employer for a change to their contractual terms and conditions of employment to work flexibly provided they have worked for their employer for 26 weeks continuously at the date the application is made.

Dealing with requests under the Lead Employer model is much more complex than in a normal employment situation and therefore each request must be approached in a fair and objective manner with the Lead Employer, Health Education England, Host Organisations, Universities and Trainees working in partnership.

However it must be recognised that although individual requests will be met where possible, the principal need at all times must be to guarantee cost effective service delivery for patients.

For doctors in training only requests for 'Less Than Full Time Training' should be made through Health Education England (see Health Education England's Less Than Full Time Training Policy and Guidance) but this does not preclude an additional or subsequent request to the Lead Employer under this policy. NB A request to Health Education England under their policy is not a Flexible Working request under the legislation.

2. Policy Objectives

This policy aims to provide a consistent approach to flexible working requests from Trainees who meet certain criteria as detailed in section 5.1.

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It provides the provision for a range of flexible working requests to be considered under set criteria and for Trainees who have a request refused to enter into an appeals process.

3. Definitions

Trainees - Specialty Trainees which includes the following:

- Core trainees
- Specialist Registrars
- Specialty Registrars
- Fixed Term Specialty Training Appointments
- Locum Appointments for Training
- SHO (Oral and Maxillo Facial Surgery)
- Medical and Dental Public Health Specialty Registrars
- Non-medical Public Health Specialty Registrars
- Student Physician Associates (NB For such employees, applications under this policy will be considered taking the requirements of the highly structured training plan into consideration).

Hereafter, referred to as the 'trainees'.

'Flexible Working' is a phrase that describes any working pattern that is adapted to suit the needs of the Trainee

'Protected characteristics' – as defined in the Equality Act 2010 these are age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, and sexual orientation

Host Organisation – the location where the trainee is undertaking their on the job training NB where the term is used in this policy it should be regarded as including Sponsoring Organisations for Student Physician Associates.

SECTION 2

4. Duties Accountabilities and Responsibilities

4.1 Director of Human Resources

The Director of Human Resources has a responsibility to ensure all legislation in this area is adhered to at all times and that complaints are promptly and competently investigated. Specific responsibility for areas such as auditing and monitoring may be delegated by the Director of HR to particular individuals within the function but the final responsibility remains with the Director. The senior management team in Lead Employer HR are responsible for escalating any areas of concern following monitoring to the HR Director who, where necessary will highlight to the Board.

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4.2 Trust Board

The Board of Directors are responsible for ensuring that the policy is being adhered to both collectively and by the management and staff in their area of responsibility. The Director of Human Resources has Board level responsibility for ensuring that this policy applies to all levels within the organisation and that the policy is followed fairly and consistently. In addition they must ensure that any allegation of harassment and/or bullying is investigated and that appropriate action is taken to stop this behaviour and to prevent its recurrence. The monitoring of the impact of the policy will be delegated to the Workforce Council and the auditing to the HR management team however the HR Director and Workforce Council will highlight any areas of significant shortfall identified to the Governance Board (a sub-committee of the Board).

4.3 The Governance Board

The Governance Board has delegated responsibility from the Trust Board for oversight of this policy and provides assurance to the Trust board. The HR Council is responsible for the monitoring the policy and reports to the Governance Board

4.4 Trainees

Trainees should ensure that requests for flexible working arrangements are submitted in accordance with the procedure. Trainees must be aware that whilst the Lead Employer wishes to provide support, there are occasions when it may be unable to grant a request in part or full. If a request cannot be granted the Trainee will receive an explanation of the reasons for this based on the criteria laid down.

4.6 Lead Employer Human Resources

The Human Resources Team are responsible for dealing with flexible working requests appropriately in conjunction with Health Education England, Universities and Host Organisations by following the procedure detailed in this policy.

4.7 Workforce Council

The Workforce Council are responsible for monitoring the impact of the policy including any resulting equality issues on behalf of the Board. Any issues of significant concern must be escalated up to the Board.

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5. Process

5.1 Eligibility

All Trainees are eligible to submit a request under the Flexible Working Policy provided that they satisfy the criteria of:

- having worked for the Trust for at least 26 weeks continuously.
- not made a previous flexible working request to the Trust within the past 12 months

In exceptional circumstances a Trainee may submit a request twice within the 12 month period if this is directly linked to a change in placement.

5.2 Short Term Change

If the Trainee is only looking for an informal change to their working hours or conditions for a short period, for instance to cope with a bereavement or temporary care issue this should be dealt with out-with-outside of this policy to enable them to work to a temporary revised conditions of employment and revert back to their old conditions after a specified period. This will be undertaken by Lead Employer HR in conjunction with Health Education England, University and the Host Organisation. Trainees should contact Lead Employer HR for advice in the first instance.

5.3 Application Process

When a change in working pattern is required applicants must complete, sign and date a Flexible Working Request Form setting out

- The date of the application, the change to working conditions they are seeking and when they would like the change to come into effect.
- What effect they think the requested change would have on Host Organisations and the provision of their training by Health Education England/ Universities and how, in their opinion, any such effect might be dealt with.
- That this is a statutory request and if they have made a previous application for flexible working the date of that application.
- Whether they are making the request on the basis of a Protected Characteristic as defined in the Equality Act 2010 e.g. are making the request as a reasonable adjustment due to disability.

This completed form must be submitted to Lead Employer HR. On receipt of the form Lead Employer HR will liaise with Health Education England/ University and if necessary with the Host Organisation and an initial view formed.

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A representative of the Lead Employer HR will meet with the Trainee where possible within 28 days of the receipt of the request form to discuss the request, taking into account service requirements and demands, the possible effect on the work of Host Organisations, including cover and temporary arrangements, cost implications, training requirements etc. The trainee can be accompanied at this meeting by a Trade Union representative or a work based colleague. NB if there is any delay to the arrangements for the meeting caused by the need to accommodate the requirement to be accompanied this will be outside the requirement for the meeting to be held within 28 days of the receipt of the request.

After the meeting Lead Employer HR will liaise further with Health Education England/University and if necessary with the Host Organisation, taking into account the views expressed at the meeting in order to make a final decision and will notify the Trainee of this decision within 28 days of the meeting wherever practical. The decision will be one of the following:

- Accept the request and establish a start date and any other action *; or
- Confirm a compromise agreed at the discussion, such as a temporary agreement to work flexibly**; or
- Reject the request, setting out clear business reasons, how these apply to the application and the appeal process***

NB The whole request excluding any appeal must be completed within three months of first receiving the original request for flexible working unless an extension is formally agreed with the Trainee.

* Lead Employer HR will formally confirm the change in working arrangements and, where appropriate, issue a revised statement of terms and conditions of employment which if necessary will include a revised date for the end of the fixed term period of employment. There is no automatic right to transfer back to the original contract or working arrangements once a flexible agreement has been entered into.

** There may be instances where at least one of the parties is unsure whether the arrangements requested are sustainable or about the possible impact on other requests for flexible working and wants to agree flexible working arrangements for a temporary or trial period rather than rejecting the request. In such a situation a trial period of normally 3 months duration can be agreed between all parties including the Trainee. However should the new arrangements not be working satisfactorily during the trial period then either party will have the right to return to the original contractual basis but this must be in agreement if it is prior to the end of the 3 month period. This arrangement may be reviewed at any time in line with changes in personal circumstances.

*** The application may be declined only on one or more of the following grounds:

- The burden of additional costs
- There is an inability to re-organise work amongst existing staff
- Inability to recruit additional staff

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- The change will have a detrimental impact on quality (NB this may include the quality of training)
- The change would have a detrimental effect on the ability to meet patient care
- There would be a detrimental impact on performance (NB this may include training performance)
- There is insufficient work during the periods proposed to be worked.
- There are a planned changes due to re-organisation / service changes

The reason(s) for declining the request must be explicitly stated in writing by Lead Employer HR.

NB In considering these business reasons in a case where a Trainee is making a request on the basis of a Protected Characteristic as defined in the Equality Act 2010 this will be taken into account e.g. a reasonable adjustment for a disability.

When more than one request is received particularly from Trainees at the same Host Organisation or in the same Speciality no value judgement about the most 'deserving request' will be made but rather each case will be considered on its merits looking at the business case and the possible impact of refusing a request. In such situations where it is not possible to grant all the requests they will be considered in the order they are received. Having considered and approved the first request it should remember that the business context has now changed and can be taken into account when considering the second request against the business reasons set out above. The option of a discussion with the Trainees to see if there is any room for adjustment or compromise will also be considered in such rare cases.

5.4 Appeal Process

Trainees can appeal against the decision if the information the Lead Employer representative used to make the decision was incorrect or incomplete or if they believe that the application was not handled reasonably in line with this policy. They cannot appeal if they only disagree with the business reason for the rejection.

This appeal must be done within 7 days of the written notification of the decision and made to the Lead Employer Head of Human Resources. The letter of appeal must set out the specific grounds of appeal as designated above.

An appeal meeting should normally be held within 14 days of receipt of the letter by either the Lead Employer Assistant Director of HR or their nominated deputy who has not been involved in the original decision. The Trainee can bring a workplace colleague or union representative to the meeting. The appeal does not have to be dealt with face to face and if the Lead Employer Assistant Director of HR or nominated deputy and the Trainee agree it can be held by phone.

The Lead Employer Assistant Director of HR or nominated deputy should write to the Trainee with the decision within 14 days of the meeting after

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consulting further with Health Education England/University and if necessary with the Host Organisation.

If the Trainee misses 2 appeal meetings without a reason satisfactory to the Lead Employer, the Lead Employer will treat the appeal as withdrawn.

5.5 Monitoring

The Lead Employer HR Service Manager is responsible for the monitoring of compliance with respect at work issues to ensure the effective use of the policy and enable action plans to be produced where are trends or specific remedial steps are required e.g. where concerns are raised through the grievance procedure or from the trade unions that the processes are not being followed.

6. Equality Analysis			
		Yes/No	Comments
1.	Does the document/guidance affect one group less or more favourably than another on the basis of:	No	
	• Ethnicity	No	
	• Age	No	
	• Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
2.	Is there any evidence that some groups are affected differently?	Yes	By nature of the ability to have and care for a child which is a frequent reason why Trainees make such a request
3.	If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable?	Yes	Legal
4.	Is the impact of the document/guidance likely to be negative?	No	
5.	If so, can the impact be avoided?	N/A	
6.	What alternative is there to achieving the document/guidance without the impact?	N/A	
7.	Can we reduce the impact by taking different action?	N/A	

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7. Training

HR Lead Employer Department are responsible for providing advice, guidance and coaching in relation to this policy.

8. Appendices

APPENDIX 1 FLOWCHART SHOWING STAGES OF FLEXIBLE WORKING REQUEST

