**Flexible Working: Ia Ara Aotearoa Transporting New Zealand Policy Template**

**Summary for Employers [not to be included in policy]:**

Following a 2014 law change, all employees are entitled to request flexible working arrangements, as often as they like.[[1]](#footnote-1) The [Employment Relations Act](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398200.html) requires a particular process to be followed. Employers must:

* Genuinely consider the application (as part of acting towards their employees in good faith);
* Notify the employee of their decision as soon as possible (no later than one month after receipt);
* If refusing the application, rely on one or more of the eight permitted refusal grounds, or the fact that the application would be inconsistent with the employee’s collective agreement.

A Flexible Working policy helps ensure that a business has a compliant process for handling flexible working applications. If a business is not compliant, an employee can complain to the Labour Inspector or the Employment Relations Authority, resulting in a $2,000 penalty. Having a Flexible Working policy can also help attract and retain staff.

More information is available in MBIE’s [Flexible Work Toolkit](https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/dd1c4f7c5c/flexible-work-toolkit.pdf).

**Using this policy template:**

This policy sticks closely to the minimum statutory requirements – if you want to offer employees greater flexibility or support for flexible work then please seek separate advice on the right policy for you.

Ensure the policy template accurately reflects the business’s circumstances:

* Check that this policy does not clash with any existing policies, employment agreement clauses, or the flexible working provisions in the Employment Relations Act.
* Check that this the policy fits with how your business operates. This includes changing position titles to reflect your business structure (ie. references to managers, supervisors, business owner).
* Notify staff about the policy, and ensure it is readily available. If your employment agreements have requirements about consulting on policies prior to their introduction, ensure this has been done.
* If you have any questions about the suitability of this policy template, contact Transporting New Zealand or independent legal or human resources advisors for clarification.

**Note:** Transporting New Zealand does not accept any responsibility or liability for the use of this policy. This Template is not a substitute for independent legal or HR advice. Any organisation using this policy template is encouraged to seek advice when in any doubt about employment and policy matters.

**Flexible Working**

**PURPOSE**

The policy explains how employees can request a variation of their working arrangements (referred to in this policy as a **flexible working)**. It sets out the requirements for making a flexible working application, and when and how the employer must respond.

The employer is not required to accept an employee’s flexible working application, however all applications will be considered and responded to.

This policy should be read alongside the Employment Relations Act, particularly [Part 6AA Flexible working](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398200.html).

**WHAT IS FLEXIBLE WORKING?**

Flexible working is a variation in an employee’s current working arrangements (place of work, work-days and hours). A flexible working application might propose:

* Working from home or other premises: An arrangement where an employee works remotely on an ongoing basis, either full-time or part-time.
* Flexitime: An employee works a variable number of hours per week, depending on their availability and circumstances. This may include a minimum and maximum number of hours per week, fortnight or month.
* Part-time work: An employee works a reduced number of days or hours, as agreed between the parties.
* Job-sharing: A variety of part-time work, where two or more people share the responsibilities of a full time role.
* Condensing or extending the working week: An employee completes their work in longer or shorter shifts (eg. moving to four ten-hour shifts per week).
* A combination or variation of the above.

An application can be for permanent flexible working, a trial arrangement, or a temporary variation (for example over school holidays or while caring for a dependent).

**FLEXIBLE WORKING APPLICATION PROCESS**

***Making an application***

Employees are encouraged to engage in discussions about their flexible work proposal with their **[manager or supervisor]** at an early stage, prior to submitting an application.

An employee can make a flexible working application at any time after starting employment. The application must be made in writing and sent to **[the employee’s manager]**. The exact requirements relating an application can be found at [section 69AAC](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398213.html) of the Employment Relations Act.

To ensure compliance, and assist with consideration, employers are encouraged to use the application form below. [**Appendix A: Flexible Work Application Form**](#_Appendix_A). However, this is not a requirement.

When making an application, employees are encouraged to consider the impact it would have on the business. Applications that are realistic and well thought-out are more likely to be successful.

***Considering the application***

When considering the flexible working application, the employer should consider the application in good faith. The employer should approach the application with an open mind, including considering different ways the flexible working arrangement could work for both parties, and potential variations to the application.

This may include discussing the application directly with the employee, or discussing the proposal with other employees. The employer should seek the employee’s consent before discussing the proposal with other employees, to ensure their privacy.

The employer may only refuse an application on one or more of the following grounds, set out at [section 69AAF](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398217.html) of the Employment Relations Act:

|  |  |
| --- | --- |
| (a) inability to reorganise work among existing staff: | (e) insufficiency of work during the periods the employee proposes to work: |
| (b) inability to recruit additional staff: | (f) planned structural changes: |
| (c) detrimental impact on quality | (g) burden of additional costs |
| (d) detrimental impact on performance: | (h) detrimental effect on ability to meet customer demand. |
| (g) The application is from an employee bound by a collective agreement, **and** the application relates to working arrangements to which the collective agreement applies, **and** the application would be inconsistent with the collective agreement. |

 ***Notifying the decision***

The employer must notify the employee of a decision approving or refusing the application as soon as possible, and **no later than 1 month** after receiving the application.

The employer may wish to discuss the outcome of the application with the employee prior to providing the written response.

This response must be in writing, and include the required information listed at [section 69AAE](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398216.html) of the Employment Relations Act. To assist with compliance, the employer can respond using the form below at [**Appendix B: Employer’s / Manager’s Response Form**](#_Appendix_B). However, this is not a requirement.

If an application is accepted, employers and employees must be aware that it cannot be changed without mutual agreement (subject to the terms of the application). The parties can agree to trial a flexible work proposal for a set period of time if they don’t want to commit to a particular proposal.

**RESOLVING DISPUTES**

If the employee believes the employer has not complied with the flexible working requirements set out in the Employment Relations Act: Part 6AA Flexible Working, they can raise their concerns directly with the employer.

The employee can also refer the dispute to the Labour Inspector or apply to the Employment Relations Authority (ERA). Employees must apply to the ERA within 12 months of the employer’s refusal, or if the application is not responded to, 13 months from the date the employer received the request.

Further information is available in the Employment Relations Act [Part 6AA Flexible Working](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398200.html) ‘Resolving disputes’ and at the Additional Resources section below.

**POLICY AMENDMENT**

This policy may be amended by the employer from time to time, as required (subject to any overriding employment agreement terms and statutory requirements).

**APPENDICES**

* [**Appendix A: Flexible Work Application Form**](#_Appendix_A)
* [**Appendix B: Employer’s / Manager’s Response Form**](#_Appendix_B)

**ADDITIONAL RESOURCES**

[Employment Relations Act 2000, Part 6AA](https://www.legislation.govt.nz/act/public/2000/0024/latest/DLM1398200.html)

[Flexible working arrangements](https://www.employment.govt.nz/workplace-policies/productive-workplaces/flexible-work/) Ministry of Business, Innovation and Employment

[Flexible Work Toolkit](https://www.employment.govt.nz/assets/Uploads/tools-and-resources/publications/dd1c4f7c5c/flexible-work-toolkit.pdf) (prepared by MBIE and Diversitas consultants)

# Appendix A

 **Flexible Work Application Form**

*Details can be cut and paste into an email, but must be complete and accurate*

|  |  |  |  |
| --- | --- | --- | --- |
| **Full Name** |  | **Date** |  |
| **Job Position** |  |
| **Employer / Manager Name** |  |
| ***I would like to request a variation to my current working arrangements which are :*** |
| **Place(s) of work** | *Full street address(s)* |
| **Days and hours of work** |  |
| **My proposed working arrangement is:***(Tick appropriate box)* |
|  | **Working from home** |  | **Flexi time** |  | **Part-time** |  | **Job share** |
|  | **Condensed working week** |
|  | **Alternative arrangement****detail below** this may be a combination of two arrangements or a different version |
| *If applying to work from home please include technology requirements here* |
| **Place(s) of work****If more than one location state****both address’s** | *Full street address(s)* |
| **Days and hours of work*****If working from home specify both hours at work and home*** | *If flexitime state hours to work between* |
| ***I would like the new working arrangement to be permanent and start from:****(Please write in full - Day of the week, Date, Month and Year and allow at least one month’s notice of start date)* |
| ***I would like the new working arrangement to be temporary****(Please write in full - Day of the week, Date, Month and Year and allow at least one month’s notice of start date)***Starting : Finishing :** |
| ***The reason for my request is to:****(Note: This is optional)* |

|  |
| --- |
| ***I believe that the new working arrangements;****Complete all relevant sections, if there are no benefits or impacts on a specific group state ‘Not Applicable’* |
| ***will benefit me by ;*** |
| ***will benefit the business (and employer) by ;*** |
| ***will benefit the team by;*** |
| ***will benefit the customers by;*** |
| ***could have the following impacts for the business (and employer);*** |
| ***could have the following impacts for the team;*** |
| ***could have the following impacts for the customers;*** |
| ***I suggest we could fix the impacts by;*** |
| **Signed:** | **Date:** |
| **PRINT NAME:**  |

# Appendix B

 **Employer’s / Manager’s Response Form**

*This form can be used to approve your employee’s request, approve an alternative arrangement or decline a request This form can be cut and paste into an email*

|  |  |  |  |
| --- | --- | --- | --- |
| ***TO:*** | *Employee’s Full Name* | ***on the*** | *Date* |
| ***in position of*** | *Job Position* |
| ***I*** | *Employer / Manager Name and Position* |
| ***have considered your request for a variation to your working arrangements*** |

*EITHER*

|  |
| --- |
| ***I can confirm that I have approved your request for*** |
| *Detail arrangements including place(s), days and times of work.* |

*OR*

|  |
| --- |
| ***I am unable to accommodate your original request. However, I am able to offer the******following alternative arrangement, which we have discussed and you agreed would be suitable to you*** |
| *Detail arrangements including place(s), days and times of work.* |

*OR*

|  |
| --- |
| ***I am declining your request at this time for the following reasons as discussed with you.*** |
| *Detail the reasons* |

|  |
| --- |
| ***Your new working arrangement will commence from:*** |
| ***Start Date*** |  | ***Finish Date******(If Temporary)*** |  |
| ***If permanent we will review the arrangement after a 3 month trial period*** |
| **Signed:** |
| **PRINT NAME:** |
| **Note to employee:**If you have any questions on the information provided on this form, please contact me as soon as possible to discuss.Please note that the change in your working arrangement will be a permanent change to your terms and conditions of employment unless a specified period of time is identified and agreed for which the new arrangement will last. If the change is permanent, you will have no right to revert to your previous working arrangement unless both parties agree.If working from home is part of this arrangement then you are responsible to ensure your home environment is set up appropriately to work safely. |

1. Employment Relations Amendment Act 2014. [↑](#footnote-ref-1)