



Statutory Document No.96/07

THE EMPLOYMENT ACT 2006

**THE FLEXIBLE WORKING REGULATIONS 2007**

*Approved by Tynwald*

*21<sup>st</sup> March 2007*

*Coming into operation*

*30<sup>th</sup> September 2007*

In exercise of the powers conferred on the Department of Trade and Industry by sections 99, 100, 101(3) and 102(3) of the Employment Act 2006<sup>1</sup>, and of all other enabling powers, the following Regulations are hereby made:—

*Preliminary*

**1. Citation and commencement**

These Regulations may be cited as the Flexible Working Regulations 2007 and, subject to section 175(1) of the Act, shall come into operation on the 30<sup>th</sup> September 2007.

**2. Interpretation**

In these Regulations —

"the Act" means the Employment Act 2006;

"application" means an application under section 99 of the Act (statutory right to request flexible working);

"contract variation" means a change in the terms and conditions of a contract of employment of a kind specified in section 99(1)(a) of the Act;

"electronic communication" has the same meaning as in the Electronic Transactions Act 2000<sup>2</sup>;

"the Tribunal" means the Employment Tribunal;

"writing" includes writing delivered by means of electronic communication.

(2) For the purpose of these Regulations, unless the contrary is proved, a notice is taken as being given —

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<sup>1</sup> 2006 c.21

<sup>2</sup> 2000 c.8

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- (a) in relation to a notice transmitted by electronic communication, on the day on which it is transmitted,
- (b) in relation to a notice sent by post, the day on which the notice would be delivered in the ordinary course of post.

*Entitlement to make application*

**3. Duration of employment**

(1) The condition as to duration of employment which an employee must satisfy in order to make an application for a contract variation is that he has been continuously employed for a period of not less than 26 weeks.

(2) The reference in paragraph (1) to a period of continuous employment is to a period computed in accordance with Schedule 5 to the Act, as if that paragraph were a provision of that Act.

*Form of application etc.*

**4. Form of application**

An application shall —

- (a) be made in writing,
- (b) state whether a previous application has been made by the employee to the employer and, if so, when, and
- (c) be dated.

**5. Date when application is taken as made**

(1) Unless the contrary is proved, an application is taken as having been made on the day the application is received.

(2) The reference in paragraph (1) to the day on which an application is received is a reference —

- (a) in relation to an application transmitted by electronic communication, to the day on which it is transmitted,
- (b) in relation to an application sent by post, to the day on which the application would be delivered in the ordinary course of post.

**6. Withdrawal of application by the employee**

(1) An employer shall treat an application as withdrawn where the employee has —

- (a) notified to him whether orally or in writing that he is withdrawing the application,
- (b) without reasonable cause, failed to attend a meeting under regulation 7(1) or 10(1) more than once, or

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- (c) without reasonable cause, refused to provide the employer with information the employer requires in order to assess whether the contract variation should be agreed to.
- (2) An employer shall confirm the withdrawal of the application to the employee in writing unless the employee has provided him with written notice of the withdrawal under paragraph (1)(a).

*Meeting to discuss application with employee*

**7. Duty to hold meeting**

(1) Subject to paragraphs (2) and (4), an employer to whom an application for a contract variation is made shall hold a meeting to discuss the application with the employee within 28 days after the date on which the application is made.

(2) Paragraph (1) does not apply where the employer agrees to the application and notifies the employee accordingly in writing within the period referred to in that paragraph.

(3) A notice under paragraph (2) shall specify —

- (a) the contract variation agreed to, and
- (b) the date from which the variation is to take effect.

(4) Where the individual who would ordinarily consider an application is absent from work on annual leave or on sick leave on the day on which the application is made, the period referred to in paragraph (1) commences on the day the individual returns to work or 28 days after the application is made, whichever is the sooner.

**8. Notice of decision**

(1) Where a meeting is held to discuss an application the employer shall give the employee notice of his decision on the application within 14 days after the date of the meeting.

(2) A notice under paragraph (1) shall —

- (a) be in writing,
- (b) where the employer's decision is to agree to the application, specify the contract variation agreed to and state the date on which the variation is to take effect,
- (c) where the decision is to refuse the application, state which of the grounds for refusal specified in section 100(1)(b) of the Act are considered by the employer to apply, contain a sufficient explanation as to why those grounds apply in relation to the application, and set out the appeal procedure, and
- (d) be dated.

*Appeals*

**9. Right of appeal**

(1) An employee is entitled to appeal against his employer's decision to refuse an application by giving notice in accordance with paragraph (2) within 14 days after the date on which notice of the decision is given.

- (2) A notice of appeal under paragraph (1) shall —
- (a) be in writing,
  - (b) set out the grounds of appeal, and
  - (c) be dated.

**10. Meeting to discuss appeal**

(1) Subject to paragraph (2), the employer shall hold a meeting with the employee to discuss the appeal within 14 days after the employee's notice under regulation 9(1) is given.

(2) Paragraph (1) does not apply where, within 14 days after the date on which notice under regulation 9(1) is given, the employer —

- (a) upholds the appeal, and
- (b) notifies the employee in writing of his decision, specifying the contract variation agreed to and stating the date from which the contract variation is to take effect.

**11. Notice of decision on appeal**

(1) Where a meeting is held to discuss the appeal, the employer shall notify the employee of his decision on the appeal within 14 days after the date of the meeting.

- (2) Notice under paragraph (1) shall —
- (a) be in writing,
  - (b) where the employer upholds the appeal, specify the contract variation agreed to and state the date from which the variation is to take effect,
  - (c) where the employer dismisses the appeal, state the grounds for the decision and contain a sufficient explanation as to why those grounds apply, and
  - (d) be dated.

*Meetings: general*

**12. Time and place of meeting**

The time and place of a meeting under regulation 7(1) or 10(1) shall be convenient to the employer and the employee.

**13. Right to be accompanied**

- (1) This regulation applies where —
  - (a) a meeting is held under regulation 7(1) or 10(1), and
  - (b) the employee reasonably requests to be accompanied at the meeting.
- (2) Where this regulation applies the employer must permit the employee to be accompanied at the meeting by a single companion who —
  - (a) is chosen by the employee, and
  - (b) a worker of the same employer as the employee.
- (3) The companion shall be permitted —
  - (a) to address the meeting (but not to answer questions on behalf of the employee), and
  - (b) to confer with the employee during the meeting.
- (4) If —
  - (a) an employee has a right under this regulation to be accompanied at a meeting,
  - (b) his chosen companion will not be available at the time proposed for the meeting by the employer, and
  - (c) the employee proposes an alternative time which satisfies paragraph (5),

the employer must postpone the meeting to the time proposed by the employee.

- (5) An alternative time must —
  - (a) be convenient for the employer, employee and companion, and
  - (b) fall before the end of the period of 7 days beginning with the first day after the day proposed by the employer.
- (6) The employer shall permit a worker to take time off during working hours for the purpose of accompanying an employee in accordance with a request under paragraph (1)(b).
- (7) Section 35(3) to (6) (payment for time off for carrying out trade union duties) shall apply in respect of a person to whom paragraph (6) applies as if he were an official of a registered trade union.
- (8) Sections 68, 104 and 105 of the Act apply to the right to be accompanied under this regulation as they apply to the right to be accompanied under section 103(2), (3) or (6) of the Act.

*Supplemental*

**14. Extension of time**

- (1) An employer and an employee may agree to an extension of any of the periods referred to in regulations 7(1) and (4), 8(1), 9(1), 10(1) and 11(1).

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(2) An agreement under paragraph (1) must be recorded in writing by the employer.

(3) The employer's record referred to in paragraph (2) must —

(a) specify what period the extension relates to,

(b) specify the date on which the extension is to end, and

(c) be dated;

and the employer shall send a copy of it to the employee.

**15. Breaches of regulations by employer entitling employee to make complaint to Tribunal**

The breaches of regulations under section 100(1)(a) of the Act which entitle an employee to make a complaint to the Tribunal under section 101 of the Act even though his application has not been disposed of by agreement or withdrawn are —

(a) failure to hold a meeting in accordance with regulation 7(1) or 10(1),

(b) failure to notify a decision in accordance with regulation 8(1) or 11(1).

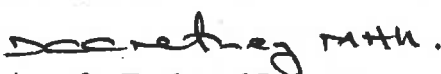
**16. Compensation**

The maximum amount of compensation that the Tribunal may award under section 102 of the Act where it finds a complaint by an employee under section 101 of the Act well-founded is 8 weeks' pay.

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Minister for Trade and Industry

EXPLANATORY NOTE

*(This note is not part of the Regulations.)*

These Regulations, made under the Employment Act 2006, make provision supplemental to section 99 of the Act, which entitles an employee to request flexible working in certain cases. The entitlement is conferred on an employee who has been continuously employed for 26 weeks (regulation 3).

Regulations 4, 5 and 6 make provision for the making and withdrawal of an application for flexible working, and regulations 7 and 8 for the employer's duty to hold a meeting to discuss the application and to notify the employee of his decision on it. Regulations 9, 10 and 11 provide for an appeal against the decision, a meeting to consider the appeal and the employer's decision on appeal. Regulation 12 deal with the time and place of those meetings, and regulation 13 confers a right for the employee to be accompanied by a fellow-worker.

Regulation 14 enables the parties to agree to extensions of time. Regulation 15 provides that a failure by the employer to hold a meeting or to notify the employee of his decision entitles the employee to complain to the Employment Tribunal. Regulation 16 specifies 8 weeks' pay as the maximum award.

