

Rights of part-time workers

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 give part-time workers a statutory right to be treated no less favourably than their comparable full-time colleagues. Employers must, therefore, ensure that they do not treat part-timers less favourably both to avoid a breach of this right, and in any event, to avoid potential sex discrimination claims due to the higher proportion of part-time workers who are women.

The Regulations do not give a right to move from full time to part-time work. This is a matter for negotiation between the employer and employee, subject to possible claims of sex discrimination if the employer cannot objectively justify a refusal, and subject to the regulations on flexible working requests.

This document summarises the Regulations regarding part-time workers.

What is the right?

A part-time worker has the right not to be treated less favourably than a comparable full-time worker on the basis that he/she is a part-time worker.

This means that part-time workers should:

- be paid the same hourly rates as comparable full-time workers
- be given equal opportunities to apply for promotion
- be provided equal access to any pension scheme
- receive a pro-rata level of benefit calculated according to the number of hours worked
- be given equal access to training

It will also be unlawful, in any redundancy situation, to select workers on the basis that they work part-time.

Different treatment of part-time workers and their full-time comparators will only be lawful if it can be justified on objective grounds.

Who will be protected?

The Regulations apply to workers, not just employees. The right therefore extends to agency workers, home workers and casual workers.

A worker is any individual working for another in a personal capacity, under a contract which is not a contract where the other party is a client or customer of any business or undertaking carried on by the individual. Therefore, unless an individual is providing services through a business or undertaking, he will be likely to be deemed a worker for the purpose of the Regulations.

Who should the part-timer be compared with?

The worker can only compare him/herself to another worker:

- employed by the same employer
- under the same type of contract
- on the same or broadly similar work

The scope of the comparison is therefore narrow.

The same employer

The comparison may only be with someone employed by the same employer and does not extend to an associated employer. The full-time worker should also work at the same establishment; only if there is no comparable full-time worker at the same establishment as the part-timer can the part-timer look at a full-time worker based at another establishment for comparison.

Same type of contract

The different types of contract set out in the Regulations distinguish employees, workers and apprentices. Therefore a part-time worker on a contract for services cannot claim detriment if treated less favourably than a full-time employee; there will only be a comparator if there is a full-time worker on a contract for services, and then only if that worker is doing broadly similar work.

The effect is that employees should be compared with other employees, agency workers with other agency workers and so on. However, the original restriction whereby a fixed-term worker could not compare himself/herself to a permanent worker and vice-versa was removed, so this type of comparison is possible.

The same or broadly similar work

The comparison must be between workers doing the same or broadly similar work. Regard must be given, where relevant, to the level of qualifications, skills and experience of each worker. It is for the part-time worker to establish the similarity.

It should be noted that in sex discrimination and equal pay claims the employee must establish that work is broadly similar, but the employer must show any relevant differences such as qualifications and experience to justify the differing levels of pay or benefits. The burden placed on the part-time worker to prove the similarity in this case may restrict the number of claims being brought.

The restriction on comparison to workers on the same types of contract and broadly similar work, in particular the onus on the worker to show similarity of qualifications and experience if necessary, makes strong potential for claims of sex discrimination and equal pay claims being brought alongside any claim under the Part-Time Workers Regulations.

Workers becoming part-time

Such workers do not have to identify a comparable full-time worker with the same type of contract but may compare with their own full-time terms immediately before their reduction in hours.

Those workers who are returning on reduced hours after a period of absence of less than 12 months, for example after maternity or parental leave or after illness, may compare with their previous terms subject to any changes which would have occurred during their absence, such as any pay increases.

What might qualify as 'objective grounds' for different treatment?

The Regulations do not specify what will constitute objective grounds. The Department of Trade and Industry (now DBERR) Guidance on the Regulations states that "Less favourable treatment of a part-timer will be justified on objective grounds if it can be shown that it is necessary and appropriate to achieve a legitimate business objective":

It follows that just because a benefit cannot be applied pro rata it will not be justified to exclude part-timers from that benefit. It is necessary to show a legitimate objective and the treatment must be both necessary and appropriate to achieve that objective. It may, therefore, be justified to withhold a benefit from a part-timer if it can neither be applied pro rata nor provided without disproportionate costs to the employer. An example might be the provision of healthcare coverage to a worker employed just one or two days a week. Compare this to a benefit which can be applied pro rata, such as contractual sick pay, which should be applied even-handedly; part-timer workers should be treated the same in respect of length of service to qualify for payment and the length of time for which they are paid, but payment should then be calculated pro rata.

What is defined as part-time?

Whether a worker is full-time or part-time depends on the business. It will be determined on the basis of the custom and practice of the employer. It is only where different workers work different hours that any comparison can be drawn. Employers should beware, however, of refusing to facilitate part-time working in principle, as that is likely to constitute indirect sex discrimination, unless there is objective justification.

What if a part-time worker believes he is being treated less favourably?

The worker may make a request in writing for a written statement giving particulars of the reasons for the treatment. If he does so, the statement must be provided to him within 21 days.

Such a statement is admissible in evidence at any tribunal and care should therefore be taken in drafting it.

The tribunal is entitled to draw inferences from any statement it considers evasive or equivocal or from any failure to provide a statement.

What are the penalties for less favourable treatment?

A worker may apply to an employment tribunal, provided he does so within three months of the relevant infringement of his rights. A claim may be presented beyond this time if the tribunal considers it just and equitable.

If the tribunal finds a claim is well founded it may:

- make a declaration as to the rights of the parties
- order the employer to pay compensation
- recommend that the employer take remedial action

If an employee has been dismissed for reasons connected with a complaint under the Regulations, such dismissal will be regarded as **automatically** unfair.

Particular areas of difficulty

Occupational pensions

Part-time workers must be offered access to any pension scheme on the same basis as full-time workers. The Regulations initially sought to limit any damages claimed for breach to two years prior to the complaint. However, in line with European case law, this time limit no longer applies.

Training

Employees must ensure that part-time workers do not miss opportunities for training simply because of their part-time status. It may, therefore, be necessary to offer additional pay if they need to attend training outside their normal working hours; or it may be necessary to seek alternative training providers to suit the hours worked.

Bank/public holidays

As the majority of bank holidays fall on a Monday, this may particularly present problems with part-time workers who do not work Mondays, or those who only work at the beginning of the week. If full-time workers are given paid public holidays, part-time staff should be given paid holiday pro-rata for those days regardless of whether they would normally work on them. In any event, since 1 October 2007 both full-time and part-time staff are entitled to the new statutory right of paid additional annual leave. This means that where paid bank holidays are the means of providing additional annual leave, part-time staff must be paid proportionately for such days, regardless of whether they work on days on which bank holidays fall.

Overtime

Part-time workers will be entitled to overtime pay at the same rate as full-time workers only once they work more than the normal number of hours for a comparable full-time worker.

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