

Part-Time Workers

How the law protects and affects part-time workers



Overview

More and more people are seeking flexible ways of working as a way of balancing their home commitments with the world of work. The government has recognised the need to protect such individuals, in the form of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (the Regulations). This factsheet gives a general overview of the legislation.

A right to work part-time?

These Regulations fall short of providing a right to work part-time. Instead the Employment Rights Act 1996 gives parents and carers of children aged under 17 or disabled children aged under 18, and carers for adults the right to ask to work flexibly and the right to get a written answer. If you are a parent or carer and you have 26 weeks' service, your employer has a duty to consider your request for flexible working seriously. Flexible working could include reduced hours, changes to times of work, or home working.

If an employer fails to deal with the request properly, a claim may be brought at an Employment Tribunal within three months less one day of the date of the employer's failure.

Please see our factsheet 'Returning to Work' for more information on making a flexible working request.

There is no automatic right to work flexibly. Similarly, the flexible working provisions do not allow you to challenge a refused request if it has been properly considered and proper reasons are given for the refusal. However, any refusal to allow a request to work part-time or to work flexibly may be unlawful, as indirect discrimination on grounds of sex may have occurred. This is because statistically, the majority of workers with caring commitments are female, and any refusal would need to be justified by the employer by proving clear business needs.

Please see our factsheet on 'Sex Discrimination'. If your employer refuses your request you should consider appealing and raising a formal grievance.

However, an Employment Tribunal claim must be brought within three months less one day of the refusal or act complained of. You could be prevented from bringing a claim if you do not lodge it with the Tribunal in time. If you're in any doubt, it is wise to seek legal advice as soon as possible.

Rights created by the Regulations

Once you are working part time, you are protected by the Regulations. The main protection given by the Regulations is the right for part-time workers not to be treated less favourably than comparable full-time workers, unless that treatment can be justified. There is also a right not to be victimised for

having raised an issue or brought a claim, and a 'written statement' procedure which helps to clearly establish the reason for any less favourable treatment. These rights apply not just to employees but to anyone who is regarded as a 'worker', which can include a self employed person who has to do the work personally.

Protection from less favourable treatment

The main principle of the Regulations is that a part-time worker has the right not to be treated less favourably than a comparable full-time worker because of their part-time status, unless the difference in treatment can be justified.

Less favourable treatment may include things like differences in terms and conditions, in day-to-day working practices or in working environment, or subjecting a part-time worker to some kind of disadvantage. For example, part-time workers might be provided with a less advantageous pension scheme, or a lower hourly rate of pay than full-time workers doing the same job. The Regulations are based on comparing differences between comparable part-time and full-time workers. It is not against the regulations to take a 'pro-rata' approach where the part-time worker gets the same proportion of a benefit as his/her hours are of full time hours. Further, the regulations recognise that where an enhanced rate for overtime hours is payable, the part time worker only gets the enhanced rate once the same number of hours have been worked as a full time worker has to work to get the enhanced rate.

Finally, any difference in treatment which is objectively justified as an appropriate way of achieving a legitimate aim will not be unlawful.

What is a 'comparable full-time worker'?

According to Regulation 2(4), a full-time worker is a 'comparable full-time worker' if at the time when the less favourable treatment of the part-time worker takes place the following applied:

- a) both workers are employed by the same employer under the same type of contract, and are engaged in the same or broadly similar work having regard, where relevant, to whether they have a similar level of qualification, skills and experience; and
- b) the full-time worker works or is based at the same establishment as the part-time worker or, if there is no full-time worker working or based at that establishment who satisfies the requirements of sub paragraph (a), one who works or is based at a different establishment and satisfies those requirements.


How to bring a claim


A claim under the Regulations is brought in the Employment Tribunal, and must be lodged with the Tribunal within three months less one day of the treatment you are complaining of. You could lose the right to bring a claim if you do not lodge it in time.

Contact Us

Please feel free to discuss your own position and concerns. Contact your nearest Russell Jones & Walker office or call:

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This factsheet is for general guidance only and should not be treated as a definitive guide or be regarded as legal advice. If you need more details or information about the matters referred to in this factsheet please seek formal legal advice. This information was correct at time of going to press August 2011.