

Part-Time Workers

Discrimination against Part-Time Workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, protect part-time workers from unjustifiable discrimination by employers on the basis of their part-time status. The purpose of this fact-sheet is to provide a general overview of the Regulations.

A right to work part-time?

The Regulations do not provide a right to work part-time. However, under the Employment Rights Act 1996, parents of children aged under six or disabled children aged under 18 who are employees with 26 weeks service have the right to apply to work flexibly and their employers have a duty to consider their request seriously. Flexible working could include reduced hours, changes to times of work or home working. A claim challenging an employer's failure to consider a flexible working request may be brought at the employment tribunal within 3 months less one day of the date of the employer's failure.

There is no automatic right to work flexibly and no claim under the flexible working provisions to challenge a refusal to grant a flexible working request, provided the request has been properly considered. 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. This is because statistically the majority of part-time and flexible workers are female. Any refusal would need to be justified by the employer by reference to clear business needs. See our fact sheet on sex discrimination for more details, and note in particular that a claim of this nature must be lodged with an employment tribunal within 3 months less one day of the date on which the refusal was made.

Rights created by the Regulations

The main protection established by the Regulations is the right for part-time workers not to be treated less favourably than full-time workers, unless that treatment can be justified. There is also a right not to be victimised and a 'written statement' procedure which is similar to the questionnaire procedure under the sex and race discrimination provisions.

Protection from less favourable treatment

The central concept introduced by 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 might include differences in terms and conditions, in day to day working practices or in working environment, or subjecting a part-time worker to a detriment or 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.

- Comparable full-time worker:

The definition of a "comparable full-time worker" is set out at 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:

- (a) both workers are –
 - (i) employed by the same employer under the same type of contract, and
 - (ii) 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, where there is no full-time worker working or based at that establishment who satisfies the requirements of sub paragraph (a), works or is based at a different establishment and satisfies those requirements.

The Regulations (at Regulations 3 and 4) also protect workers' terms and conditions on the change from full-time to part-time working. They also apply where a worker returns to part-time working after an absence of less than a year (so, for example, after a period of maternity leave of less than a year). They provide that where an worker becomes part-time, a comparison may be made with a hypothetical comparator working on the same terms that applied to the newly part time worker immediately before becoming part time, or immediately before their absence. In other words, the comparator for a newly part-time worker can be him or herself in the previous full-time role.

- Pro rata principle

In determining whether a part-time worker has been subjected to less favourable treatment, the pro rata principle shall be applied "unless it is inappropriate". Pro-rata'ing of benefits such as pay will normally be appropriate but there are some exceptions. It may not always be appropriate to pro rata a car allowance for example.

- Objective justification

Even if there is less favourable treatment, the protection only applies if the treatment is because of the worker's part-time status (and not for any other reason) and if the treatment is not justified on objective grounds, that is, without reference to the worker's part-time status (Regulation 5).

In other words, like an indirect discrimination claim, a claim can be defeated if it can be shown that any less favourable treatment is justified.

The guidance notes at the back of the Regulations give assistance in understanding

what amounts to an objective justification. To be justified, the treatment must be a necessary and appropriate means of achieving a legitimate business objective.

Right not to be subjected to a detriment - victimisation

Regulation 7(2) provides protection against victimisation for those seeking to rely on or enforce rights under these Regulations. It is unlawful for an employer to subject any worker to a detriment on the ground that they have alleged a breach of the Regulations, sought to rely on the Regulations, pursued a claim or sought information under the Regulations, done anything else under the Regulations or assisted someone else to do so.

Written statement under Regulation 6

A worker who thinks their rights under the Regulations are being or have been infringed is entitled to request a written statement from the employer for the reasons for any less favourable treatment. The employer must respond within 21 days of the request, stating the reasons for the treatment. The statement is admissible as evidence in proceedings and a tribunal may make whatever inference it considers just and equitable if it considers the statement to be "evasive or equivocal", or where it is not provided at all.

This is a similar right to the questionnaire procedure under the discrimination legislation, but is stronger as the Regulations oblige the employer to respond to the request and give a time limit for doing so.

Overtime

Part-time workers' rights in relation to overtime are expressly dealt with in the Regulations. Payment of a lower rate of overtime to a part-time worker whose overtime working falls within the normal full-time week will not amount to less favourable treatment.

Complaints to the Employment Tribunal and time limits

The forum for bringing claims for breach of the Regulations is the employment tribunal. Generally, proceedings must be commenced within three months less one day of the less favourable treatment or detriment alleged.

Where the complaint arises from less favourable terms and conditions, in broad terms the treatment is treated as taking place on each day that the less favourable term is effective (Regulation 8).

In respect of claims brought under Regulations 3 and 4 (full-time workers becoming part-time, and workers returning part-time after absence respectively), the less favourable treatment is treated as occurring on, and only on, the first day of working under the part-time contract, or of the return from absence as the case may be.

Where the less favourable treatment is an omission by the employer, the task of deciding the date on which an omission took place for the purpose of calculating the time limit can be complex. Regulation 8(4)(c) provides that "a deliberate failure to act contrary to regulation 5 or 7(2) shall be treated as done when it was decided on." This raises the evidential problem of establishing when a decision not to act was taken. Regulation 8(5) gives guidance in this respect.

Where a claim is presented out of time, the tribunal may decide to allow it if it considers that this would be "just and equitable".

Remedies

Remedies that can be awarded by the tribunal following a successful application are:

- a declaration as to the rights of the worker and the employer in relation to the issues raised by the complaint;
- ordering the employer to pay compensation;
- making recommendations to the employer to take action to remove or reduce the adverse effect on the worker within a specified period.

There is no compensation for injury to feelings.

Guidance

There are guidance notes at the end of the Regulations which provide assistance in relation to the application of the Regulations. There is a section on access to training for part-time staff, which may be particularly helpful.

To find out more

To find out more about how we may be able to help you, please call:

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