

Part-time Workers

Treatment of Part-Time Workers

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (“the Regulations”) came into force in July 2000. The purpose of the Regulations is to improve the status of part-time workers by enabling them to claim parity of treatment with their full-time counterparts.

The Regulations provide workers with a mechanism by which they can seek to obtain the same treatment as full-time comparable workers including protection from adverse treatment by their employers if they choose to exercise their rights under the Regulations.

It is now essential for employers to ensure that part-time workers are treated in the same way as their full time workers. In the event that they are not, this could lead to a claim under the Regulations and an Employment Tribunal claim.

Scope of the Regulations 2000

The Regulations refer to “workers” rather than employees and so it is necessary to decide whether even though an individual may not strictly be an employee, he or she comes within the wider definition, e.g. a service engineer who works exclusively for one company but who is self-employed.

Definition of a Part-Time Worker

There is no definition in the Regulations of a part-time worker by reference to the number of hours worked. An employer has to decide who is considered a part-time worker by reference to pay and also its own custom and practice whereby workers are considered full or part-time.

Protection from Discrimination

An employer employing both full and part-time workers should consider whether they apply the same terms of engagement and treat part-time workers in the same way as their full time counterparts. The appropriate comparator must be identified by reference to the following criteria:

- The full-timer must be employed by the same employer and must undertake the same or broadly similar work to the part-timer. Employers need to take account of an individual’s qualifications, skills and experience - two workers may have the same job title but their skills and expertise may be completely different.
- The comparison must be with a full-time worker working at the same establishment as the part-time worker. To prevent employers employing part-timers at one establishment and full-time workers at another, if there is no full-time worker at the same establishment another place of work operated by the employer can be used as a comparator by the part-time worker provided that the full-time worker satisfies the criteria set down in a) above.

NB: If a full-time worker changes to part-time hours (either following a period of absence of not more than 12 months or without a break) then the part-time worker can compare his/her present treatment with how he/she was treated when working full-time. This is particularly relevant to those women returning after maternity leave.

What Protection do Part-time Workers Enjoy?

The protection is the right to be treated no less favourably than a comparable full time-worker and also not to be subjected to any deliberate act or detriment by the employer because of the part-time status.

If there is a complaint made by a part-time worker that he/she has been treated less favourably then to succeed with the complaint the reason for the treatment must be because he/she works part-time and the treatment cannot be justified by the employer on objective grounds.

Areas of Comparable Treatment

Part-time workers should be treated the same as comparable full-time workers in areas such as:-

- the hourly rate received;
- the hourly rate of overtime paid once the part-time worker has worked more than normal full time hours;
- training;
- entitlement to annual leave, maternity and parental leave, contractual sick pay and maternity pay and access to occupational pensions on a pro-rated basis where appropriate.

Unfair Dismissal and other Remedies

It is important that employers do ensure that part-time workers are treated in the same way as full-time comparable workers. If not then a worker can file a complaint against his/her employer in an Employment Tribunal seeking compensation for the losses sustained as a result of the less favourable treatment.

A worker can also request a written statement of reasons from their employer if they believe that they are being treated less favourably than a comparable full time worker. This provision will not only enable a worker to obtain an explanation for the treatment received which could assist when deciding whether or not to make a complaint to the Employment Tribunal but may also reduce the number of applications made for two reasons:-

Firstly an employer will be given the chance to fully explain the reasons why treatment of workers is different and to provide justification for differing treatment thereby enabling the worker to consider whether or not his or her complaint is likely to be successful.

Secondly an employer may decide after receiving this request and considering the treatment complained of that there is a breach of the Regulations and thereafter take steps to rectify the situation.

Employers must remember that in dismissing someone for bringing a complaint in accordance with the Regulations (or exercising other rights afforded to them in accordance with the Regulations) will render that dismissal automatically unfair.

No right to part-time hours

The Regulations do not however confer a right to work part-time. Our advice to employers however is that in order to promote good working relationships requests by workers to work part-time should be considered on their merits. Failure to do so could also result in a claim for indirect or direct sex discrimination.

Right to Request Flexible Working

Certain qualifying employees have the right to request flexible working arrangements for the purpose of caring for children under the age of 17 (likely to be increased to 18 in 2011 and in the case of a disabled child until he or she attains the age of 18). An employer is not obliged to agree to such a request but must have a legitimate business reason for refusing. There is a formal application/response process and we would recommend that employers faced with such an application should seek advice to ensure that proper process is followed in order to minimise the risk of claims for compensation.

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