

Rights for Part-Time Workers

Employment Rights Advice Leaflet
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Until recently there was little legal protection for the UK's 6 million part-time workers. Employers frequently discriminated by denying part-timers access to benefits, such as sick and holiday pay. Statutory employment rights sometimes depended on qualifying rights which had the effect of excluding part-time workers. Part-timers, the majority of whom are women, had to use sex discrimination and equal pay legislation in order to enforce their rights, and this often proved complicated and ineffective.

Gradually the legal barriers which reinforced discrimination against part-timers have been removed, and as a result of the Part Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 it is now unlawful to treat part-time workers less favourably than their full-time counterparts. These Regulations apply to most areas of employment, including pay, pensions, training and holidays.

Who is covered by the Regulations?

The Regulations cover all part-time workers - so home workers, agency and contract workers are all covered. From a legal point of view you are 'part-time' if you are paid by reference to the time you work and, compared to your fellow workers, you are not identifiable as a full-time worker.

What rights are provided by the Regulations?

If you work part-time, the Regulations give you the right not to be treated less favourably than a **comparable full-time worker** in the terms of your contract, **unless the difference in treatment can be justified on objective grounds**. Rights should normally be provided on a proportional (or "pro-rata" basis).

The comparable full-time worker

To prove discrimination you must show that the terms of your contract are less favourable than those of a comparable full-timer.

This full-timer must work under the same type of contract at the same place of work. (However as a result of new regulations which came into force on 1st October 2002, it is no longer relevant whether or not the people compared are on fixed-term or on permanent contracts).

The full-timer must also do broadly similar work taking account of qualifications, skills and experience.

You can find a comparator working for your employer at a different establishment if there is no one with whom you can compare yourself at the place where you work. You can treat yourself as your own comparator if you switch from full-time to part-time work.

Objective justification

Your employer can justify differences in treatment if the reasons for it are not simply because you are working part-time. Possible reasons might include achieving a genuine business objective, or to meet a real need of the organization concerned. It will not be enough in itself that a benefit, such as health insurance, can not be provided on a pro-rata basis.

How should the Regulations be implemented?

The Regulations have been published with guidance explaining how the Regulations should be applied to different contractual terms. Strictly speaking the guidance is not law, but if your employers do not follow it, this could count against them and lead to a finding that they have discriminated. The guidance suggests the following:

- **Pay** - you should receive the same hourly rates as full-timers doing comparable work. Performance related pay should take account of your part-time status.
- **Overtime** - you should get the same overtime rates, but only once you have worked more than the **normal full-time hours**.
- **Promotion** - previous or current part-time status should not be a barrier to your promotion to either a full- or part-time post.
- **Holidays** - your holiday entitlement should be calculated on a pro-rata basis, including entitlement to public holidays. As most public holidays fall on a Monday, this can cause difficulties. Solutions might include converting annual entitlements into hours, and, for fairness, may require some part-timers who work on Mondays to take some public holidays as annual holiday (although existing staff may be able to object where this would require a variation of their contract).
- **Maternity and parental leave** - you should be treated no less favourably than full-timers.

- **Training** - you should not be excluded from training just because you work part-time.
- **Sick and maternity pay** - you should be treated equally regarding the way rates of payment are calculated, the length of any payment and the qualification period.

The guidance also covers: access to occupational pensions, profit sharing and share option schemes, health insurance, subsidised mortgages, staff discounts, career breaks, and selection for redundancy.

Enforcing your rights

Part-Timer Workers Regulations - If you believe that you have been discriminated against because you work part-time you can ask your employer to explain the reasons for any difference in treatment. The request should be made in writing, and your employer has 21 days in which to reply.

If your employer fails to reply or the answer is unsatisfactory, this can be used as any evidence in any tribunal claim which you bring later. A tribunal may draw conclusions from the way in which your employer replies and it can count against your employer.

If you believe that you have been victimized (“suffered a detriment”) or dismissed because you are a part-timer, you can make a complaint to an employment tribunal.

Examples of a 'detriment' might include having your pay cut or being demoted.

In order to bring a “detriment” claim, from a legal point of view you must be a “worker”, whereas in order to bring a claim for Unfair Dismissal you need to be an “employee”.

“Employee” has a narrower definition than “worker” and so less people are covered, but the distinction is not a straight-forward one, so if in doubt you should seek specialist legal advice.

If you can prove that you have been dismissed for reasons connected with your status as a part-time worker, the dismissal will be automatically unfair and you will be entitled to compensation. You can also obtain compensation for other forms of less favourable treatment.

Normally you need to have worked for your employer continuously for over one year before you can make a complaint of Unfair Dismissal to an Employment Tribunal. However this does not apply where the dismissal is for reasons relating to your being a part-timer. There is also no qualifying period for bringing a “detriment” claim.

There are strict time limits for employment tribunal claims and any complaint should be made within 3 months of the date of the less favourable treatment.

Sex Discrimination Complaints or Equal Pay Claims

Since most part-time workers are women, often discrimination against part-timers will also amount to sex discrimination. The law on Sex Discrimination and Equal Pay is complex and if you think you have been discriminated against you should seek specialist advice. You can contact your trade union or see a solicitor; alternatively you can get advice from your local Law Centre, Citizens Advice Bureau or other independent advice centre.

For further details contact:

Employment Rights Advice Service (ERAS)
Low Pay Unit
10 Dukes Road
London WC1H 9AD

Advice line: 020 7387 2522

www.lowpayunit.org.uk

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