

THE PART-TIME WORKERS (Prevention Of Less Favourable Treatment) Regulations 2000

The Part-time Workers (Prevention Of Less Favourable Treatment) Regulations 2000 ("The Regulations") will come into force in England and Wales on 1 July 2000, and will apply to all employers, regardless of size. The Regulations are a product of the EU Part-time Work Directive, which aims to end less favourable treatment of part-time staff in order to support the development of a flexible labour market by encouraging the greater availability of part-time work and increasing the quality and range of jobs which are considered suitable for part-time work or job-sharing.

In addition, the Regulations may combat indirect sex discrimination. In order to manage family commitments, over 80% of part-time workers are women. If an employer treats part-time workers less favourably than full-time workers, the employer may, in effect, be treating women less favourably than men, depending on the numbers of male and female staff in full or part-time employment at that particular business.

The definition of a part-time worker

The Regulations apply not only to persons who have a contract of employment, but also those who personally perform services under some other contract, for example, homeworkers, agency workers and contract workers. The definition of a part-time worker is essentially a worker who is not a full-time worker. A full-time worker is an individual whose contract of employment or custom and practice of the employer, identifies them as full-time.

Rights conferred by the Regulations

In summary, part-timers will have the right not to be treated less favourably than a comparable full-timer, (i.e. a full-timer on a similar contract working for the same firm), unless such treatment can be justified on objective grounds. For example:

Rates of pay: Part-timers must not receive a lower basic rate of pay than comparable full-timers. Part-timers can only be given a lower hourly rate when this is justified on objective grounds, for example, a performance related pay scheme.

Overtime pay: Presently, part-timers do not have an automatic right to overtime payments once they work beyond their normal hours. Under the Regulations, part timers will be entitled to overtime payments after they have worked up to the normal weekly hours of a comparable full-timer.

Contractual sick and maternity pay schemes: Under the Regulations, the benefits that a full-timer receives must also apply to part-timers on a pro rata basis, unless differing treatment is justified on objective grounds.

Occupational pensions: Employers should not discriminate between full-time and part-time workers over access to pension schemes.

Other benefits (e.g. profit related pay, share option schemes, health insurance, subsidised mortgages, staff discounts): Where possible, these and similar benefits should be provided pro

rata. In some cases, this may prove difficult. In the case of a benefit such as health insurance which cannot easily be divided, employers will have to decide whether to withhold it from part-time workers. If the employer wishes to do so, it will have to justify it on objective grounds, e.g. the cost would be prohibitive. It will not be sufficient to say that the benefit could not be applied pro rata.

Leave and holidays: Part-time workers are entitled to a minimum of statutory annual leave, maternity leave and parental leave. The entitlements may be extended contractually. Part-time workers should have the same leave entitlements pro rata as their full time colleagues. An employer should take particular care in dealing with public or bank holidays. Many of these fall on a Monday. This can put part-time staff that do not work on a Monday usually, at a disadvantage compared to full time staff.

Promotion: Part-time workers should be given equal opportunity to seek promotion, regardless of whether the post is full or part-time.

Training: Employers should not exclude part-time staff from training, simply because they work part-time.

Where a worker becomes part-time or, having been full-time, returns to work part-time after an absence, he or she must not be treated less favourably than they were before becoming part-time.

Remedies for less favourable treatment

If a worker considers that his employer may have treated him in a manner which infringes a right conferred on him by the Regulations, he may request a written statement from his employer giving reasons for the treatment. The worker is entitled to be provided with the statement within 21 days of his request. The statement can be used as evidence in subsequent Employment Tribunal proceedings. If the employer fails to provide the statement, or the statement is evasive or equivocal, the Tribunal may draw an inference from this that it considers just and equitable in the circumstances, including, an inference that the employer has infringed the workers rights.

A worker can bring a complaint of infringement of the Regulations in an Employment Tribunal and if successful, the Tribunal can take the following steps against the employer:

- Make a declaration as to the rights of the worker and the employer in relation to the matters to which the complaint relates.
- Order the employer to pay compensation to the worker.
- Recommend that the employer take, within a specified period, action appearing to the Tribunal to be reasonable, in all the circumstances of the case, for the purpose of obviating or reducing the adverse effect on the worker. If the employer fails to act on the recommendation, the Tribunal has the power to award additional compensation to the worker.

An employee who is dismissed will be regarded as unfairly dismissed (and will therefore be able to bring Employment Tribunal proceedings and to seek compensation and other remedies), if the reason or principal reason for the dismissal is that the worker has:

- Brought proceedings against the employer under the Regulations, or
- Requested a written statement of reasons for less favourable treatment; or
- Given evidence or information in connection with such proceedings brought by any other worker; or

- Alleged that the employer has infringed the Regulations; or
- Refused to forgo a right conferred on him or her by the Regulations; or
- Otherwise done anything under the Regulations in relation to the employee or to another person; or
- The employer believes or suspects that the worker has done or intends to do, any of the above.

In addition, a worker has a right not to suffer any detriment as a result of items 1 to 7 above. Any detriment suffered on this ground will entitle a worker to bring a complaint to an Employment Tribunal.

In conclusion

Implementation of the Regulations by employers will take considerable thought and may involve significant expense. However, the social goals of the Regulations will be of direct benefit to employers. The aim is to widen access to part-time work, which may improve and expand the labour market and ultimately increase staff morale and productivity.

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further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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