

FACTSHEET – Part-Time Workers

The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (“the Regulations”) provide that part-time workers have the right not to be treated less favourably on the grounds of their part-time status than comparable full-time workers working for the same employer, unless different treatment can be justified on objective grounds. Less favourable treatment of a part-timer will be justified on objective grounds only if it can be shown that it is necessary and appropriate to achieve a legitimate business aim.

In addition to the requirements under the Regulations, employers should also be aware of potential sex discrimination risks in their treatment of part time staff. For further information please see: [Discrimination Overview](#).

This factsheet provides general guidance to assist employers in complying with the Regulations and other key issues to consider when employing part-time workers.

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Who is protected by the Regulations?

The Regulations apply not only to employees but also to a wider category of ‘workers’. A worker is someone who undertakes to do or perform personally any work or services for an ‘employer’ whose status is not that of a client or customer of any profession or business undertaking carried on by the worker. Casual, seasonal and temporary workers, freelancers, home workers, piece-workers and agency temps are all covered. Importantly, workers are covered regardless of their length of service and therefore individuals do not have to have been employed for a particular length of time before being able to lodge a claim in the Tribunal.

What is a part-time worker?

Workers are full-time if they are paid wholly or in part by reference to the time they work and are customarily identifiable as full-time workers in the organisation in which they work. A part-time worker is a person working in the same organisation who is generally considered to be in part-time work. For example, in a typical business, a full-time worker is one who works a contractual 35-hour week. Other staff may work two to three days a week, or for three or four hours each day. These would be considered to be employed in part-time work.

The need for a comparable full-time worker

In order for a claim to be made under the Regulations, a part-time worker will need to show that their treatment is less favourable than that of a comparable full-time worker. In order to show that the full-timer is comparable the part-timer must:

- Work for the same employer as the full-timer under the same type of contract;
- Do the same or broadly similar work to the full-timer, having regard, where relevant, to whether they have a similar level of qualifications, skill and experience; and
- Work or be based at the same establishment as the full-time worker or, where there is no full-time worker working or based at that establishment who satisfies the above requirements, works or is based at a different establishment and satisfies these requirements.

A part-time worker cannot compare themselves to another part-time worker in order to bring a claim under the Regulations, although there will be considerations of general fairness when treating colleagues differently, regardless of the number of hours worked per week which may give rise to other claims depending on the circumstances.

The requirement for the comparator to be employed under the same type of contract means that many atypical workers, such as agency workers or zero hours workers can find difficulty in succeeding with a claim under the Regulations where the comparator is a full time employee employed under a contract of employment for a fixed number of hours per week.

Obligations under the regulations

As set out above, the Regulations provide that part-time workers have the right not to be treated less favourably than comparable full-time workers working for the same employer in relation to:

- The terms of their contract; or
- By being subjected to any other detriment by any act, or deliberate failure to act, by their employer

(Subject to the objective justification defence set out below).

At the present time, a worker needs to show that the less favourable treatment is *solely* because of their part-time status, rather than it being the effective and predominant cause as required for discrimination regarding other protected characteristics such as race or sex. This stricter test has been criticised, though, by the Court of Appeal in *Augustine v Data Cars Ltd* and could change if it is appealed to the Supreme Court.

Complying with the Regulations in practice

Examples of what this means in practice are as follows:

Reorganising hours of work

Reorganising hours of work is a contractual matter between an employer and their employees. However, in reorganising workloads, part-timers should not be treated less favourably than full-time staff (and in certain situations employers may also be vulnerable to a claim for indirect sex discrimination).

Promotion and training

Part-timers must be given equal opportunity to seek promotion, whether the promoted post is full-time or part-time. Part-time staff should not be excluded from training simply because they work part-time.

Rates of pay and overtime

Part-time workers must receive the same basic rate of pay as comparable full-time workers unless the difference in pay is due to some other factor than the employee's part-time status or it can be justified on objective grounds.

In general, the same principle applies to enhanced rates of pay e.g. bonus pay, shift allowances, commission structures, unsocial hours payments and weekend payments. In these cases, the part-timers are entitled to the same hourly rate or rate of commission accrual as comparable full-timers.

The rules are slightly different in respect of overtime pay in that an employer can require all employees to work the same number of hours before they become eligible for premium overtime pay. For example, an employer can require both full-time and part-time staff to work at least 35 hours per week at their basic hourly rate before they become eligible for an overtime rate in that week and this would not contravene the Regulations. In practice, this means that part-timers may only receive the same hourly rate of overtime pay once they have worked more than the normal full-time hours.

However, the position is different again where the arrangement is that employers require employees to work a certain number of hours' overtime without pay before they reach a threshold where they are entitled to payment. For example, an arrangement where employers are required to work at least 5 hours overtime per week without pay and once they have exceeded those 5 hours of overtime then they are entitled to receive payment for hours worked in excess of this. This arrangement is likely to have a disproportionate impact on part-time staff and you should [speak to your legal advisers](#) in these circumstances for further advice.

Contractual sick pay and contractual maternity pay

There is an obligation on employers under the Regulations not to treat a part-time worker less favourably than a comparable full-time worker when it comes to calculating contractual sick and maternity pay, in relation to the rate of pay, the length of service required to qualify for payment and the length of time for which the payment is received. The only exception will be if the different treatment is justified on objective grounds.

Access to occupational pension schemes

It is unlawful to deny access to occupational pension schemes to part-time workers, unless different treatment is justified on objective grounds.

Redundancy selection criteria

An employee cannot be selected for redundancy purely on the basis that they are a part-time worker. The employee must be fairly selected using fair and objective selection criteria. Such selection will be a breach of the Regulations; will be an unfair dismissal, and potential sex discrimination.

Paid annual leave

Under the Working Time Regulations all workers are entitled to a minimum of 5.6 weeks paid annual leave. A part-time worker's entitlement to annual leave will vary depending on the number of days or hours worked. For example, a part-time worker who works three days a week is entitled to a minimum of 16.8 days' annual

leave per year (compared to 28 days for a full-time employee). This is because one week for this employee is three days and not five. If you have a more generous annual leave entitlement than the statutory minimum, part-time workers should also benefit from this on a pro rata basis. For example, if your full-time workers qualify for six weeks paid annual leave (30 days), a part-timer who works, say, three days a week should receive 18 days (six weeks at three days per week).

Note, too, that since April 2024, irregular hour and part year worker's annual leave entitlement and pay can be calculated using an accrual percentage (12.07%, which is based on the statutory minimum of 5.6 weeks leave) of hours worked. As mentioned above, if full-time workers receive more than the statutory minimum under the Working Time Regulations, then the percentage accrual rate should be amended accordingly. Please see our guidance note, **Holiday Rights Detailed Reference Guide**, for details.

Bank holidays

In respect of bank holidays, the best way to calculate entitlement of part-time workers to bank holidays is to calculate this on a pro rata basis. You must treat part-timers as favourably as you treat full-timers. Where workers work fixed days each week, a practice of giving the day off to those whose day of work happens to coincide with the bank holiday will put some part-timers at a disadvantage (mainly those who do not work on Mondays), whilst others will be treated more favourably (those who do work on Mondays). This is because most bank holidays fall on a Monday.

The solution is to give all part-time workers a pro rata entitlement of days off according to the number of hours/days they work a week. The easiest way to calculate a part-timer's bank holiday entitlement is to calculate on a pro rata basis the number of bank holidays they should be entitled to according to the number of hours/days they work a week. For example, an employee who works three days a week should be entitled to three-fifths of the eight bank holidays each year. This means they are entitled to 4.8 bank holidays, which can be rounded up to five days for practical purposes. You then need to work out how many bank holidays the part-timer will benefit from in the particular holiday year (you will need to check on what days the bank holidays will fall in that year). If, for example, a part-timer will benefit from six bank holidays, but they are only entitled to five, then one day can be deducted from his or her general annual leave entitlement. Conversely, if the part-timer will only benefit from two bank holidays but he or she is entitled to four, then an additional two days should be added to their general annual leave entitlement.

You should ensure that your employees are notified in advance of the exact number of days they are entitled to (taking into account how the relevant bank holidays fall) at the start of each holiday year.

Other benefits

Where possible, any other benefits that are provided to full-time workers should be provided to part-time workers on a pro rata basis. These include:

- Access to facilities, such as a gym.
- Career break schemes.
- Paid leave on compassionate grounds.
- Private health insurance.
- Subsidised mortgages.
- Staff discounts.
- Company cars.

In some cases, this may prove difficult. For example, health insurance or a company car cannot easily be divided on a pro rata basis. Employers will then have to decide whether to withhold it from a part-time worker if the cost of extending such a benefit would be unduly prohibitive or disproportionate. The Employer must

still be able to demonstrate that their decision is justified on objective grounds. If the benefit is to be withheld, the Employer should still consider calculating the financial value of the benefit to a full-timer and applying that value pro rata to a part-timer.

Part-time workers, like full-time workers, are entitled to a minimum of statutory maternity leave, paternity leave, parental leave, shared parental leave and time off for dependants.

The objective justification defence

You may have a defence to a claim under the Regulations if you can show that your treatment of the part-time worker is justified on objective grounds. Less favourable treatment will only be justified on objective grounds if it can be shown that the less favourable treatment:

- Is to achieve a legitimate objective, for example a genuine business objective;
- Is necessary to achieve that objective; and
- Is an appropriate way to achieve that objective.

All 3 elements of this test need to be satisfied in order to meet the objective justification defence. So for example, if there was a less detrimental course of action that the employer could have taken in order to meet the business objective then the treatment is unlikely to be objectively justified.

Workers becoming part-time

Where a full-time worker moves to part-time work, they can compare their terms and conditions of employment to those that applied to their full-time position in order to assess whether there has been less favourable treatment. This prevents an employer from providing less favourable terms and conditions on a move from full-time to part-time work.

Right to request a written statement of less favourable treatment

Part-time workers who believe that their rights have been infringed under the Regulations may write to their employer requesting a written statement explaining the reasons for their less favourable treatment. The request must be submitted in writing and the employer must respond within 21 days. You should note that your response will be admissible as evidence in any subsequent Employment Tribunal proceedings and therefore you should speak to your legal advisor if such a request is received.

This does not apply where the act complained of is dismissal, where individuals are instead entitled to receive written reasons for dismissal, which again should be approached with the same degree of caution.

Employment Tribunal claims

A part-time worker who considers that their rights have been breached under the Regulations has three months to lodge a claim beginning with the date of the less favourable treatment, or where the claim relates to a dismissal (see below), beginning with the effective date of any dismissal. Individuals will be required to go through the Acas pre claim conciliation process prior to lodging a claim, which will have an impact on time limits. For further information please see: [Employment Tribunals](#).

If the tribunal finds in favour of the employee, it can order that the employer set matters right and/or award compensation which it considers is just and equitable in the circumstances.

Finally, be aware that it is an automatic unfair dismissal (regardless of the length of the employee's employment) to dismiss an employee for a reason relating to him or her having asserted their rights under the

Regulations. An employee also has the right not to be subjected to a detriment on these grounds. Unfair dismissal protection only extends to employees however and not to the wider category of workers. For further information please see: [Unfair Dismissal- Constructive Dismissal](#).

This document was prepared by the Employment Law team of WorkNest. It is intended only as a general document and as a guide in relation to its subject matter and has not been bespoke drafted for you or the specific circumstances in which you are looking to use it. It is not to be regarded as a substitute for consultation with one of your advisers, since every case will ultimately turn on its own particular facts and circumstances. We will always ask you what you want to achieve and can advise on best practice or more commercial options. If you do not consult with us, do not follow our advice, or decide to take a commercial option, there is a risk that your insurance position will be affected (if cover has been taken) and we will not be liable in any way. If in any doubt as to how to use this document or for legal advice please contact your advisers on their usual number.