

# Part-time Workers Factsheet



Part-time workers benefit from a number of protections in connection with their part-time status.

The key protections are available under the Part-Time Workers (Prevention from Less Favourable Treatment) Regulations 2000 (the "Part-Time Worker Regulations").

## The Part-Time Worker Regulations

The Part-time Worker Regulations state that a person who is a part-time employee or worker is protected from being treated less favourably than a comparable full-time worker (a "comparator") by reason of their part-time status.

Specifically, a part-time worker is protected from less favourable treatment:

- ♥ in respect of the terms of their contract; and
- ♥ by being subjected to any other detriment by any act, or deliberate failure to act, by their employer.

Both employees and workers are protected under the Part-Time Worker Regulations. When we talk about the 'employer' in this factsheet, we use that term in the broadest sense to mean the company or entity which engages the worker or employee.

In order to establish less favourable treatment, the part-time worker must identify an appropriate '**comparator**'. We have explained who can be a comparator below.

The Part-Time Worker Regulations state that a '**pro-rata principle**' should be applied where relevant to consider whether there has been less favourable treatment. We have also explained the concept of the pro-rata principle below.

An employer will be able to defend a claim for less favourable treatment if it can show that its treatment of the part-time worker is '**objectively justified**'. Objective justification is also explained below.

## Comparators

A part-time worker who believes they have received less favourable treatment will need to identify a suitable comparator in order to bring a claim. The comparator must be someone who:

- ♥ Works full-time
- ♥ Works for the same employer;
- ♥ Works under the same type of contract. For example, if the person is engaged as a worker then their comparator must also be engaged as a worker, not as an employee;
- ♥ Works in the same physical workplace (unless there is no full-time comparator at the part-time worker's workplace in which case the comparator can work at a different establishment); and
- ♥ Does the same or a broadly similar job to the part-time worker, having regard, where relevant, to whether they have a similar level of qualification, skills and experience.

The Part-time Workers Regulations also state that where an employee has had a break of less than 12 months and then on their return switched from full-time to part-time hours, they can use their previous full-time contract as the comparator. This is likely to be relevant to women who reduce their hours after maternity leave.

## The pro-rata principle

The term 'pro rata' is used throughout this factsheet. Pro rata means: 'in proportion', and is used to identify what someone should be entitled to in proportion to their working hours, when compared to a full-time comparator.

For example, if the full-time comparator works 5 days' a week and is paid £25,000, the part-time worker who works 3 days' a week should be paid a salary which is equal to 3/5ths of their comparator's salary i.e. £15,000.

## Objective justification

There are times when it is considered acceptable for employer to treat a part-time worker less favourably than a full-time comparator. This will be the case where the employer can show a **good business reason** for the different treatment, **and there is no other, less discriminatory, way available** in which it can achieve its aim.

# Key-employment rights for part-time workers

We have summarised how the principle of protection against less favourable treatment for part-time workers should operate in practice, in respect of key aspects of the employment relationship below:

## Non-discrimination

As we have explained above, part-time workers have the right not to be treated less favourably than their full-time comparators in terms.

In some cases female workers who are part-time may also have a claim for indirect sex discrimination under the Equality Act 2010. This is because women are more likely to be part-time, especially because they tend to have more childcare responsibilities than men and a policy or practice that disadvantages part-time workers can amount to indirect sex discrimination. See our [guidance on discrimination against parents and carers in the workplace](#) for more information.

## **Pay**

Part-time workers should receive at least the same hourly rate as their full-time comparators. If the part-time worker is paid a salary, the salary should be pro-rated based on the days worked. For example, if the worker works 3 days a week in comparison to a 5 day full-time Comparator they should receive 3/5ths of the comparator's full-time salary. A part-time worker who is hourly paid is entitled to receive the same hourly rate as their full-time comparator.

## **Overtime pay**

If an employer pays an enhanced rate of pay to full-time workers then it is permitted to require that a part-time worker works the same number of hours as a full-time employee would normally work, before it pays the enhanced rate to the part-time worker. For example, if salaried employees work a basic week of 37.5 hours and are paid at the rate of 1.5 x their hourly rate for any hours worked in excess of that amount, then the employer is entitled to pay a part-time worker who undertakes overtime at their normal rate hourly until they have worked 37.5 hours in the week.

## **Pension opportunities**

a part-time worker has the same rights as a comparable full-time worker to join their employer's pension scheme.

However, there is an earnings trigger which applies to auto-enrolment. As at 2023 the earnings trigger is £10,000. This means that employers are not required to automatically enrol part-time workers whose earnings do not exceed the earnings trigger into a workplace pension scheme. A part-time worker whose earnings are below the lower earnings limit can however ask to be auto-enrolled. The benefit of asking to be auto-enrolled is that your employer must contribute 3% of your pay to the pension scheme which is in addition to your basic earnings. However, you will need to contribute 5% and it is important to make sure this is affordable before asking to be auto-enrolled. In most cases contributions are made in relation to a specific band of earnings, starting from £6,240 (as at 2023). This means that if you earn between £6,240 and £9,999 your employer will only make contributions in respect of the band of your pay that falls between those two amounts.

If your employer provides an enhanced workplace pension scheme for its employees (for example, it pays 5% of contributions instead of 3%), then you will be entitled to receive the same contribution rate as your full-time comparators.

## Benefits

A part-time worker should not be excluded from workplace benefits such as company car schemes, healthcare, travel loans or staff discounts. In some cases it can be difficult to apply the pro-rata principle to benefit schemes and the employer might consider paying a cash allowance which can be pro-rated instead.

## Annual leave

Part-time workers are entitled to a pro-rata amount of annual leave in comparison to full-time workers, based on the number of days or hours they work. This includes both statutory minimum amount of 5.6 weeks leave per year (equivalent to 28 days inclusive for a full-time employee who works 5 days per week) and any additional contractual leave provided by the employer.

A week's leave should allow workers to be away from work for a week. It should be the same amount of time as the working week. For example, if a worker works 5 days per week they are entitled to 28 days holiday per year, if they work 3 days per week, they are entitled to 3/5ths of this entitlement, which is 16.8 days. The employer cannot round down the number of days, and so any fraction should be rounded up to the nearest half day. In this example, the part-time worker would be entitled to 17 days leave.

It does not matter how many hours they work on a day, so for the above example if a worker works five 6 hour days they are still entitled to 28 days holiday per year. A week's leave should allow workers to be away from work for a week whatever their working week looks like. This is however, subject to a statutory maximum of 28 days. This means that a worker who works a 6 day week only gets 28 rather than 32 days.

The pro rate principle only applies in relation to part-time workers in the sense that they work less than a 5 day week. It does not apply in relation to part-year workers. The Supreme Court in *Harpur Trust v Brazel [2022] UKSC 21* has held that the amount of leave to which a part-year worker employed under a permanent contract is entitled, should not be pro-rated to be proportional to that of a full-year worker. However, the Government is currently consulting about proposed changes to the rules for calculating holiday entitlement for part-year and irregular hours workers and changes to simplify this area are likely.

A calculator is provided on the [Government website](#) which enables a worker to check the statutory minimum holiday to which they are entitled, according to their working hours. It is important to remember that this only calculates statutory minimum holiday, so if your employer offers comparable full-time workers a greater contractual entitlement then your leave should be pro-rated according to that entitlement.

## Bank Holidays

The 2009 increase in statutory holiday entitlement from 4 weeks to 5.6 weeks was intended by the Government to represent the 8 bank holidays - 5.6 weeks being the equivalent to 20 days plus the 8 usual existing bank holidays. However, it remains the position that workers

do not have a statutory right to take holiday actually on a bank holiday. Rather the number of paid annual leave days was generally increased. Accordingly, time off for bank holidays can be counted against a worker's annual holiday entitlement.

Some employers include bank holidays in the worker's annual holiday allowance, which means that the worker will need to book the bank holiday from their annual allowance if they would otherwise be working and wish to take leave. In this scenario the annual allowance can be pro-rated for part-time workers as in the examples given for annual leave above.

However, employers often express the annual leave entitlement as being exclusive of bank holidays. This is common where the employer does not operate on bank holidays and so all employees are expected to take the day as leave. In this case a calculation is needed to pro-rata a part-time worker's overall holiday allowance to ensure they are not any better or worse off due as a result of the bank holiday closures.

What this means in practice is that the employer will need to calculate the total number of bank holidays which fall in the leave year, the number which the worker is entitled to on a pro-rata basis and the number which will fall on the worker's normal working days. If there are more bank holidays than the worker is entitled to which fall on the worker's normal working days then the employer will be entitled to offset the additional bank holidays which the worker will receive from their normal holiday entitlement. In contrast, if there are fewer bank holidays than the worker is entitled to which will fall on days when the worker is due to work, then the employer will need to give the worker additional days of leave to reflect this.

For example, full time employees are entitled to 20 days plus 8 bank holidays. The worker has a 4 day working week with a non-working day on Friday. They are entitled to 4/5ths of the 8 usual bank holidays i.e. 6.5 bank holidays and 4/5ths of the 20 day normal holiday entitlement i.e. 16 days. Only one of the bank holidays will fall on their non-working days (i.e. good Friday) and so the employer is entitled to take the other 0.5 days from their 16 day holiday allowance to account for the bank holidays they will receive over and above their pro-rated allowance.

## **Training and career development**

A part-time worker should be afforded the same opportunities to attend training courses as a full-time worker. This means that an employer should (as much as possible) schedule training to allow part-time workers to participate.

However, it may not be possible for an employer to accommodate all part-time workers and this is an example of where it may be possible to justify less-favourable treatment. For example, if a part-time worker is asked to alter their working days in order to attend training, or, if a part-time worker is unable to attend a training event because it falls on their non-working day, then this is likely to be justified.

## **Promotion**

Part-time workers should have the same access to promotion opportunities as their full-time comparators. Part-time working should not in itself be a barrier to promotion.

An employer is not obliged to change the hours for a promotion opportunity to mirror the part-time worker's existing working hours. However, it could be indirect sex discrimination if an employer refuses to adapt the hours of a role without a good business reason.

## **Redundancy**

It is not fair to dismiss an employee if the only reason for the redundancy is because he or she works part-time hours.

See our guide on [part-time workers and redundancy](#) for more information.

## **Dismissal**

It is not fair to dismiss an employee if the reason for the dismissal is because they work part-time. An employee who has two or more years' service may bring a claim for unfair dismissal if they believe they have been dismissed due to their part-time status.

Workers do not have the ability to claim unfair dismissal. If a worker's contract is terminated because of their part-time status then they can however bring a claim for less favourable treatment on the ground of their part-time status.

If an employer terminates a worker's contract because they have taken certain actions in connection with their or somebody else's rights under the Part-Time Worker Regulations then this will be automatically unfair dismissal and/or less favourable treatment.

## **Right to request written reasons for less favourable treatment**

If a worker believes that their employer may have treated less favourably on the grounds of their part-time status then they may ask their employer to provide a written statement giving particulars of the reasons for the treatment. The worker must request this statement in writing. The employer must provide it within 21 days of their request.

An employer must not dismiss a person or subject them to less favourable treatment because they have asked for a written statement regarding possible unfair treatment.