

GUIDANCE NOTE

Part-Time Working and Flexible Working

March 2013

What is part-time work and flexible work?

There has been a substantial increase in the employment of part-time workers and in flexible working arrangements. Any individual who does not fit the employer's traditional practice of full-time work may be regarded as a part-time worker or a flexible worker. Flexible working can also include home working, whether on a regular or occasional basis.

Is there a right to part-time work or flexible work?

Full-time workers do not have a right to switch to part-time work or to be given a flexible working pattern. However, a statutory right to request flexible working was introduced in 2003. Currently the right applies to employees with 26 weeks' continuous employment who have caring responsibilities for a child up to and including the age of 16 (17 if the child is disabled) or for an adult. In November 2012 the Government declared its intention to extend the right to all employees with at least 26 weeks' continuous service, regardless of whether or not they have any caring responsibilities. The extended regime is expected to come into force in 2014.

The regulations governing the right prescribe a statutory request procedure which must be followed by both the employee and the employer. An employee may request a change in overall working hours or times of work or a change in job location, for example, working from home or a job share arrangement. A statutory request by an eligible employee does not have to be granted, but the employer must arrange a meeting with the employee to discuss the request, at which the employee may be accompanied by a fellow employee.

Where a request is granted, there will be a mutually agreed variation to the contract terms. This should either be confirmed in writing or a new contract should be issued.

A request can be refused on procedural grounds or for one or more of prescribed statutory business reasons, including additional costs, impact on the ability to satisfy customer demand, impact on other staff and impact on performance or quality. The reason for refusal must be explained to the employee, who must also be given the right to appeal against the refusal and to have an appeal meeting.

The employer's commercial rationale or business reasons for refusing a request cannot be challenged at an Employment Tribunal. However, an employer which has failed to deal with the request in accordance with the prescribed procedure may be ordered to pay compensation of up to 8 weeks' pay (subject to the statutory cap of £450 per week) to the employee.

Flexible working policies

The statutory right to request flexible working is relatively limited in scope. However, many employers have adopted flexible working policies and will try to accommodate requests to work flexibly regardless of whether the statutory procedure has been followed. Many employers have found that this brings benefits in terms of commitment to work as well as staff retention and morale.

Sex discrimination

A female employee whose request for flexible working has been rejected may seek to challenge the employer's decision by making a sex discrimination claim. A refusal of flexible working may be tantamount to a requirement to continue a full-time working pattern and potentially may amount to indirect discrimination against a woman with childcare responsibilities. Very often a flexible working request is made by a woman who is returning from maternity leave. Any such request must be handled very carefully. Although it does not have to be granted, generally speaking the employer must be able to show that any refusal is objectively justified for legitimate business reasons to avoid being guilty of unlawful discrimination.

Many employers have a tendency to look more favourably on flexible working requests by women. However, this could expose the employer to a claim of sex discrimination by a male employee whose request has not been granted in circumstances where a similar request from a female employee would have been granted.

Protection of part-time workers

Part-time workers have the same general employment rights as full-time workers, for example, unfair dismissal protection, redundancy pay rights, protection against unlawful discrimination on the grounds of sex, race, age, disability and sexual orientation.

In addition the Part-Time Workers Regulations which came into force in 2000 are designed to ensure that part-time workers are not treated less favourably than comparable full-time workers on the grounds of their part-time status. Less favourable treatment of a comparable part-time worker is unlawful unless the employer can show that the treatment or action is justified on objective grounds. Thus, for example, it may be unlawful to select part-time staff for redundancy in preference to full-time staff because of their part-time status.

It is also unlawful to provide part-time staff with less favourable terms of employment. The Regulations specifically embody a pro-rata principle for comparing the treatment of part-time and full-time staff. This means that part-time workers should be given pro-rata entitlement to pay and benefits, for example, holidays. Thus, an employee who works 3 days per week in comparison to a 5 days per week full-timer should be allowed 60% holiday entitlement and also 5 out of the 8 public holidays.

The comments in this guidance note are of a general nature only. Full advice should be sought on any specific problems or issues

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March 2013