

Protection of Employees (Part-Time Work) Act 2001



Explanatory Booklet for Employers and Employees

Web: www.djei.ie

Issued by the
Department of Jobs, Enterprise and Innovation

Protection of Employees (Part-Time Work) Act 2001

EXPLANATORY BOOKLET

The purpose of this booklet is to provide general guidance on the Act to employees and employers in non-legal language. The booklet outlines the rights and obligations under the Act. It is important to note that this is an information booklet and not a legal interpretation of the Act.

In cases of doubt or where further information is required, interested parties should refer to the Act or contact the National Employment Rights Authority, O'Brien Road, Carlow, Co. Carlow.

Telephone: 059 917 8990

Lo-Call: 1890 80 80 90*

Website: www.employmentrights.ie

Further copies of the booklet may be obtained from NERA

Other useful telephone numbers:

Department of Jobs,	01 631 2121
Employment & Innovation	Lo-Call 1890 220 222
Labour Court	01 613 6666
	Lo-Call 1890 220 228
Labour Relations Commission	01 613 6700
	Lo-Call 1890 220 227
Rights Commissioner Service	01 613 6700
	Lo-Call 1890 220 227
Pensions Board	01 613 1900

Note: The Lo-Call numbers may be used by callers from outside the 01 area.

*Note that the rates charged for the use of 1890 (Lo-Call) numbers may vary among different service providers.

Department of Jobs, Enterprise and Innovation, Dublin 2.

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1. Purpose of the Act

The Protection of Employees (Part-Time Work) Act 2001 (No. 45 of 2001) came into operation on 20th December 2001.

The purpose of the Act is to implement Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC is:

- (i) to provide that a Part-Time Employee (as defined) cannot be treated in a less favourable manner than a comparable full-time employee in relation to conditions of employment;
- (ii) to provide that all employee protection legislation applies to a part-time employee in the manner as it already applies to a full-time employee. Any qualifying conditions (with the exception of any hours thresholds) applying to a full-time employee in any of that legislation, also apply to a part-time employee;
- (iii) to improve the quality of part-time work and
- (iv) to facilitate the development of part-time work on a voluntary basis and to contribute to the flexible organisation of working time in a manner which takes into account the needs of employers and workers.

2. Who is covered by the Act?

In general, the Act applies to any Part-Time Employee

working under a contract of employment or apprenticeship

employed through an employment agency or

holding office under, or in the service of, the State including members of the Garda Síochána and the Defence Forces, civil servants and employees of any health board, harbour authority or vocational education committee.

In the case of agency workers, the party who is liable to pay the wages (employment agency or client company) will, normally, be deemed to be the employer for the purposes of the Act and be responsible for ensuring that a part-time employee is not treated in a less favourable manner than a comparable full-time employee.

3. Repeal

This Act repeals The Worker Protection (Regular Part-Time Employees) Act 1991, so that the threshold, which required that a part-time worker should be in the continuous service of the employer for not less than 13 weeks and should be normally expected to work not less than 8 hours per week for that employer, no longer applies. The calculation of continuous service for the purposes of entitlement under, for example, the Unfair Dismissals and Redundancy Payments Acts, however, still applies. Thus, in the same manner as a full-time employee, -a part-time employee will still be required to have 12 months continuous service under the Unfair Dismissals Acts and 2 years continuous service under the Redundancy Payments Acts with his/her employer from the start of the employee's employment.

4. Main Definitions

The following definitions apply under the Act:

Conditions of Employment Includes all terms and conditions of the employment contract whether statutory or otherwise including for example: remuneration, pensions, voluntary health contributions, entitlement to sick pay, etc.

Remuneration in relation to an employee, includes-

- (a) any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment, and
- (b) any amounts the employee will be entitled to receive on foot of any pension scheme or arrangement.

Employer means, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment, subject to the qualification as regards an agency worker that the person who under the contract of employment is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual's employer.

<i>Part-time employee</i>	means an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.
<i>Full-time employee</i>	means an employee who is not a part-time employee.
<i>Agency worker</i>	means an individual who agrees with another person, who is carrying on the business of an employment agency, to do or perform personally any work or service for a third person (whether or not the third person is party to the contract).
<i>Normal hours of work</i>	means the average number of hours worked by either a part-time or full-time employee each day during a reference period.
<i>Reference Period</i>	means a period, which is of not less than seven days nor more than twelve months duration.

5. What is a comparable employee?

A comparable employee is a full-time employee (of the same or opposite sex) to whom a part-time employee (defined in the Act as a “relevant part-time employee”) compares himself/herself where the following conditions are met:

- (a) where the comparable employee and the part-time employee are employed by the same or associated employer (and one of the conditions at paragraph 6 below is met)

- (b) where (a) above does not apply (including a case where the part-time employee is the sole employee of the employer), the full-time employee is specified in a collective agreement to be a comparable employee in relation to the part-time employee, or
- (c) where neither (a) or (b) above applies, the full-time employee is employed in the same industry or sector of employment as the part-time employee (and one of the conditions at paragraph 6 below is met).

6. In what circumstances can a part-time employee be compared to a comparable full-time employee?

A part-time employee can be compared to comparable full-time employee-

- (i) where both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (ii) where the work performed by one of the employees concerned is of the same or a similar nature to that performed by the other and any differences between the work performed or the conditions under which it is performed by each, either are of small importance in relation to the work as a whole or occur with such irregularity as not to be significant, and
- (iii) the work performed by the part-time employee is equal or greater in value to the work performed by the other employee concerned, having regard to such matters as skill, physical or mental requirements, responsibility and working conditions.

7. To whom can an agency worker compare himself/herself?

Under the Act a part-time agency worker can only compare himself/herself to a comparable employee who is also an agency worker. Likewise a part-time employee, who is not an agency worker, cannot compare himself to an agency worker.

8. Conditions of employment

The Act provides that a part-time employee shall not be treated in a less favourable manner in respect of his/her conditions of employment than a full-time employee (except in the circumstances set out in paragraph 10 beneath).

EXAMPLES

(a) Overtime Payment

If a full-time comparable employee is paid overtime, then a part-time employee, who compares himself/herself with that comparable full-time employee, is also entitled to overtime payment. A part-time employee is entitled to the same rate of payment for overtime work as his/her comparable full-time employee.

(b) Holiday Entitlement

The holiday entitlement of a part-time employee is related to the holiday entitlement of comparable full-time employee, subject to the minimum legal entitlements under the Organisation of Working Time Act 1997.

Under the Organisation of Working Time Act 1997 a part-time employee's minimum annual leave entitlement is

- (i) 4 working weeks in a leave year in which a part-time employee works at least 1365 hours (unless it is a leave year in which he/she changes employment)
- (ii) $\frac{1}{3}$ of a working week per calendar month that the part-time employee works at least 117 hours
- (iii) 8% of the hours worked in a leave year subject to a maximum of 4 working weeks. These provisions have not been altered by the terms of the Protection of Employees (Part-Time Work) Act 2001.

9. Proportionate provision of certain conditions of employment

If a condition of employment is dependant on the number of hours worked by the employee then the extent to which that condition of employment is provided to a part-time employee shall be related to the proportion which the normal hours of work of that employee bears to the normal hours of work of the comparable full-time employee.

10. Are there circumstances where a part-time employee may be treated in a less favourable manner than a comparable full-time employee?

Yes **In the following two sets of circumstances:**

(a) Objective Grounds

The Act provides that a part-time employee may be treated in a less favourable manner than a comparable full-time employee where such treatment can be justified on objective grounds.

What is an objective ground for treatment in a less favourable manner?

A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations other than the status of the employee as a part-time worker and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

If the treatment of the part-time employee is based on the part-time status of the employee then it is not an objective ground for less favourable treatment. However, what may be considered as not an objective ground in relation to a part-time employee may be considered an objective ground in relation to a casual part-time employee (see paragraph 11).

(b) Pensions

The right not to be treated in a less favourable manner than a comparable full-time employee shall not apply, in relation to any pension scheme or arrangement, to a part-time employee who normally works less than 20 per cent of the normal hours of the comparable full-time employee. However, this provision does not prevent an employer and a part-time employee from

entering into an agreement whereby that employee may receive the same pension benefits as a comparable full-time employee.

11. What is a casual employee?

A casual employee is a part-time employee who works on a casual basis. Under the Act a part-time employee is considered as working, at a particular time, on a casual basis if-

- (a) at that time-
 - (i) he or she has been in the continuous service of the employer for a period of less than 13 weeks, and
 - (ii) that period of service and any previous period of service by him or her with the employer are not of such a nature as could reasonably be regarded as regular or seasonal employment, or
- (b) if he or she fulfils, at that time, the conditions specified in an approved collective agreement (as defined in section 11(5) of the Act) that has effect in relation to him and her, and regards him or her for the purposes of that agreement as working on a casual basis.

An employee's service in an employment is continuous unless that service is terminated by-

- (a) the dismissal of him or her by the employer, or
- (b) the employee voluntarily leaving his or her employment.

The Minister for Jobs, Enterprise & Innovation shall, from time to time, cause to be reviewed the criteria required for a part-time employee to be considered as working on a casual basis. The Minister shall consult with employer and employee organisations and any other appropriate organisations with a view to reviewing such criteria. The Minister may, following such a review, make regulations prescribing a class or classes of employees as not being casual employees.

The Minister shall not make regulations, in relation to part-time employees who work on a casual basis, unless the results of the review, in his/her opinion, show that there cannot be objective grounds for treating such class, or classes, of employees in a less favourable manner than comparable full-time employees.

12. Must an employer provide access to part-time work to his/her employees?

No

However, the Labour Relations Commission may carry out a study of any industry and sector of employment for the purpose of identifying obstacles to the performance of part-time work in that industry or sector. Such studies may lead to the preparation and publication of codes of practice by the Labour Relations Commission.

In drawing up such codes of practice, the Labour Relations Commission shall consult, *inter alia*, such organisations, representative of employers and employees and such other bodies as it considers appropriate. Following this consultation process, the Commission shall determine the extent to which the preparation of

codes of practice could be of practical benefit to employers and employees by identifying the steps that could be taken by employers for the purposes of meeting the requirement of Clause 5.3 of the Framework Agreement viz

As far as possible, employers shall give consideration to

requests by workers to transfer from full-time to part-time work and vice versa,

provide information on the availability of full-time and part-time positions to facilitate transfers from full time to part-time work and vice versa,

facilitate access by part-time workers to vocational training.

13. Voidance of certain provisions in agreements

The Act provides that a provision in any agreement shall be void in so far as it attempts to exclude or limit the application of any provision of the Act or is inconsistent with any provision of the Act.

Nothing in the Act shall be construed as prohibiting the inclusion in an agreement of a provision more favourable to an employee than any provision in the Act. References to an agreement are to any agreement, whether a contract of employment or not, and whether made before, or after, the passing of the Act.

14. Prohibition of penalisation of an employee by an employer

The Act prohibits an employer from penalising a part-time employee on the grounds that:

- (a) he/she has exercised or proposes to exercise his/her right not to be treated in a less favourable manner than a comparable full-time employee in relation to conditions of employment,
- (b) he/she has in good faith opposed by lawful means an act which is unlawful under the Act,
- (c) he/she has refused to accede to a request by the employer to transfer from performing—
full-time work to performing part-time work or vice versa,
or
- (d) he/she has given evidence in any proceedings under the Act or given notice of his or her intention to do so or to do any other thing referred to in (a), (b) or (c) above.

15. What constitutes penalisation of an employee?

The following constitutes penalisation by an employer of an employee:

- (a) dismissal of the employee,
- (b) any unfavourable change in the conditions of employment of the employee,
- (c) any unfair treatment of the employee, including selection for redundancy, or

- (d) any other action which is prejudicial to his or her employment.

16. Exception to penalisation provisions

Any action by an employer against an employee, who refuses to accede to a request by the employer to transfer from performing full-time to performing part-time work or vice versa, shall not constitute a penalisation of an employee if the following conditions are met:-

the employer **must** have substantial grounds **both** to justify the employer's making the request concerned **and** for taking that action consequent on the employee's refusal, and

the taking of that action is in accordance with the employee's contract of employment and the provisions of any other employment rights legislation.

17. Protection against penalisation including dismissal

Where an employee has:

less than one year's service and is dismissed within the meaning of the Unfair Dismissals Acts 1973 to 1993, he/she may refer a case to a Rights Commissioner under the Protection of Employees (Part-Time Work) Act 2001.

more than one year's service and is dismissed within the meaning of the Unfair Dismissals Acts 1973 to 1993, he/she may refer a complaint to a Rights Commissioner under the Protection of Employees (Part-Time Work) Act 2001 or under the Unfair Dismissals Acts 1973 to 1993. However, relief may

not be granted to the employee in respect of that penalisation under both these Acts.

18. What form of redress is available under the Act?

An employee may refer a dispute in relation to an entitlement under the Act to a Rights Commissioner of the Labour Relations Commission for adjudication. A decision of the Rights Commissioner can be appealed to the Labour Court for legally binding determination.

19. Referral of complaints

An employee or any trade union of which the employee is a member, with the consent of the employee, may present a complaint to a Rights Commissioner if it appears that the employer has failed to provide an entitlement to which the employee is due under the Act.

Written notice of complaint must be presented **within 6 months of the date of the alleged contravention**. The **time limit** for submitting a complaint for redress of the alleged contravention may be extended by a further **12 months** if the Rights Commissioner is satisfied that the failure to present the complaint within the normal 6 month period was due to reasonable cause.

Under the Act, the Rights Commissioner, on receipt of a complaint, will send a copy of the notice of complaint to the employer. The Rights Commissioner will then give the parties an opportunity to be heard by him/her and to present any evidence relevant to the complaint. After hearing the parties, the Rights Commissioner will issue a written decision.

Proceedings before a Rights Commissioner will be held in private.

The provisions of this Act regarding the resolution of disputes (access to Rights Commissioner/Labour Court) do not apply to members of the Defence Forces.

20. Rights Commissioner's Decisions

A decision of the Rights Commissioner shall do one or more of the following: -

declare that the complaint was, or was not, well founded,

require the employer to comply with the relevant provision,

require the employer to pay the employee compensation not exceeding 2 years' remuneration.

In a case where the ownership of a business changes after the contravention to which the complaint relates, the new employer will be considered as the employer with reference to the above decision.

21. Appeal from decisions of Rights Commissioner

The employer or employee may appeal the Rights Commissioner's decision to the Labour Court within 6 weeks from the date it was communicated to the parties. The Labour Court shall copy the notice of appeal to the other party and hear the parties according to its own procedures.

A complaint by an employee that a Rights Commissioner's decision has not been implemented may be made by the employee concerned to the Labour Court **6 weeks** after, but within **12 weeks** of, the date on which the decision was communicated to the employee. The Court will issue a determination to the like effect of the Rights Commissioner's decision. The Act precludes the Court from hearing the employer concerned or other evidence in this case.

22. Appeals to the High Court

A party to proceedings before the Labour Court may appeal to the High Court on a point of law from a determination of the Labour Court and the determination of the High Court shall be final and conclusive.

23. Referrals by the Minister to the High Court

The Minister for Jobs, Enterprise and Innovation may, at the request of the Labour Court, refer a question of law arising in proceedings before the Court to the High Court.

24. Enforcement of Labour Court determinations

Following the hearing of the appeal, the Labour Court shall issue a determination. If the Court's determination is not implemented **within 6 weeks** from the date on which the determination is communicated to the parties, the Circuit Court, on application by the employee concerned, by a trade union of which the employee is a member if it has the employee's consent or by the Minister, if the Minister considers it appropriate and without further hearing, shall make an Order directing the employer to carry out the determination in accordance with its terms.

The Rights Commissioner Service is available at Tom Johnson House, Haddington Road, Dublin 4, Tel. (01) 6136700. Lo-call 1890 220227 (if calling from outside the 01 area).

25. Miscellaneous provisions of the Act

(a) Posted Workers and Non-National Workers Working in Ireland

The Protection of Employees (Part-Time Work) Act 2001 confirms for the “avoidance of doubt” that Irish employee protection legislation conforms to the requirements of Directive 96/71/EC of the European Parliament and of the Council of 16 December, 1996, concerning the posting of workers in the framework of the provision of services. In this regard, the Act provides that the full range of Irish employee protection legislation apply to foreign workers posted to work in, or otherwise working in this country.

(b) Increase in fines under the Protection of Employment Act 1977

The Protection of Employees (Part-Time Work) Act 2001 provides that the fine for indictable offences under section 14(2) of the Protection of Employment Act 1977-relating to collective redundancies- is increased from £3,000 to €12,500.