

# HASSENBROOK SCHOOL Specialist Technology College



## **PART-TIME WORKING LEGISLATIVE FRAMEWORK**

## HASSENBROOK SCHOOL

### Section A

#### Part-time working – The Legislative Framework

##### 1. Introduction

- 1.1 There have for some years, been several avenues of redress under which part-time employees can protect their employment rights-principally the Sex Discrimination Act 1975 and the Equal Pay Act 1970 as amended. Although, until now, there has never been any specific legislation to protect part-time workers, case law has built up over the years to fill the gaps in statute.
- 1.2 While this approach has been reasonably successful in the UK, the European Union drew up a Part-time Work Directive in 1997 with a view to formally outlawing discrimination against part-time workers. Following consultation with employer and employee organisations, the Directive was largely incorporated into English law in the form of the Part-time Workers' (Prevention of Less Favourable Treatment) Regulations 2000 and came into force on 1 July 2000. It is worth noting, additionally, that the Regulations have not incorporated every aspect of the Directive but there is an expectation that Public Body organisations will have to comply with all aspects of the Directive.

##### 2. Key aspects of the Part-time Workers' (Prevention of Less Favourable Treatment) Regulations 2000

###### 2.1 The Regulations

The Regulations require that part-time staff should not be treated less favourably than full-time workers in relation to:

- reorganisation of workloads and hours;
- promotion opportunities;
- rates of basic and enhanced payments;
- overtime;
- contractual sick and maternity pay;
- access to occupational pensions;
- access to training;
- redundancy;
- leave, holidays and breaks.
- other benefits (e.g. health insurance, subsidised mortgages);

The right not to be treated less favourably applies only if the treatment is on the grounds that the worker is a part-time worker and the treatment cannot be justified on objective grounds i.e. it can be shown that the less favourable treatment:

- is to achieve a legitimate objective e.g. a genuine business objective;
- is necessary to achieve that objective; and
- is an appropriate way to achieve that objective.

## 2.2 The Directive

In addition, the Directive requires that employers should give consideration to:

- requests to transfer from full-time to part-time work available in the establishment;
- requests to transfer from part-time to full-time or increase hours where opportunities exist;
- measures to facilitate part-time work at all levels.

## 2.3 Comparators and who is a worker? (Regulation 1)

The Regulations ensure that part-timer workers are not treated less favourably in their contractual terms and conditions than comparable full-timer workers, unless different treatment is justified on objective grounds i.e. if it is necessary and appropriate to achieve a legitimate business objective.

### 2.3.1 Part-time workers have the right:

- not to suffer less favourable treatment (Regulation 5)
- not to be unfairly dismissed (Regulation 7)
- not to be subject to any detriment (Regulation 2)

2.3.2 The pro-rata principle applies – a part-time worker should receive the same pay and benefits as a full time worker but proportionate to the number of hours (and weeks) worked.

2.3.4 A part-time worker is one who is paid wholly or in part by reference to the time she/he works and who is not identifiable as full-time.

2.3.5 A comparable full-time worker is a full-time worker who:

- a) is engaged in the same or broadly similar work as a part-time worker;
- b) has a broadly similar level of skills, qualification and experience to those of the part-time worker;
- c) is employed at that time; and
- d) works at the same establishment as the part-time worker, or where no full-time worker working at the establishment satisfies subparagraphs a) and b), works at a different establishment and satisfies those sub-paragraphs. (In Community and Controlled Schools a comparable full-time worker will be considered to be any full-time worker in any Community or Controlled schools who satisfies sub-paragraphs a) and b)).

2.3.6 It is necessary for the part-time worker to find a comparable full-time worker who is working on the same contract. It is important to note that casual/supply workers may well have a claim under the Regulations if they can find a casual/supply worker who is working full-time. (This reinforces the message that where workers are covering full-time posts, they should be given temporary fixed-term contracts and not retained on a casual/supply basis).

#### 2.4 Right to receive a written statement (Regulation 6)

A part-time worker can request a written statement from their employer to explain any less favourable treatment, to which the employer must respond within 21 days.

#### 2.5 Complaint to an Employment Tribunal (Regulations 7 & 8)

The employee has the right to complain to an employment tribunal on the grounds of having suffered a detriment and/or having been dismissed for exercising their rights under the Regulations.

#### 2.6 Remedies (Regulation 7)

2.6.1 If the Tribunal finds a claim is well founded it may:

- make a declaration of rights;
- order compensation; and/or,
- make a recommendation that the employer take specific action.

2.6.2 Compensation awards are likely to be limited to any loss attributable to the infringement based on the pro-rata principle and there is no entitlement to damages for injury to feelings.

2.6.3 It is worth noting, however, that while the Regulations negate the need for claims for unfair treatment in this area to be brought under discrimination legislation (the majority of part-time workers are, at present, women), there is still the opportunity for sex discrimination claims (for which there is no limit to awards) to be brought on top of claims under the part-time regulations.

*Appendix 1 gives details of the explicit terms of the Regulations.*

## Section B

### Part-time working – Best Practice Guidance

#### 3. Introduction

- 3.1 Schools are major employers of part-time workers and, in general treat all of their workers equally. The national conditions of service for support staff and teaching staff provide that part-timers should have applied to them pay and conditions pro-rata to comparable full-time workers. However, in addition to pay and conditions, there are matters of procedure and policy where employers can fall foul of best practice and the law.
- 3.2 The message of the law is quite clear – part-timer workers must be treated equally to full-timer workers in all aspects of employment. There are exceptions if less favourable treatment can be objectively justified, but such objective reasons are likely to be few and far between in the school work environment, judging from case law already established relating to part-time work under the Sex Discrimination Act.
- 3.3 The following guidance is intended to give schools advice about dealing with part-time working issues in all aspects of the employment relationship, with a view to ensuring fair treatment and avoiding the scope for claims under the Regulations.

#### 4. Recruitment

- 4.1 The Regulations do not cover external recruitment. However, part-time workers, all else being equal, are no different from full-time workers in terms of ability or performance. Failure to consider their applications on the basis of their part-time status alone will be limiting the field and employers may fail therefore, to recruit the best person for the job. There may also be vulnerability to sex discrimination claims in certain circumstances.
- 4.2 Best practice recommendations:
- *Employers should always consider whether the posts they are offering could be performed by part-time/job share workers.*
  - *Employers should always consider whether part-time work arrangements could fulfil the requirements of the post, when approached by an applicant who wishes to work part-time.*
  - *Employers should always consider equally, applications from job share applicants.*
  - *Employers must bear in mind the requirement of the Disability Discrimination Act to make reasonable adjustments, which may include varying hours/working pattern, for disabled workers.*

## **5. Promotion/Career Progression and Internal Deployment**

5.1 The same principles for external recruitment apply to internal recruitment opportunities. Considering part-time applications at all levels broadens the field to its full potential, as well as ensuring motivation and development of the whole workforce. Just because someone is part-time does not mean that she/he is not interested in continuing to develop his/her career. The fact that a post is currently performed by a full-time worker does not mean that a part-time worker could not fulfil the post. A similar approach should be adopted to that outlined below for dealing with a request to reduce hours.

### **5.2 Best practice recommendations:**

- *At all levels, including skilled and managerial positions, employers should seek to maximise the range of posts designated as suitable for part-time or job-sharing.*
- *Part-time workers should be allocated tasks commensurate with their post and grade.*
- *Part-time workers should have equal access to development/appraisal schemes.*

## **6. Increasing & Decreasing Hours / Transfer from Full-time to Part-time**

6.1 The Regulations themselves do not make it a legal requirement to allow a worker to change his/her hours. However, public sector employers are almost certainly obliged to follow the broader requirements of the Directive to consider such requests and all schools are vulnerable to sex discrimination claims for refusing such requests as established in the employment courts in recent years. Such requests can be refused if there is a good business reason - something that is not always easy to evidence objectively.

6.2 Employers must bear in mind that requests from men or women to work part-time and/or vary hours should be considered equally. Such requests may be made at any time, not just following, for example, a return from maternity leave.

6.3 Personnel & Development Service's model contracts of employment do not allow the employer to vary the working hours of full-time workers but part-time contracts contain a variable hours clause. Changing the hours of a worker may have profound implications either financially (decreases) or in terms of domestic/private commitments, childcare or even health (increases). There is particular vulnerability in insisting that a part-time worker works full-time. Therefore, in applying this clause, consideration should be given to what constitutes a reasonable change and the circumstances of the individual. Additionally, as much notice as possible must be given. (See section 13. – Redundancy)

6.4 Best practice recommendations:

- *Employers should look seriously at all requests to change from full-time to part-time; from part-time to full-time; and to change hours. The employer should explore with the worker how such changes could be accommodated.*
- *The employer may, in the end, prescribe when the hours need to be worked and how many hours are appropriate in accordance with the needs of business.*
- *Employers can refuse such requests provided they have objective justification – these must be based on sound business reasons.*
- *When looking to enact a variable hours clause, due consideration must be given to the reasonableness of such changes in relation to the impact on each individual worker. A worker's refusal to transfer from full-time to part-time or visa versa should not in itself constitute a sound reason for terminating employment.*
- *Employers must bear in mind the requirement of the Disability Discrimination Act to make reasonable adjustments, which may include varying hours/working pattern, for disabled workers.*

See also Appendix 2

**7. Job Sharing**

7.1 Job-sharing arrangements are a special form of part-time work, where a full-time post is shared between two part-time workers. The job can be divided in a number of ways to suit the circumstances of the post and the individuals concerned. Job-sharing enables skilled workers to obtain or remain in a range of posts and often allows greater flexibility, lower absences etc. Although there may be very slight additional administrative costs involved in administering two wages etc, these are far outweighed by the potential benefits.

7.2 Distinctions need to be drawn between part-time working and job-sharing. A part-time job is just that – a job done for less than full time-hours whereas a job-share is a whole time job shared between two (or more) people.

7.3 Personnel & Development Service's model contracts of employment for job-sharers enable some flexibility where one of the job-share partners leaves.

7.4 Best practice recommendations:

- *Consider seriously any requests for job-sharing both from existing staff and applicants to posts.*
- *Consider indicating that job-share applicants are welcome when advertising posts.*

- *Job-share applicants are not obliged to apply with a partner. If the applicant proves suitable every effort should be made to find a job share partner before offering the post.*
- *If one half of a job-share leaves, offer full-time work to the remaining partner before advertising for a replacement job-sharer.*
- *If no suitable job-share partner can be found, redeployment should be considered.*
- *Ultimately, requests to job-share can be refused where no suitable partner can be found.*

## **8. Providing Information to Workers**

8.1 Employers should examine their practices to ensure that they do not, albeit unintentionally, disadvantage part-time workers. This should include ensuring part-time workers are given all of the same information as full-time workers e.g. about vacancies, policies, procedures etc. and that part-time workers are kept informed about events/issues which may have occurred when they are not at work e.g. meetings.

### **8.2 Best practice recommendations:**

- *Employers should ensure that all policies, procedures and communication systems take into account part-time workers such that part-time workers have equal and timely access to such information.*

## **9. Training**

9.1 Clearly part-time workers are as much in need of training and development as full-time workers and should be subject to the same processes of identification and provision

9.2 Part-time workers should not be denied training and development opportunities simply because of their part-time status. However, part-time workers cannot be obliged to attend training on days they would not normally work (although they can be asked and should be paid to do so) and employers should therefore ensure that the needs of part-time workers are given proper weight when the structure, time and location of training is being planned.

9.3 Where a job-share is in operation, consideration should be given to ensuring each partner has equal access to training.

9.4 The same principles apply to meetings which may need to be rotated in order to allow part-time or job-share staff to attend an equal number or structured information sharing systems should be implemented.

9.5 Best practice recommendations:

- *Appropriate training and development should be provided equally to full and part-time workers.*
- *Employers should consider the needs of part-time workers when arranging training.*
- *Part-time staff should be paid for additional hours where they attend training over and above the normal working hours.*
- *Employers should explore alternative training opportunities e.g. open or distance learning courses, internal courses, cascade training.*

**10. Alternative work arrangements**

10.1 In addition to part-time working in its most common form, there are other flexible work alternatives which may be considered. Clearly not all of the following will be appropriate in all work situations, but imaginative thinking may well lead to mutually acceptable arrangements. Once again, the principle is about looking at ways of being able to recruit and retain experienced and qualified staff.

- Home working
- Term-time only working
- Flexi-time
- Annualised hours
- Career breaks
- Adoption of appropriate leave of absence policies.

10.2 Best practice recommendations:

- *Employers should explore the whole range of flexible work options on a case by case basis.*
- *Employers should adopt appropriate leave of absence policies which give flexibility to the workforce.*

*See also Appendix 3*

**11. Occupational Pension Schemes**

11.1 Part-time workers must be given equal access to pension schemes as that afforded to full-time workers.

11.2 Part-time and supply teachers can make an election to join the Teachers' Pension Scheme.

11.3 All staff are automatically entered into the Local Government Pension Scheme if they have a contract for three months or more, although other staff can elect to join at any time.

11.4 Best practice recommendations:

- *Employers are statutorily obliged to make all staff aware of their pension options.*
- *Employees should be advised to explore the effect of changed hours on their pensions with the appropriate pension provider.*

**12. Other benefits: company cars, mileage allowances**

12.1 Where possible, these and similar benefits should be provided pro-rata.

**13. Redundancy**

13.1 The automatic redundancy of part-time workers is likely to be unfair on two counts: it could infringe the part-time regulations by treating part-timer workers less favourably than full-time workers, and, since most part-timer workers are women, it is likely to be a form of unlawful indirect sex discrimination.

13.2 It may also be unlawful under the Regulations to avoid redundancy by reducing the hours of part-time workers where there are also full-time workers employed in the at-risk group.

13.3 However, the need to explore redundancy avoidance with staff remains, and the possibility of altering hours of full and part-time workers should form part of these discussions.

13.4 Best practice recommendations:

- *Employers should consult on all redundancy avoidance options, treating full and part-time workers equally.*
- *Employers should follow a fair redundancy procedure and select on the basis of their pre-determined objective criteria.*

**14. Holidays, leave etc.**

14.1 Part-time workers should have the same entitlements to holidays, leave of absence etc., pro-rata, to their full-time colleagues. This is provided for in the conditions of service for all school staff.

14.2 Best practice recommendations

- *Employers should apply policies and conditions of service fairly to all staff, using the pro-rata principles where appropriate.*

## Appendix 1 (i)

### Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000

#### Compliance Guidance

(i) Reorganisation of workloads and hours

In organising workloads, part-time workers should not be treated less favourably than full-time workers, unless this treatment can be objectively justified.

(In certain situations employers may also be vulnerable to claims for indirect sex discrimination).

(ii) Promotion opportunities

Previous or current part-time status should not in itself constitute a barrier to promotion to a post, whether the post is full-time or part-time.

(iii) Rates of basic and enhanced payments

Part-time workers should receive the same hourly rate as comparable full-time workers (including any enhanced payments).

(iv) Overtime

Part-time workers should receive the same hourly rate for overtime as comparable full-time workers, once they have worked more than the normal full-time hours.

(v) Contractual sick and maternity pay

Part-time workers should not be treated less favourably than full-time workers in terms of:

- calculating the rate of sick pay or maternity pay;
- the length of service required to qualify for payment;
- the length of time for which payment is received.

(vi) Access to occupational pensions;

Employers should not discriminate between full-time and part-time workers over access to pension schemes, unless different treatment can be justified on objective grounds.

## Appendix 1 (ii)

(vii) Access to training:

Employers should not exclude part-time workers from training simply because they attend for duty on a part-time basis.

(Part-time workers should be paid in full for whole days training attended)

(viii) Redundancy;

The criteria to select jobs for redundancy should be objectively justified, and part-time workers must not be treated less favourably than comparable full-time workers.

(There may be vulnerability in certain circumstances in reducing part-timers' hours to avoid redundancy).

(ix) Other benefits (e.g. health insurance, subsidised mortgages)

Benefits should be applied to part-time workers, unless an exception is justified on objective grounds. Where a benefit, such as company cars, cannot be applied pro-rata this may in itself not be an objective justification. It may be necessary to show objective grounds such as a disproportionate cost to the organisation of such provision.

(x) Leave, holidays and breaks

- The holiday entitlement of part-time workers should be pro-rata to that of full-time workers.
- Contractual maternity leave, paternity leave and parental leave (where applicable) should be available to part-time workers as well as full-time workers.
- Career break schemes should be available to part-time workers in the same way as for full-time workers, unless their exclusion is objectively justified on grounds other than their part-time status.

(xi) Public Holidays and Bank Holidays

The rights to part-time workers in relation to public and bank holidays is not always clear. Some part-time staff may not work, for example, on Mondays when most bank holidays fall, and it is possible that tribunals will consider part-timer workers to have been treated less favourably where they do not receive pro rata pay or time off in lieu for these holidays.

## **Appendix 2 (i)**

### **Considering requests to increase / decrease hours**

Consideration of a change of hours will inevitably involve discussion between the employer and worker, focusing on the worker's tasks and responsibilities. An arrangement which suits both parties will ensure that the job gets done and the morale/health/well-being of the worker is maintained or enhanced.

In order to facilitate these discussions, the following key areas should be explored:

#### **Decreasing hours**

- Can the post be filled as a job-share?
  - Is there a suitable candidate for a job-share?
  - Could one be recruited?
- Does someone need to be present in this post during the whole working day?
- Can all the necessary work be done in the hours requested?
- Can alternative part-time hours be negotiated?
- Could the job be refined to make it easier to do part-time?
- Is there another job of a similar level which the worker could do part-time?
- Is the change for a known period?
- How much would it cost to recruit and train a replacement if the worker left?
- What benefits would the organisation derive from this arrangement?
  - More commitment?
  - Retention of a valued member of staff?
  - Flexibility of workforce?
- Are there already job-shares or part-time workers in the organisation in the same or other posts? (i.e. has a precedent been set?)

## **Appendix 2 (ii)**

### **Increasing hours**

- Is there sufficient work for those hours?
- Could the extra hours be used to re-organise a number of jobs more efficiently?
- Can the organisation afford the increase in pay?
- Will the increase save money by avoiding the need for recruitment?

These factors may also be considered when re-assessing posts prior to advertisement.

## **Appendix 3**

### **Alternative Work Arrangements**

#### **Home working**

There may be occasions when staff work at home on particular days and certainly a large proportion of staff will undertake work at home in the evenings or at weekends. However, home working in its purest sense involves people who are employed on the basis of their work base being their home and this is unlikely to reflect the school context.

#### **Term-time only working**

This involves staff being required to attend for work for the appropriate number of weeks in a year and is common practice for many school-based posts, affording full and part-time workers greater opportunity to arrange their personal lives, particularly around child care responsibilities.

#### **Flexi-time**

This involves staff working a core number of hours but having greater flexibility about start and finish times. This will not be appropriate in all cases, since management will need to ensure attendance at certain key times.

#### **Annualised hours**

This is a modified version of flexi-time and/or term-time only working. Workers are employed for a fixed number of hours per year, but work more hours for some weeks of the year and less in others e.g. fewer hours during school closure periods.

#### **Career Breaks**

The County Council operates a scheme to enable staff to take a break while keeping in touch with the employer, with a view to returning to work at some stage. Although there is no contractual obligation to provide work at the end of the career break, the employer will endeavour to facilitate a return.

#### **Leave of Absence Policies**

There is a range of leave of absence policies/options (e.g. parental leave, paternity leave, unpaid leave of absence) which facilitate effective management of staff attendance, whilst also giving staff the flexibility they need to manage their personal and professional lives. When in place, these policies provide a clearly understood framework which reduces the abuse of absence and makes staff and employers feel more secure.