

Part-Time Workers

A level playing field?

Overview

The law protects part-time workers from discrimination on the basis of their part-time status. As well as the Part-time Workers Regulations 2000 (PTW Regulations), police officers are also protected by the Police Regulations 2003, which set out the entitlements of part-time officers to pay, allowances, annual leave and other benefits.



A right to work part-time?

The PTW Regulations do not give you a right to work part-time and the statutory right to request flexible working does not apply to the police service. However, College of Policing Guidance says there should be a parallel right for officers to request flexible working, and European law on part-time working (which does apply to police officers) provides that, as far as possible, a request to transfer from full, to part-time should be considered.

If your request to work part time or flexibly is refused, it may be unlawful as indirect sex discrimination under the Equality Act 2010. The force would have to prove clear operational reasons to justify any such refusal. There is more information about this in the fact sheet on sex discrimination. You should note that normally you have to bring a sex discrimination claim to an employment tribunal within three months less one day of the date the refusal was made. These provisions are complicated and you should get legal advice or advice from your Federation representative to make sure you do not run out of time.

Your rights under the PTW Regulations

The PTW Regulations protect part-time officers from being less favourably treated than full-time officers, unless the treatment can be justified. Less favourable treatment might include, for example, inferior terms and conditions or working environments, or putting a part-time officer at a disadvantage.

You are also protected from victimisation. This means it is unlawful for a force to treat you less favourably because you have made a complaint or pursued a claim under the PTW Regulations, asked for information about them or helped someone else to do so.

The PTW Regulations include guidance notes which may be helpful. In particular, there is a section on access to training for part-time workers.

Proving less favourable treatment

In order to show you have been less favourably treated because you work part-time, you have to compare your treatment with an equivalent full-time worker (called a “comparator”). This must be someone who does the same or broadly similar work as you and has equivalent qualifications, skills and experience. The comparator should also work in the same place as you, unless there are no full-time workers, in which case you can use a comparator in another location.

The PTW Regulations also protect your terms and conditions if you change from full to part-time work or return to part-time work after an absence of less than a year (for example, after a period of maternity leave). If you change from full to part-time work, the comparator does not have to be a real person. In this instance you can compare your new part-time terms and conditions with those you had in your previous full-time role.

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In most cases the pro-rata principle applies to part-time officers. This means your pay and benefits, such as allowances, are paid in proportion to a full-time officer. This won't always apply though. For example, it may be appropriate to pay some allowances in full rather than to pro-rata them.

If you have been treated less favourably because you work part-time, this is unlawful if the treatment cannot be justified on objective grounds. There is guidance in the PTW Regulations about what counts as objective justification, but generally it must be a necessary and proportionate means of achieving a legitimate operational objective. In other words, a force must put forward a genuine operational reason why you have been treated in that way.

It does not count as less favourable treatment if you get paid at an unenhanced rate for overtime, providing the hours you worked are within the normal full-time week. You should be paid an enhanced overtime rate in the same way as full-timers, for hours you work over the normal full-time week.

Making a claim under the PTW Regulations

If you think your rights under the PTW Regulations are being or have been infringed, you can ask the force for a written statement of the reasons for your less favourable treatment. The force must respond within 21 days of the request. This statement is admissible as evidence and an employment tribunal can draw its own conclusions if the force doesn't respond fully, or at all.

Normally you have three months less one day of the less favourable treatment to bring your claim to the employment tribunal. If your complaint is about less favourable terms and conditions, this may be treated as taking place on each day they are effective. If your complaint is about less favourable treatment on changing from full- to part-time work, this is treated as taking place only on the first day of working under the part-time contract or your return from absence.

If your complaint of less favourable treatment is due to an omission by your employer, it can be complicated to work out the date on which this happened and you may need to get legal advice.

Sometimes, the tribunal may allow a claim to be brought after the deadline. There is no time extension for pursuing your complaint through the force's internal grievance procedure. You should seek advice from your Federation representative as soon as possible to avoid missing any time limits.

Remedies

If your complaint is successful, the tribunal can:

- Make a declaration on your rights and the rights of the force in relation to your complaint
- Order the force to pay you compensation for financial losses (this does not include injury to feelings where the complaint is under the PTW Regulations)
- Recommend the force takes action to remove or reduce the detriment within a specified period.

Questionnaire

You can serve a questionnaire on the force to obtain useful information relating to your complaint. ACAS have prepared guidance on 'asking and responding to questions of discrimination in the workplace' which is available on their website at www.acas.org.uk.

Mandatory ACAS Early Conciliation

If you are thinking about making an employment tribunal claim, you will first need to notify details of your claim to ACAS, who will then offer early conciliation to try to resolve the dispute. The conciliation period can be up to one month. If the claim does not settle, ACAS will issue a certificate confirming that the mandatory conciliation process has concluded.

There are changes to time periods within which to lodge claims to allow for the period during which a claim is with ACAS. The period within which a claim is with ACAS will not count for calculation of time limits; and if the time limit would usually expire during that period, or within the month after the certificate is issued, then you will have up to one month following receipt of the conciliation certificate in which to lodge a claim.

The process makes the calculation of time limits in employment tribunal cases more complicated. Claimants are advised to be aware of limitation issues and seek legal advice promptly. For further information on the ACAS early conciliation process visit: www.acas.org.uk

Employment Tribunal Fees

You have to pay a fee when you file your claim in the employment tribunal. Fees are payable when you issue your claim and prior to a final hearing. A fee remission scheme is in place- see the employment tribunal website at www.employmenttribunals.service.gov.uk for further details. The booklet on the website "EX160A Court and Tribunal fees – do I have to pay them?" Provides details for claiming a remission of fees.

If you need further assistance, in the first instance please contact your local Joint Branch Board.

W: www.slatergordon.co.uk/policelaw

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