

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 10

PART TIMERS

What you need to know about:

**EMPLOYMENT RIGHTS
PAY AND CONDITIONS
TAX & NI
STATUTORY SICK PAY**

*Community
Legal Service*



November 2009

More people than ever before are doing part-time work. There is growing recognition of its importance to employers and to the national economy. Part-time work is also seen as an important factor in the promotion of policies, which allow people to balance work and home life. Since the majority of part-time workers are women, treating part-time workers less favourably, or unreasonably refusing to allow someone to work part-time, may amount to sex discrimination.

Additionally, new laws now specifically protect the rights of part time workers. If you are dismissed for *asking* for the same rights as a full-time worker, you can claim unfair dismissal at Employment Tribunal even if you have worked there for less than one year.

WHAT IS PART-TIME WORK?

There are different definitions of part-time work:

- * 'Full-time hours' are usually specified in your contract. Anything less is 'part-time'.
- * For statistical purposes, the government defines part-time workers as people normally working for not more than 30 hours a week.
- * Some entitlements, such as Statutory Sick Pay (SSP) or Statutory Maternity Pay (SMP), depend not on the number of hours you work but on whether you earn above the National Insurance Lower Earnings Limit (see below). Some part-timers do not earn enough to be eligible for these payments.

WHAT LEGAL RIGHTS DO YOU HAVE?

Part-timers have all the same **statutory** rights as full-timers. Statutory rights include things like protection from discrimination or from unfair dismissal and rights to receive a minimum wage, holiday pay, notice and redundancy pay if you qualify for them (see the check list at the back of this leaflet or contact the **Pay & Employment Rights Service (PERS)** for more details). Most statutory rights now depend only on your length of service or level of income, not the number of hours you work.

Since **1st July 2000**, part-time workers also have the same **contractual** rights as 'comparable' full time workers. Contractual rights are terms and conditions which are agreed between you (or your representative, such as a trade union) and your employer. They include things such as rate of pay and bonus schemes. Your contract may give you improvements on your statutory rights (for example better holiday or sickness arrangements) but cannot give you terms that are worse than the statutory minimum.

However, less favourable contractual terms for part-time workers *may* sometimes be justified in order to achieve a legitimate business objective – see below.

EQUAL PAY AND CONDITIONS

Since 1st July 2000, the law says you must have equally favourable 'pro rata' terms and conditions as a 'comparable' full-time worker. **All** workers have this right, including agency workers and home workers. It applies equally if you are changing from full-time to part-time work (perhaps because you have particular family responsibilities, health or study needs or because you want to prepare for retirement) and if you are returning to work part-time after an absence (for instance after maternity or sick leave).

'Pro rata' means that you get the same rights in proportion to the number of hours you work. For instance, if a comparable full-timer works for 5 days a week and you work for 2 days, you should get 2/5ths of their holiday pay, pension contributions, salary etc.

A **'comparable worker'** is someone who is:

a) on the same **type of contract** as you - e.g. if you are on a temporary contract you can only compare yourself to another full-time temporary worker, not a full-time permanent worker. Your 'type of contract' might be permanent, temporary, fixed term, an apprenticeship, employee or non-employee.

b) doing the **same or similar work** as you, with similar skills and experience.

c) employed by the **same employer** as you, normally at the same establishment.

If you are changing from full-time to part-time work with the same employer, you can compare your part-time terms to your own previous full-time terms.

Terms and conditions affected include:

- * hourly rate of pay, bonuses, evening/weekend working pay enhancements;
- * overtime payments, once you have worked more than normal full-time hours;
- * contractual sick pay and contractual maternity/paternity pay;
- * contractual holiday (including pro rata bank holiday) entitlement, contractual maternity, parental and dependants' leave; career break schemes;
- * access to company benefits such as occupational pensions, profit-sharing/share options, staff discounts, etc;
- * access to training, which should be at times to fit in with most workers; and
- * criteria for promotion and transfer, and for redundancy selection.

Remember, however, that there may be an **objective reason** for giving you less favourable contractual terms and conditions than a comparable full-time worker. It could be justified if it can be shown that it is necessary and appropriate to achieve a legitimate business objective. If so, this would not be unlawful. If your employer is treating you less favourably because you are a part-time worker, you should ask for a **written statement** explaining the reasons for the different treatment. Your employer must reply in 21 days. If you are not satisfied that the reply gives a genuinely 'objective reason', you can complain to an Employment Tribunal within 3 months of the less favourable treatment taking place.

NATIONAL INSURANCE (NI)

Eligibility for NI benefits depends on how much you earn. If a job pays you over the NI Lower Earnings Limit (the LEL) - **£95 from April 2009** - you may qualify for essential payments during periods when you are not working, such as when you are unemployed, having a baby, sick or retired. Many part time workers lose out on benefits because they are paid below the NI Lower Earnings Limit. Neither you nor your employer will start to *pay* NI contributions until you earn over the Employee's Earnings Threshold - **£110 from April 2009**. This is higher than the LEL. Eligibility for NI benefits depends on whether you earn above the LEL, not on whether you pay NI contributions.

Your NI entitlement is worked out **separately** for each job you do. So, for example, in a week you might earn £55 in one job and £65 in another, both below the NI Lower Earnings Limit (LEL). Although your week's earnings total £120, well above the LEL, you will not qualify for NI benefits as each wage is below the LEL. However, because NI is worked out separately, you will get some benefits for each job in which you earn enough to qualify. So if you have two part-time jobs and earn over the Lower Earnings Limit in each, you will be entitled to **Statutory Sick Pay** from **each** job if you are off work sick for more than three working days from both jobs at the same time.

INCOME TAX

Everyone is allowed to earn a certain amount before they start paying tax. Every year this amount (the Personal Allowance) is set in the Budget. The threshold is **£125 per week from April 2009**. The rate will probably change again in April 2010. See **PERS leaflet No 2, Tax and NI**, for more information.

Tax should be automatically deducted from your pay and should be detailed on your **itemised payslip**. You should get a payslip even if you do not earn enough to pay any NI or tax and even if you only work a few hours a week.

Please note: Unlike NI, if you have more than one part-time job you will be taxed on the **total** amount you earn in both (or all) your jobs.

STATUTORY SICK PAY (SSP)

If you earn over the NI Lower Earnings Limit, you will be entitled to SSP on the same basis as full-time workers. The amount you will be paid is decided in the Budget and usually changes in April (**£79.15 from April 2009**). This is a weekly amount which, does not depend on your own earnings. Some firms will offer company sick pay in addition to SSP.

There is no qualifying period before you can claim SSP. However, it is only paid from the fourth day of sickness onwards. The waiting days and the days you get SSP (qualifying days) must be days you would normally work. So if you normally work for two days a week you would not start getting SSP until the end of your second week of sickness. If your working week varies, then you and your employer must agree on which are qualifying days.

Please look at the most recent PERS leaflet No 3, Statutory Sick Pay, for more information and to check the up-to-date figures.

MATERNITY BENEFITS

All pregnant employees are entitled to paid time off for antenatal appointments, to 52 weeks statutory maternity leave from the job they are doing, to protection against unfair dismissal or redundancy for reasons connected with their pregnancy or childbirth, and to safe and healthy working conditions. As a part-time worker, you will qualify for other benefits, such as Statutory Maternity or Paternity Pay (SMP and SPP) and the right to request more flexible hours or terms, on the same basis as full-time workers. Women who don't earn enough for SMP but who **regularly earn £30 or more** per week may qualify for **Maternity Allowance**.

See PERS leaflet No 5, Maternity & Paternity Rights, for more information.

OTHER BENEFITS

You may be entitled to certain benefits such as Income Support, Tax Credits or help with child-care or housing costs, depending on the hours you work and the amount you earn. Check with your local Citizen's Advice Bureau or Jobcentre Plus. If in doubt - claim.

TRADE UNIONS

All workers have a legal right to join a trade union and not to be victimised for doing so. Most unions have different subscription rates for part-time workers. When you join, check if you are entitled to a reduced subscription.

See PERS leaflet No 12, Trade Unions, for more information.

CHECK YOUR RIGHTS

Statutory Rights:	Right starts:
Protection from discrimination on grounds of race, religion or belief, sex or sexuality, disability or age.	Immediately
Right to equal treatment for part-time and fixed term workers	Immediately
Right to equal pay for work of equal value	Immediately
Right to receive the national minimum wage	Immediately
Entitlement to 5.6 weeks paid holiday a year	Immediately
Right to time off for antenatal appointments	Immediately
Right to 52 weeks ordinary maternity leave	Immediately
Right to return to work after maternity leave	Immediately
Right to written reasons for dismissal when pregnant	Immediately
Right to statutory sick pay	Immediately
Entitlement to dependants' leave	Immediately
Protection from unfair dismissal for asserting a statutory right; for asking for equal treatment to full-timers; for reasons related to trade union activities, or to pregnancy, paternity, adoption, parental or dependants' leave; for a health & safety reason; for refusing to work on Sunday; for 'whistle blowing'; for reasons connected with Working Time Regs, national minimum wage, Tax Credits Act, acting as a pension trustee or employee representative.	Immediately
Right to time off for trade union duties/activities, for appointed safety reps, or for public duties	Immediately
Right to receive itemised pay statement	Immediately
Right not to have unauthorised deduction from wages	Immediately
Entitlement to 20 min rest break if working more than 6 hours	Immediately
Right not to work more than 48 hours a week on average	Immediately
Right to guarantee payments when laid off	After 1 month
Right to notice/notice pay	After 2 months
Right to Written Statement of Employment Particulars	After 2 months
Right to statutory maternity pay	26 weeks prior to the 14th week before the baby is due
Right to statutory paternity leave and pay	
Right to adoption leave and pay	
Right to apply for flexible working if entitled	After 6 months
Entitlement to parental leave	After 1 year
Right to claim unfair dismissal	
Right to written reasons for dismissal	
Right to statutory redundancy payment	After 2 years

Please note: Other qualifications may apply e.g. earnings level, age, employment status, industrial sector.

PERS LEAFLETS

This is one of a series of leaflets which look at aspects of your rights at work:

- 1 Contracts of Employment
- 2 NI and Income Tax
- 3 Statutory Sick Pay
- 4 Paid Holidays
- 5 Maternity & Paternity Rights
- 6 Redundancy
- 7 Equal Pay
- 8 Race Discrimination
- 9 Sex Discrimination
- 10 Part Timers
- 11 Dismissal
- 12 Trade Unions
- 13 Disability Discrimination
- 14 The National Minimum Wage

*This leaflet is intended as a guide and is not a full statement of the law.
Please seek advice before taking any action.*

PERS has a complaints and comments procedure. Please contact us for a copy if you wish to make a complaint or comment about our services.

PAY & EMPLOYMENT RIGHTS SERVICE

**Unit 14 Batley Enterprise Centre • 513 Bradford Road
Batley • WF17 8LL**

01924 428030

www.pers.org.uk

Telephone advice is available from PERS at the following times:

Monday: 10am to 1pm

Tuesday: 10am to 4pm & 5.30pm to 7.30pm

Wednesday: 10am to 4pm

Thursday: 10am to 4pm

Friday: 10am to 1pm

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