



EMPLOYMENT RIGHTS EXPLAINED

Factsheet 5: Part-time workers

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This factsheet gives information about the employment rights of part-time workers. It also covers people who jobshare and gives information about the rights of agency workers. You can find more information about your employment rights in the booklet *Employment rights explained* (available from your local Citizens Information Centre), from the National Employment Rights Authority (NERA) at www.employmentrights.ie or from the Citizens Information website at www.citizensinformation.ie

Who is a part-time employee?

A part-time employee is an employee whose normal hours of work are less than the normal hours of a comparable employee. People who share a job (see below) are viewed as part-time workers and have all the statutory entitlements of part-time workers.

Who is a comparable employee?

A comparable employee (called a comparator) is one who is doing the same or similar work. The work of the part-time employee must be of equal or greater value to the comparator's work. The comparable employees must be employed by the same or an associated employer, or in the same industry or sector, or designated as such in a collective agreement.

What rights do part-time workers have?

In general, a part-time employee may not be treated less favourably than a comparable full-time employee in respect of conditions of employment, including pay and pensions, unless the employer can objectively justify the different treatment. Any justification offered cannot be connected with the fact that the employee is on a part-time contract.

If you are a part-time employee and you have discovered that a comparator (as described above) is receiving a condition of employment that you are not, you could claim that employment condition from your employer. The only way your employer could avoid granting you this condition of employment would be if they had objective grounds for treating you less favourably than the comparable full-time employee.

In relation to a pension scheme or arrangement, an employee who normally works less than 20% of the normal hours of the comparable full-time employee can be treated in a less favourable manner. However, this does not prevent an employer and a part-time employee from entering into an agreement whereby the part-time employee receives the same pension benefits as a comparable full-time employee.

Where employers try to justify less favourable treatment on objective grounds, they have to show that the difference in treatment is:

- Based on grounds other than the part-time status of the employee, and
- These grounds are for the purpose of achieving a legitimate objective of the employer, and are
- Appropriate and necessary for that purpose

The entitlement of the part-time employee is in proportion to the entitlement of the full-time employee.

The legislation listed below applies to all employees regardless of the number of hours worked. Other qualifying conditions, such as length of service, continue to apply in the same way to all employees. For instance, this means that the previous condition in the Terms of Employment (Information) Act 1994 – that the Act only applied to employees working eight or more hours a week – no longer applies. However, the condition in the 1994 Act of at least one month's service still does apply.

- Adoptive Leave Acts 1995 and 2005
- Carer's Leave Act 2001
- Employment Equality Acts 1998 and 2004
- Maternity Protection Act 1994 and the Maternity Protection (Amendment) Act 2004
- Minimum Notice and Terms of Employment Acts 1973 and 1984
- National Minimum Wage Act 2000
- Organisation of Working Time Act 1997
- Parental Leave Act 1998 and Parental Leave (Amendment) Act 2006
- Payment of Wages Act 1991
- Protection of Employees (Employers' Insolvency) Acts 1984 to 1990
- Protection of Young Persons (Employment) Act 1996
- Redundancy Payments Acts 1967 to 2007
- Terms of Employment (Information) Act 1994–2001
- Unfair Dismissals Acts 1977 to 2007
- Worker Participation (State Enterprises) Acts 1977 to 2001

Part-time employees cannot be victimised for invoking their rights under the Act.

Part-time casual employees may be treated less favourably if such a difference in treatment can be objectively justified. Casual employees are those with fewer than 13 continuous weeks' service who are not in regular or seasonal employment or are regarded as casually based by a collective agreement to that effect.

Are part-time workers covered for maternity leave?

Yes, all female employees who have a contract of employment are now entitled to maternity leave (currently 26 weeks), regardless of the hours worked or length of service. See **Factsheet 4: Leave for parents** for more on maternity leave.

What are annual leave entitlements for part-time workers?

Holiday entitlements of part-time workers are calculated in a different way to those of full-time workers. Under the Organisation of Working Time Act 1997 part-time workers are entitled to eight hours leave for every 100 hours worked, subject to a maximum of 4 working weeks (8% of all hours worked, excluding lunch time). So if you worked 500 hours in a leave year you would be entitled to 40 hours leave. Time spent on annual leave is counted as working time when calculating holiday entitlements.

The statutory leave year is from 1st April to 31st March. (An employer can use a different leave year, such as January to December, provided this is used consistently.)

How are public holiday entitlements calculated?

Part-time workers who have not worked for their employer for at least 40 hours in total in the 5 weeks before a public holiday are not entitled to paid leave on the public holiday. Part-time workers who are entitled to paid leave on the public holiday but are due to work that day are entitled to an extra day's pay, or a paid day off within a month of the public holiday, or an extra day's annual leave, as the employer decides.

Those entitled to paid leave but not due to work on the public holiday are entitled to one fifth of their weekly pay instead of the actual day's leave or pro rata time off/annual leave as mentioned above. Where the pay varies, an average day's pay can be worked out by adding the number of hours worked over the previous 13 weeks and dividing by the number of days worked.

Am I entitled to overtime?

Part-time workers are entitled to overtime if a comparable full-time employee is paid overtime after working their maximum hours per week. However, your employer can determine that part-time employees must work the same number of hours as a full-time employee before they can claim overtime. Employers in Ireland are not required by law to pay employees higher rates (i.e., 'double time')

for work completed in overtime. You must however, receive at the very least, your normal hourly rate of pay for overtime.

Does a part-time worker pay PRSI?

Every employee aged 16 to 66 years should be included in Pay Related Social Insurance (PRSI) but what you pay and the cover it gives you will depend on your class of insurance. This is set out under social welfare legislation. A part-time worker will be insured at Class A, if earning €38 per week or more, with cover for all benefits including short-term payments such as Jobseeker's Benefit, Illness Benefit and Maternity Benefit and long-term payments such as the State Pension (Contributory).

How much PRSI will I pay?

If you earn less than €352 per week you pay none. Your employer still has to pay the employer's portion and you are covered for benefits. If you have more than one employer, the PRSI exemption of €352 per week applies to each employment.

Can a part-time worker get Jobseeker's Benefit if unemployed?

Whether or not you get Jobseeker's Benefit for the part of the week that you are unemployed will depend on your social welfare record, being available for full-time work and genuinely looking for work. Department of Social and Family Affairs regulations mean that if you are only looking for part-time work you might be regarded as being unavailable for work and therefore not eligible for Jobseeker's Benefit.

Do I have a right to request part-time work?

No, you do not have a statutory right to request part-time work. An employer is not obliged to provide access to part-time work to his or her employees. However, the *Code of Practice on Access to Part-Time Working* aims to encourage employers and employees to consider part-time work and to provide guidance on procedures to improve access to part-time work for those employees who wish to work on a part-time basis.

Do I have a right to jobshare?

Jobsharing arises where one employment position is shared, usually between two employees. There is no statutory right to jobshare. However, a contract of employment may deal with jobsharing by stating, for example, that the employer

will consider requests from employees to jobshare. In addition, custom and practice within a workplace may indicate that jobsharing has been allowed in the past. Jobsharing arrangements may not discriminate against employees on gender or any of the other grounds in the equality legislation.

If formal arrangements do not exist, an employee wishing to jobshare must negotiate this with the employer. Equally, the employer cannot force the employee to enter into a jobsharing arrangement. The details of any jobsharing arrangement should be fully discussed and agreed between the parties, including the conditions that apply if the employee wishes to go back to the previous working arrangement.

Agency workers – who are they?

An agency worker is a person who has an agreement with an agency to work for another person. For example, a secretary may have an agreement with a secretarial agency to do work for an office while one of their employees is on leave. It is obviously important for the secretary to know who is responsible for ensuring compliance with employment protection legislation – the agency or the firm for which he or she is working. There is a new EU Directive on equal treatment of agency workers but it has not yet been transposed into Irish law.

Who is considered an agency worker's employer?

This depends on which rights the worker is seeking to enforce. Under the Unfair Dismissals (Amendment) Act 1993, the employer is the person for whom the employee actually works rather than the agency. Thus, in the example given above, the secretary's employer is the firm for which he or she is doing the temporary work.

Compliance with health and safety requirements is also the responsibility of the person or organisation for whom the agency worker is actually working.

Under all other employment legislation, the person who pays the wages is regarded as the employer of the agency worker. So, in the example of the secretarial agency given above, if the agency charges the office its fee and pays the actual wages of the secretary, then the agency is the employer and must fulfil the responsibilities of a normal employer. As a result, if the secretary wishes to take leave under the Maternity Protection Act 1994, she should serve the relevant notice on the agency because the agency pays her wages.

The Social Welfare (Miscellaneous Provisions) Act 2003 clarifies the PRSI position of agency workers. It provides that agency workers are insurably employed and the person who pays the wages is the employer for PRSI purposes.

I am a domestic worker working for a person in their home. What are my employment rights?

The term domestic worker refers to people employed to carry out duties in a private home (for example to clean or to take care of children or older people). Domestic workers often work part time. As a domestic worker, you have broadly the same rights as all other workers in Ireland. The key difference is that it is not illegal to discriminate against a prospective domestic employee at the interview and selection stage. For example, an advertisement could state that a woman is required to look after children without being considered discriminatory. However once the person has taken up the job they are fully protected by anti-discrimination legislation.

The Code of Practice for Protecting Persons employed in other People's Homes states that employers should give employees written details of the hours of work, rate of pay, duties of the job, annual leave, place(s) of work and rest breaks. Employers must also supply payslips with details of the payment intervals, rates of pay per hour, any overtime payments made, PRSI and PAYE deductions and any other deductions.

ENFORCING YOUR RIGHTS

Complaints under the Protection of Employees (Part-Time Work) Act 2001 Act should be brought to a Rights Commissioner within six months of the date of the contravention of the Act or the date of termination of employment, whichever is earlier. However the Rights Commissioner may extend this period by a further six months if there was reasonable cause for not bringing the complaint within the first six months.

The Citizens Information Board is the statutory body which supports the provision of information, advice and advocacy on the broad range of social and civil services to the public. It provides the Citizens Information website and supports the voluntary network of Citizens Information Services and the Citizens Information Phone Service.

USEFUL ADDRESSES

Citizens Information Board Head Office

George's Quay House
43 Townsend Street, Dublin 2

Tel: (01) 605 9012

Website:

www.citizensinformationboard.ie

Email: info@ciboard.ie

Labour Relations Commission (including Rights Commissioner Service)

Tom Johnson House, Haddington
Road, Dublin 4

Tel: (01) 613 6700

Email: info@lrc.ie

Website: www.lrc.ie

Department of Social and Family Affairs

Information Services, Social Welfare
Services Office, College Road, Sligo

Tel: (01) 704 3000

Lo-call: 1890 20 23 25 (to request
an information leaflet or booklet)

Lo-call: 1890 66 22 44

(for general information)

Website: www.welfare.ie

National Employment Rights Authority

O'Brien Road, Carlow

Tel: (059) 917 8800

Lo-Call: 1890 220 100

Email: info@employmentrights.ie

Website: www.employmentrights.ie

Citizens **Information** 

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www.citizensinformation.ie

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1890 777 121 Open Mon to Fri, 9am to 9pm

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