Protection Of Employees (Part-Time Work) Act, 2001

Origin And Purpose Of The Act

The Protection Of Employees (Part-Time Work) Act, 2001 came into effect on 20 December, 2001. The purpose of the Act was to implement a European Directive 97/81/EC of December 15,1997 concerning the Framework Agreement on Part-Time Work concluded by the European employers' organisations and the ETUC (European Trade Union Confederation).

The Act aims –

- 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;
- to provide that all protective employment legislation applies to part-time employees in the manner as it already applies to full-time employees. Any qualifying conditions, with the exception of any hours thresholds, applying to full-time employees in any of that legislation, also apply to a part-time employee;
- to improve the quality of part-time work;
- and 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 that takes account of the needs of employers and employees.

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;
- holding office under, or in the service of, the State including members of the Garda Siochána and the Defence Forces, civil servants and employees of the Health Services Executive (HSE), and any harbour authority or VEC.

In the case of agency workers, the party who is liable to pay the wages – the 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 part-time employees are not treated in a less favourable manner than comparable full-time employees.

Definition Of Terms Under The Act

The following definitions apply under the Act –

- *Conditions Of Employment* includes all terms and conditions of the employment contract whether statutory or otherwise including remuneration, pensions, VHI contributions, sick leave entitlements, etc;

- *Remuneration* in relation to an employee includes any consideration, whether in cash or in kind, which the employee receives, directly or indirectly, from the employer in respect of the employment and any amounts the employee is entitled to receive in respect of any pension scheme or arrangement;

- *Employer* means, in relation to the 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 work or service concerned shall be deemed to be the individual's employer;

- *Part-Time Employee* means an employee whose normal hours of work are less than the normal hours of a comparable employee in relation to her/him;

- *Full-Time Employee* means an employee who is not a part-time employee;

- *Agency Worker* 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;

- *Normal Working Hours* means the average number of hours worked by either a part-time or full-time employee each day during a Reference Period;

- *Reference Period* means a period which is not less than seven days nor more than twelve (12) months duration.

What Is A Comparable Full-Time 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 her/himself where one of the following conditions are met –

A: where the comparable employee and the part-time employee are employed by the same or associated employer;
B: where this does not apply, including a case where the part-time worker is the sole employee, the full-time employee specified in a collective agreement to be a comparable employee in relation to the part-time employee;
C: or, where neither of the above applies, the full-time employee is employed in the same industry or employment sector as the part-time employee.

In cases A and C above, one of the following conditions must also be met:

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

- 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 done;
- where the work performed by one of the employees concerned is of the same or 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 are either of small importance in relation to the work done as a whole or occur with such irregularity as not to be significant;
- 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 or working conditions.

Who Can An Agency Worker Compare Themselves To?

A part-time agency worker can only compare them-self to a comparable employee who is also an agency worker. Like-wise a part-time employee, who is not an agency worker, cannot compare themselves to an agency worker.

What Are The Benefits Of This Act For Part-Time Workers?

The Act provides that a part-time employee cannot be treated in a less favourable manner in respect of their conditions of employment than a full-time employee – unless there are objective grounds for doing so. The following *examples* demonstrate the point –

- *overtime payments* – if a full-time comparable employee is paid overtime, then a part-time employee who compares them-self with that comparable full-time employee is also entitled to an overtime payment. Part-time employees are entitled to the same rate of overtime payment;
- *holiday entitlement* – the holiday entitlement of a part-time employee is related to the holiday entitlement of a comparable full-time employee subject to the minimum legal entitlements of the Organisation Of Working Time Act, 1997.

Can A Part-Time Employee Claim Exactly The Same Conditions Of Employment As A Comparable Full-Time Employee?

Yes – but if the condition of employment relates to an amount of benefit (in monetary terms) or to the scope of a benefit (in any other case) and is dependent on the amount of hours worked then it may be paid to the fixed-term employee on the principle of *pro rata temporis.* In other words, the condition of employment concerned, whether monetary or otherwise, shall be related to the proportion which the normal hours of that part-time employee bear to the normal hours of work of the comparable full-time employee. If a part-time employee works a quarter of normal weekly working hours of the comparable full-time employee, they would expect to receive a quarter of a normal week's wages.

Can A Part-Time Employee Ever Be Treated Less Favourably Than A Comparable Full-Time Employee?

Yes – if there are Objective Grounds for doing so and in relation to pensions –

- *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;
- *Pensions* – the right not to be treated in a less favourable manner than a comparable full-time employee shall not apply to a pension scheme or arrangement for a part-time employee who works less than 20% of the normal hours of the comparable full-time employee. This does not, however, prevent an employer and part-time employee from entering into an agreement whereby that employee may receive the same pension benefits as a comparable full-time employee.

What Is An Objective Ground?

The Act outlines that the Objective Grounds for the purposes of justification of less favourable treatment than a comparable full-time employee, are that the less favourable treatment must be for the purpose of

achieving a legitimate objective on the employee and such treatment is appropriate and 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 as an objective ground in relation to a *casual part-time employee*.

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 –

- s/he has been in the continuous service of the employer for a period of less than thirteen weeks;
- that period of service and any previous period of service are of a nature that could not be reasonably regarded as regular or seasonal employment;
- if s/he fulfils, at that time, conditions specified in a collective agreement (approved by the Labour Court) that has effect in relation to them and regards them, for the purposes of that agreement, as working on a casual basis.

How To Establish If A Part-Time Worker's Service Is Continuous?

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

- their dismissal by the employer;
- the employee voluntarily leaving their employment.

The Minister may, from time to time, review the criteria required for a part-time employee to be considered as working on a casual basis. The Minister shall consult the Social Partners and may make regulations classifying certain groups as not being casual workers. The Minister will only make such regulations if there cannot be objective grounds for treating such classes of employees in a less favourable manner than comparable full-time employees.

Part-Time Worker and "Continuous Service" under other legislation

The calculation of continuous service for the purpose of entitlement under other legislation – such as the Unfair Dismissals Acts, 1977-2015 or Redundancy Payments Acts, 1967-2015 – still applies when making a claim under these Acts. Thus part-time workers, as with their full-time colleagues, will still be required to have twelve months continuous service to be covered by the Unfair Dismissals Acts and two years continuous service to be covered by the Redundancy Payments Acts. Such service has, of course, to be with the same employer.

Can An Employer Avoid The Provisions Of This Act?

No. A provision in any agreement or contract of employment is void insofar as it attempts to exclude or limit application of the Act or is inconsistent with the Act.

Nothing in the Act shall be construed as prohibiting the inclusion in any agreement or contract of employment a provision for more favourable treatment for part-time employees than that provided for in the Act.

What Protection Does The Act Give Part-Time Workers?

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

- s/he exercised or proposes to exercise their rights not to be treated in a less favourable manner than a comparable full-time employee in relation to conditions of employment;
- s/he has in good faith opposed by lawful means an act which is unlawful under the Act;
- s/he has refused to accede to a request by an employer to transfer from performing full-time work to performing part-time work or vice versa;
- s/he has given evidence in any proceedings under the Act or given notice of their intention so to do.

What Constitutes Penalisation Of A Part-Time Worker?

The Act States that an employee is penalised if he or she –

- is dismissed;
- suffers any unfavourable change in the conditions of employment;
- suffers any unfair treatment, including selection for redundancy; or
- is subject to any other action which is prejudicial to their employment.

Are There Any Exceptions To These Penalisation Provisions?

An action by an employer against an employee who refuses to transfer from performing full-time to part-time work or vice versa, shall not constitute 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;
- any action taken is in accordance with an employee's contract of employment and the provision of any employment rights legislation.

What Protection Does A Worker Have Against Penalisation?

Where an employee has less than one year's continuous service within the meaning of the Unfair Dismissals Acts, 1977-2015, s/he may refer a case to the Workplace Relations Commission alleging penalisation under the Protection of Employees (Part-Time Work) Act, 2001.

Where the employee has greater than one year's continuous service within the meaning of the Unfair Dismissals Acts, 1977-2015, s/he may refer a complaint to the Workplace Relations Commission alleging a breach of the Protection of Employees (Part-Time Work) Act, 2001 and/or alleging a breach of the Unfair Dismissals Acts, 1977-2015. Relief will, however, only be granted to an employee under one of these Acts.

How To Make A Complaint/Refer A Dispute?

A complaint in relation to a contravention of the Protection of Employees (Part-Time Work) Act 2001 may be made to the Workplace Relation Commission within six (6) months of the date of the contravention that gave rise to the complaint. The case will be heard by an Adudication Officer in the first instance. The

Adjudication Officer may extend the six (6) month time limit for making a complaint to twelve (12) months if there was reasonable cause for not submitting it within the six (6) months.

The Decision Of An Adjudication Officer

A decision of an Adjudication Officer 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

Appeal To The Labour Court From A Decision Of An Adjudication Officer

An employer or employee may appeal an Ajudication Officer's decision in writing to the Labour Court within forty-two (42) days of the date the Adjudication Officer's decision. The Labour Court may extend the forty-two (42) day time limit for making an appeal if there were exceptional circumstances for not submitting it within the six (6) months

The Labour Court will notify the other party of the appeal and will arrange a hearing between the parties. A hearing before the Labour Court is in public unless an application is made for special circumstances and the labour Court so determine.

The Labour Court has the power to refer a point of law to the High Court for final determination.

Following the hearing the Labour Court will make a decision in writing affirming, varying or setting aside the decision of the Adjudication officer.

An employer or employee may appeal a Labour Court decision, within six (6) weeks of being served with the decision, to the High Court on a point of law only. A High Court decision arising out of such an appeal is final and conclusive.

What Happens If The Employer Fails To Implement A Labour Court Decision?

If an employer does not comply with a Labour Court decision within forty-two (42) days of receiving notice of the decision and the time for appealing the decision has passed, then the employee can seek to enforce the decision before the District Court.

If an employer appeals an Adjudicators decision but abandons the appeal, then the employee must wait forty-two (42) days from the date of abandonment to apply to District Court for enforcement

The District Court may issue an Order, without hearing evidence, compelling the employer to comply with the terms of the decision.