

SUBSIDIARY LEGISLATION 452.79**PART-TIME EMPLOYEES REGULATIONS**

1st January, 2003

LEGAL NOTICE 427 of 2002, as amended by Legal Notices 140 of 2007 and 240 of 2008.

1. (1) The title of these regulations is the Part-time Employees Regulations. Title.

(2) The purpose of these regulations is -

- (a) to provide for the removal of discrimination against part-time workers and to improve the quality of part-time work;
- (b) to facilitate the development of part-time work and to contribute to the flexible organization of working time taking into account the needs of employers and workers.

2. Saving the provisions of regulation 13, these regulations apply to all part-time workers as defined by the Employment and Industrial Relations Act. Applicability. Cap. 452.

3. (1) In these regulations -

"Act" means the Employment and Industrial Relations Act;

"leave" means vacation leave, sick leave, birth leave, bereavement leave, marriage leave and injury leave and any other leave to which a whole-time employee is entitled;

"ordinary hours of work" means the hours of work exclusive of overtime;

"principal employment" means that employment in respect of which social security contributions are payable in terms of the Social Security Act, and it also includes employment which is excepted from the payment of social security contributions under Part II of the First Schedule to the Social Security Act where:

- (a) the employment is one that is excepted under paragraph 3 of Part II of the said First Schedule and is the only employment of the employee; or
- (b) the employment is one as is excepted under paragraph 8 or paragraph 9 of the said First Schedule;

"pro rata" has the meaning assigned to it by article 2 of the Act:

Provided that:

- (a) when the employee is in part-time employment on a variable time schedule, the weekly number of hours of work shall be the weekly average number of hours of work spread over successive thirteen week periods commencing on the first of January of each calendar year; and

Interpretation.
Amended by:
L.N. 140 of 2007;
L.N. 240 of 2008.
Cap. 452.

Cap. 318.

- (b) when the employee has not been in part-time employment for a period of thirteen weeks the average weekly number of hours of work shall be calculated over the number of weeks in employment;

"week" means a calendar week.

(2) Subject to the provisions of subregulation (1), terms and expressions used in these regulations shall, unless the context otherwise requires, have the meaning assigned to them in the Act.

Less favourable treatment of part-time employees.

4. (1) Without prejudice to what is stated in regulation 6, it shall be the duty of the employer to ensure that a part-time employee is not treated less favourably than a comparable whole-time employee -

- (a) with regards to the terms of the employee's contract of employment; and
- (b) by being subjected to any other detriment by an act, or deliberate failure to act, of the employer solely because of the employee's part-time work:

Provided that any different treatment may be justified on objective grounds.

(2) A part-time employee who is paid at a lower rate for overtime than a comparable whole-time employee is or would be paid in the same period shall not, for that reason, be regarded as treated less favourably than the comparable whole-time employee where or to the extent that, the total number of hours worked by the part-time employee in that period, including overtime, does not exceed the number of hours that the comparable whole-time employee is required to work in that same period, disregarding absences from work and overtime.

Right to receive a written statement.

5. (1) It shall be the duty of the employer to provide a written statement to an employee who requests such statement in writing and who considers that his employer may have treated him in a manner which infringes a right conferred on him by regulation 4.

(2) Such statement shall state the reasons for any difference in treatment and shall be provided within twenty-one days from the date of the request.

(3) A written statement made in terms of this regulation shall be admissible as evidence in any proceedings under these regulations.

Leave for part-timers.
Amended by:
L.N. 140 of 2007.

6. (1) Those part-time employees, whose part-time employment is their principal employment shall be entitled *pro rata* to -

- (a) the minimum entitlement of all public holidays and annual vacation leave, sick leave, birth leave, bereavement leave, marriage leave and injury leave applicable in terms of the recognized conditions of employment and to such other leave established by virtue of the Act;

- (b) any entitlement to statutory bonuses and other income supplements to which comparable whole-time employees on similar duties with the same employer are entitled in terms of the recognised conditions of employment applicable to them.

(2) For the purposes of this regulation, the wage applicable to the part-time employee shall be the hourly rate related to the number of hours of work for which the employee is employed.

7. (1) The *pro rata* leave entitlement of a part-time employee shall be computed in hours as a fraction of the total number of hours of leave entitlement of a comparable whole-time employee.

Computation of
pro rata leave
entitlement.

(2) The *pro rata* leave entitlement of the part-time employee shall be availed of as whole working days, with the equivalent number of hours being deducted from the *pro rata* leave entitlement calculated in hours:

Provided that when the residual hours of leave entitlement are less than the part-time employee's working day, the remaining entitlement shall be availed of as part of a working day on one occasion.

8. All part-time employees who are employed in such part-time employment shall be entitled to participate in vocational training programmes provided by or on behalf of the employer in the same manner as whole-time employees at the same place of work.

Entitlement to
participate in
vocational training.
Amended by:
L.N. 140 of 2007.

9. Every employer shall inform part-time employees about the availability of whole-time work opportunities, and whole-time employees about part-time opportunities to facilitate transfers from full-time to part-time or vice versa within the same place of work. Such information is to be given in a timely manner in order to allow the employees to apply for the vacancy.

Duty of employer
to inform part-time
employees on
whole-time
opportunities.

10. An employee's refusal to transfer from part-time to whole-time work and vice versa shall not in itself constitute a valid reason for termination of employment, without prejudice to the justified termination of employment as prescribed by the Act.

Employee's refusal
to transfer to
whole-time
employment.

11. (1) A part-time employee shall be regarded as having been unfairly dismissed if the reason for the dismissal or the grounds for the dismissal are:

Unfair dismissal of
part-time
employee.

- (a) that the employee has:
- (i) brought proceedings against the employer under these regulations;
 - (ii) requested from his employer a written statement of reasons under regulation 5;
 - (iii) given evidence or information in connection with such proceedings brought by any employee;
 - (iv) otherwise done anything under these regulations in relation to the employer or any other person;
 - (v) alleged that the employer had infringed these regulations; or

- (vi) refused (or proposed to refuse) to forgo a right conferred on him by these regulations; or
- (b) that the employer believes or suspects that the employee has done or intends to do any of the things mentioned in paragraph (a).

(2) Where the reason or principal reason for dismissal is that mentioned in subregulation (1)(a)(v), or (b) so far as it relates thereto, then subregulation (1) shall not apply if the allegation made by the employee is false and not made in good faith.

Complaints to the Industrial Tribunal.
Amended by:
L.N. 140 of 2007.

12. (1) An employee may present a complaint to the Industrial Tribunal that his employer has infringed a right conferred on him by these regulations.

(2) Subject to subregulation (3), the Industrial Tribunal shall not consider a complaint under this regulation unless it is presented within the period of four months from the date of the less favourable treatment or the alleged unfair dismissal.

(3) For the purposes of calculating the date of the less favourable treatment, where a term in a contract is less favourable, that treatment shall be treated as taking place on each day of the period during which the term is less favourable, but in any case such period shall only start to run on the lapse of three months from the date of publication of these regulations.

(4) Where an employee presents a complaint under this regulation and the employer claims that the treatment is justified on objective grounds, it shall be incumbent on the employer to prove that the less favourable treatment is so justified on objective grounds.

Exclusion.

13. These regulations shall not apply to -

- (a) holders of political office who are deemed part-time, including Members of Parliament and local councillors;
- (b) persons who are following apprenticeship schemes or schemes managed by the Employment and Training Corporation;
- (c) persons appointed on public sector boards, commissions or authorities and, or who are so appointed for an established term;
- (d) persons who are holders of a judicial office.

More favourable conditions.

14. These regulations shall be applicable without prejudice to the introduction and implementation of more favourable provisions in collective agreements and any other contract of employment or employment relationship entered into between the employer and the employee.