



An Roinn Airgeadais  
Department of Finance

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E109/49/02

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**Circular 2/2003: Protection of Employees [Part-Time Work] Act 2001**

A Dhuine Uasail,

1. I am directed by the Minister for Finance to refer to the Protection of Employees [Part-Time Work] Act 2001 and to say that the arrangements applying to civil servants in relation to part-time work are as in that Act.
2. This Circular provides a summary of the main provisions of the Act as it applies to civil servants. It does not purport to be a legal interpretation of the Act. For further information, Departments must see the booklet entitled Protection of Employees [Part-Time Work] Act 2001 issued by the Department of Enterprise, Trade and Employment. The booklet is available on that Department's web site at [www.entemp.ie](http://www.entemp.ie)
3. The Protection of Employees [Part-Time Work] Act 2001 came into operation on 20 December 2001. The purpose of the Act is to implement Directive 97/81/EC of 15 December 1997 concerning the Framework Agreement on part-time work concluded by UNICE, CEEP and the ETUC. In summary, the purpose of the Act is:
  - (i) 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;
  - (ii) to provide that all employee protection legislation applies to a part-time employee in the manner it already applies to a full-time employee. Any qualifying conditions (with the exception of any hours thresholds) applying to a full-time employee in any of that legislation also apply to a part-time employee;
  - (iii) to improve the quality of part-time work; and
  - (iv) 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 which takes into account the needs of employers and workers.

4. The Act defines a “part-time employee” as an employee whose normal hours of work are less than the normal hours of work of a comparable employee in relation to him/her.

5. In general, the Act applies to any part-time employee working under a contract of employment or apprenticeship; employed through an employment agency; or holding office under, or in the service of the State, including members of the Garda Síochána and the Defence Forces, civil servants and employees of any health board, harbour authority or vocational education committee. In the case of agency workers, the party who is liable to pay the wages (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 a part-time employee is not treated in a less favourable manner than a comparable full-time employee.

6. The Act defines a “comparable employee” as a full-time employee (of the same or opposite sex), to whom a part-time employee compares himself/herself where the following conditions are met;

- (a) where the comparable employee and the part-time employee are employed by the same or associated employer (and one of the conditions at paragraph 7 below is met)
- (b) where (a) above does not apply (including a case where the part-time employee is the sole employee of the employer), the full-time employee is specified in a collective agreement to be a comparable employee in relation to the part-time employee, or
- (c) where neither (a) or (b) above applies, the full-time employee is employed in the same industry or sector of employment as the part-time employee (and one of the conditions at paragraph 7 below is met).

7. The Act lays down that a part-time employee can be compared to a comparable full-time employee where:

- (i) both employees perform the same work under the same or similar conditions or each is interchangeable with the other in relation to the work,
- (ii) the work performed by one of the employees concerned is of the same or a 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, either are of small importance in relation to the work as a whole, or occur with such irregularity as not to be significant, and
- (iii) 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 and working conditions.

8. The Act provides that a part-time employee shall not be treated in a less favourable manner in respect of his/her conditions of employment than a full-time employee (except in the circumstances set out in paragraph 9 below). For example, if a full-time comparable employee is paid overtime, then a part-time employee, who compares himself/herself with that comparable full-time employee, is also entitled to overtime payment. A part-time employee is entitled to the same rate of payment for overtime work as his/her comparable full-time employee. [It should be noted that, in the Civil Service, overtime is only paid for attendance outside the span of the conditioned working day of full-time staff in the grades concerned.]

9. 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. A ground would be considered as an objective ground for treatment in a less favourable manner, if it is based on considerations *other than* the status of the employee as a part-time worker and the less favourable treatment is for the purpose of achieving a legitimate objective of the employer and such treatment is necessary for that purpose.

10. The Act also provides that the right not to be treated in a less favourable manner than a comparable full-time employee shall not apply, in relation to any pension scheme or arrangement, to a part-time employee who normally works less than 20 per cent of the normal hours of a comparable full-time employee. However, this provision does not prevent an employer and a part-time employee from entering into an agreement whereby that employee may receive the same pension benefits as a comparable full-time employee.

11. Departments must seek the sanction of the Department of Finance before entering into agreement with staff on any matter arising from the implementation of the Protection of Employees [Part-Time Work] Act 2001.

*Mise le meas,*

Joe McGovern  
Assistant Secretary