

WESTERN MORNING NEWS FEATURE
YOU AND THE LAW for Thursday 09/07/09
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Answers readers' questions



Under-paid part-timer

Q. My daughter has worked in the same office for 25 years, the last 12 at 20 hours a week. She has discovered recently that she has been paid at a lower rate than full-time staff for doing the same job, some of whom arrived long after she did.

A. Part-time workers should be not treated less favourably than comparable full-time workers in their terms and conditions unless it is objectively justified. A different hourly rate might be objectively justified if, for example, a fairly appraised and undiscriminatory performance-related pay scheme was in operation. Your daughter should ask her employer to provide a written statement explaining why she is paid at a lower rate. If necessary she can make a claim to the employment tribunal without having to leave her job. She may also have a claim for sex discrimination if there is a gender difference in payment for the same work and she should seek legal advice.

Still sore after tribunal win

Q. I won a case for unfair dismissal against my former employer at the employment tribunal. I wondered if there was any other legal action I can take against them for sacking me when they had no right to do so.

A. It's highly unlikely. A claimant must bring all the grounds of complaint capable of being heard by the employment tribunal at the same time (with a few exceptions), and the same issues can't now be heard in another forum. In winning your case I presume you have received financial compensation. If you believe that the employment tribunal has made a mistake in calculating an award, or has not awarded you the full amount claimed for a reason you consider is incorrect, it is possible to apply to have that point reviewed or to appeal against the decision. But the time limits for doing so are very tight.

Part-time holidays

Q. I have a permanent part-time job working 14 hours a week for ten months of the year. For that job I get 5.6 weeks' paid holiday pro rata. However I do a different job for the same employer on a casual basis, whereby I work an eight-hour day two days a week, but I don't get any holidays, or pay in lieu of holidays, for that. Should I?

A. Yes. All "workers" (basically anyone who is not properly self-employed) are entitled to a minimum of 5.6 weeks' paid holiday, pro rata, for every job done.

This can get quite complicated but it means that you have a right to annual leave which would allow you to be away from your place of work for 5.6 weeks, paid at your usual rate. If you have no normal working hours your holiday pay should be based on your average pay over the previous 12 weeks. You are not allowed to take pay in lieu of holidays: you actually have to take the holiday unless you are leaving the firm, in which case you are entitled to any holiday pay you have accrued. Discuss this with your employer.