



STATUTORY INSTRUMENTS

S.I. No. 8 of 2006

INDUSTRIAL RELATIONS ACT 1990 (CODE OF PRACTICE ON ACCESS TO PART-TIME WORKING) (DECLARATION) ORDER 2006

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Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006

WHEREAS the Labour Relations Commission has prepared under subsection (1) of section 42 of the Industrial Relations Act 1990 (No. 19 of 1990), a draft code of practice on access to part-time working;

AND WHEREAS the Labour Relations Commission has complied with subsection (2) of that section and has submitted the draft code of practice to the Minister for Enterprise, Trade and Employment;

NOW THEREFORE, I, Tony Killeen, Minister of State at the Department of Enterprise, Trade and Employment, in exercise of the powers conferred on me by subsection (3) of that section, the Labour (Transfer of Departmental Administration and Ministerial Functions) Order 1993 (S.I. No. 18 of 1993) (as adapted by the Enterprise and Employment (Alteration of Name of Department and Title of Minister) Order 1997 (S.I. No. 305 of 1997)), and the Enterprise, Trade and Employment (Delegation of Ministerial Functions) Order 2004 (S.I. No. 809 of 2004), hereby order as follows:

1. This Order may be cited as the Industrial Relations Act 1990 (Code of Practice on Access to Part-Time Working) (Declaration) Order 2006.
2. It is declared that the code of practice set out in the Schedule to this Order shall be a code of practice for the purposes of the Industrial Relations Act 1990 (No. 19 of 1990).

Schedule

Preamble - General Context

The importance of developing access to part-time work as a strategic response to growing demands for modern, flexible work-organisation, has been recognised and highlighted in economic and social policy development at international, EU and national levels. It is widely recognised that widening access to part-time work, in the context of encouraging and promoting the development of a flexible labour market, has positive economic and social benefits for employers and employees. In addition, widening access can have a role to play in facilitating further education and training, increasing participation of older people in the workplace, providing a meaningful option for many people with disabilities and providing work life balance work options generally.

Benefits for the employer

- Retention of valued and experienced staff who might otherwise leave the organisation, thereby reducing training and recruitment costs;
- Availability of a wider range of candidates for vacancies, especially skilled and experienced people who might only be interested in working part-time;
- Flexibility to match work needs and staffing requirements more closely, for example flexibility in service delivery, hours worked and variations in workload;
- Improved productivity and reduced absenteeism;
- Increased employee commitment, morale and loyalty, which is associated with improved productivity.

Benefits for the employee

- Greater sense of responsibility, ownership and control of working life;
- Better relations with management;
- Improved job satisfaction generally;

- Better work life balance and reduced stress – employees are better able to balance work and non-work issues, for example caring responsibilities, commuting and pursuing further education.

1. Introduction

- 1.1 Section 42 of the Industrial Relations Act 1990 provides for the preparation of draft Codes of Practice by the Labour Relations Commission for submission to the Minister, and for the making by the Minister of an order declaring that a draft Code of Practice received under Section 42 and scheduled to the order shall be a Code of Practice for the purposes of the said Act.

Section 13 (5) of The Protection of Employees (Part-Time Work) Act 2001 provides that the Labour Relations Commission may prepare, in consultation with the social partners, a Code of Practice governing access to part- time work.

- 1.2 Clause 10.9 of Sustaining Progress (Social Partnership Agreement 2003 – 2005) provides as follows: “The Government will request the Labour Relations Commission to develop a Code of Practice, in conjunction with the parties to the Pay Agreement, on access to part-time work in line with the provisions for consultation and evaluation as set out in Section 13 of the Protection of Employees (Part-Time Work) Act 2001.”

In March 2003 the Minister for Enterprise, Trade and Employment requested the Commission under Section 42 (1) of the Industrial Relations Act 1990 and Section 13 of the Protection of Employees (Part-Time Work) Act 2001, to prepare a Code of Practice on Access to Part-Time Work.

- 1.3 When preparing and agreeing this Code of Practice, the Commission consulted with relevant organisations and took account of the views expressed to the maximum extent possible.
- 1.4 For the purposes of this Code, “part-time employee” means an employee whose normal hours of work are less than the normal hours

of work of an employee who is a comparable employee in the employment in relation to him or her.

2. Background

- 2.1 The rights of part-time employees to equal treatment in regard to their contractual terms and conditions of employment vis-à-vis full-time employees are enshrined in The Protection of Employees (Part-Time Work) Act 2001. In general terms, the Act provides that part-time employees must not be treated less favourably than comparable full-time employees unless there are objective grounds, and where a benefit is determined by the number of hours an employee works, it shall be on a pro-rata or proportionate basis to part-time employees. There is no provision in the Act, or elsewhere in Irish employment law, for a statutory entitlement to part-time work. Rather, the Act makes provision for the Labour Relations Commission to carry out studies for the purposes of identifying obstacles that may exist in particular industries or sectors to access to part-time work, and for the Commission, in consultation with the social partners, to prepare a Code of Practice which would be of practical benefit to employers and employees in addressing such obstacles.
- 2.2 The introduction of a Code of Practice on access to part-time working accords with the principle of minimising the potential for indirect discrimination in relation to part-time working and introduces positive measures to eliminate obstacles and barriers and encourage greater participation in employment on a number of grounds, as set down in the Employment Equality Acts 1998-2004.

3. Purpose of the Code

The Code seeks to:

- Encourage best practice and conformity with the provisions of the Employment Equality Acts 1998–2004 and the Protection of Employees (Part-Time Work) Act 2001;
- Promote the development of policies and procedures to assist employers, employees and their representatives, as appropriate, to improve access to part-time work for those employees who wish to work on a part-time basis;
- Promote discussion and encourage employers, employees and their representatives, as appropriate, to consider part-time work and to address any barriers that may exist;
- Stimulate employers - where consistent with business requirements - to provide wider access to part-time work options;
- Provide a framework and practical guidance on procedures for accessing part-time work;
- Inform those who are interested in part-time work.

4. General Principles

The Code operates from the basic principles that:

- The code is applicable to all employers and employees;
- Access to part-time work should, as far as possible, be available across different levels in the organisation;
- As far as possible, employers should give consideration to
 - requests by employees to transfer from full-time to part-time work;
 - requests by employees to transfer from part-time to full-time work or to increase their working time should the opportunity arise.
- An employee moving to part-time work should suffer no diminution of status or employment rights generally, with the exception of pay, benefits as appropriate, etc (unless there are objective grounds);
- The pro-rata principle should apply where appropriate.

5. Business Context

A key element in the consideration of improving access to part-time work – either introducing part-time working arrangements or enhancing existing arrangements - is the operational/business context of the organisation and the need to enhance economic competitiveness. The capacity of the organisation to facilitate part-time working is dependant on business and operational factors, which may include:

- Concerns around increased costs – for example in administration, training and recruitment;
- Particular difficulties around the capacity of organisations with small numbers of employees to accommodate part-time working or to replace staff who are so facilitated;
- Concerns around day-to-day operations, for example impact on service delivery, implications for full time staff etc.

Essentially, consideration should be given to minimising potential constraints, for example administrative, financial or legal.

6. Reviewing and Developing Company/Organisational Policies and Practices

6.1 In general terms, providing for access to part-time work should be considered in the context of developing company/organisational policies and practices to respond to modern work environments, including mechanisms to promote flexible work organisation, equal opportunity and work life balance.

6.2 As best practice it is recommended that companies/organisations introduce, in consultation with their employees and representatives, as appropriate, new policies or review existing policies to facilitate effective access to and performance of part-time work and specify how

part-time working arrangements will operate in the company or organisation.

6.3 Assessing/expanding scope of part-time working opportunities

Best practice recommends that employers assess within their own organisations the possibilities of either introducing part-time working or increasing the range/scope of existing part-time working arrangements. As best practice it is recommended that employers should explore, in consultation with their employees and representatives, as appropriate, the possibility of introducing part-time work opportunities and/or maximise the range of posts as suitable for part-time working at all levels in the organisation, including skilled and managerial positions. A range of objective criteria should be developed to determine the suitability or otherwise of positions for part-time working. Barriers to the introduction of part-time work, at all levels in the organisation, should be identified and considered when an application for part-time work is made or when a vacancy arises. In this regard possible measures on how best to overcome such barriers should be considered.

Factors to be taken into account in this regard may include:

- What demand is there, if any, for part-time working in the organisation?
- Where a demand is identified, can work be organised differently to facilitate part-time working?
- How does the organisation deal with/process a request for part-time working?
- What are the business implications of introducing or expanding part-time working, for example in terms of service delivery, covering absence, business continuity, administration and costs generally?

- Can part-time working – to a greater or limited extent, be accommodated having regard to both the business needs of the organisation and the needs of the employee(s)?
- Are there business benefits and opportunities to the organisation in widening access to part-time work?
- What posts – including managerial and skilled posts - are suitable (or unsuitable) for part-time working?
- Are there regulatory or licensing implications?
- Does an employee need to be present in a particular post during all hours of work and, if not, can the necessary work be done by a part-time worker?
- Implications of seniority/service as appropriate;
- If a request from an employee to work part-time is refused what are the implications? For example would the employee leave and, if so, what are the recruitment and training implications/costs of a replacement?
- Are there issues around demotivation/poor morale in not providing part-time working opportunities?
- Are there opportunities in the organisation for existing part-time workers to move around the organisation in the interests of job/career development?
- Are there Employment Equality Act implications? An application for part-time working should be considered on non-discrimination grounds in accordance with the legislation. What do the policies of the organisation provide for in terms of promoting equal opportunities and work life balance?
- What will be the impact of part-time working, if any, on existing employees and their workloads?
- Are there increased time demands on management?

The outcome of any assessment of part-time working possibilities should indicate the following:

- The relevant factors to be taken into account in evaluating/determining part-time working options for the organisation;
- The actual potential for part-time working to contribute to the success of the organisation;
- The barriers, where they exist, and what reasonable steps may be necessary to overcome such barriers;

Policies should be adapted, where possible.

A key element to be considered in introducing a successful part-time working policy, particularly in large organisations, is the necessity for the support and commitment of members of management at all levels of the organisation to such policies.

7. Recruitment

Where possible, when recruiting new employees, employers should consider the proposed content, status and positioning of vacant/new posts in the organisation to determine whether the posts being offered could be performed on a part-time basis.

8. Requests by employees to (a) transfer from full-time to part-time work and (b) transfer from part-time to full-time work or to increase their working time should the opportunity arise

The facility to change the existing hours of work of employees is a matter to be agreed between the employer and the employee, rather than a statutory entitlement. Best practice indicates that employers should treat such requests seriously and where possible explore with their employees if and how requests can be accommodated or how such transfers can be made.

In this regard employers should consider establishing a procedure allowing for (i) application, (ii) relevant consultation and discussion, (iii) decision and response, (iv) managing the outcome (implementation or refusal).

Recommended best practice indicates that such a procedure should provide for the following elements:

- An application from the applicant outlining the reasons for the request to transfer from full-time to part-time working, indicating whether the request is of a temporary or permanent nature.
- A reasonable timeframe to consider the request.
- In considering the application both the employer and employee should take account of all factors both relevant to the organisation and personal to the applicant. Relevant factors may include:
 - The personal and family needs of the applicant;
 - The number of employees already availing of part-time work;
 - Additional resources required to meet part-time cover and other business/operational needs of the organisation and implications of same;
 - The urgency of the request;
 - The period of time covered by the request;
 - The employee's legal rights and entitlements;
 - The equal opportunities policy of the organisation;
 - How the applicant's proposed revised hours will fit with the tasks of his/her job and how these tasks will be performed during the period of part-time work;
 - The implications, if any, for the applicant's conditions of employment;
 - The effect, if any, on the staffing needs of the organisation;
 - Procedure for reviewing the arrangement.

- The employer should issue a decision to the applicant. If the application is successful, details of how the arrangement will work should be discussed with the applicant (and other work colleagues if appropriate) and agreed. It is useful to draw up an agreement, signed by the parties, detailing any changes to terms and conditions of employment, for example income, annual leave, pension entitlements etc.
- The consideration by an employer of a request for part-time work would have regard to the business needs of the organisation.
- If the application is refused (or deferred) the grounds for doing so should be made clear to the applicant.
- The applicant should have recourse to an appeals mechanism in the event that a mutually satisfactory solution is not reached, for example through the normal established grievance procedures in the organisation.

It should be noted that part-time working may not be appropriate to particular situations and an applicant should be prepared to accept a refusal, if there are good reasons for it. An employer may refuse a request for part-time working if it is satisfied that such arrangements would have an adverse effect on the operation of the business, lead to staffing difficulties or other relevant factors which might impact negatively on the business.

9. Training

Access to training can be an issue for part-time employees. Training courses in many organisations may be organised having regard to the availability of full-time employees. Part-time employees have less flexibility to attend training courses. For example it can be difficult for part-time employees to attend residential courses if they have other commitments, or other responsibilities prevent them from participating because of the inconvenient timing of training. As best practice it is

recommended that employers should, where feasible, ensure that the needs of part-time employees are taken into account when the structure, time and location of training is being planned. Where necessary, part-time employees may have to complete training outside their normal hours of work.

10. Career Opportunities

The Code advocates an approach that aims to identify part-time working opportunities across different levels in an organisation. As best practice it is recommended that organisations review their training, performance appraisal, promotion/career development policies to ensure that there are no career development barriers, direct or indirect, to the progression of part-time workers in the organisation.

11. Information

Providing information to Employees

It is important that employees availing of part-time work are not disadvantaged with regard to access to information. As best practice it is recommended that employers should periodically review how individuals are provided with information on the availability of posts, both part-time and full-time.

Providing Information to Representative Bodies

Organisations may have arrangements in place for representing employees in discussions with management, for example collective bargaining arrangements, work councils or staff forums. It is important that representatives are kept informed about the organisation's policy and use of part-time working. The Labour Relations Commission will periodically monitor developments in this regard.

12. Review of Obstacles to the Performance of Part-Time Work

It is noted by the Labour Relations Commission that Section 13 of The Protection of Employees (Part-Time Work) Act 2001 provides that the

Commission may, at the request of the Minister for Enterprise, Trade and Employment, study every sector of employment for the purposes of identifying obstacles that may exist in that industry or sector to persons being able to perform part-time work in that industry or sector and make recommendations as to how any such obstacles so identified could be eliminated.

13. Implementation of Code

The application of the Code relies on the full commitment of employers, employees and their representatives (as appropriate). All parties need to recognise that they have specific responsibilities in this regard including -

in the case of management, accepting that it has responsibility to:

- Have clear and objective criteria for identifying part-time work options and procedures for their adoption to meet employee needs;
- Consider the implications of part-time working for the organisation;
- Communicate the working arrangements to all staff;
- Monitor and review the new practices on a regular basis.

in the case of employees and their representatives (as appropriate), that they have responsibility to:

- Work within the policy guidelines agreed for part-time working;
- Consider the implications of part-time working for the individual employee, in consultation with relevant parties;
- Accept that not all positions may be suited to part-time working;
- Where part-time working is afforded, it is performed to the prescribed standard set by the organisation.

14. Application of the Code

In any proceedings before a Court, the Labour Court, the Labour Relations Commission, the Employment Appeals Tribunal, a Rights

Commissioner or an Equality Officer, a code of practice shall be admissible in evidence and any provision of the code which appears to the court, body or officer concerned to be relevant to any question arising in the proceedings shall be taken into account in determining that question.

15. Review of Code

The Code will be subject to review after 3 years.

GIVEN under my hand,

12 January 2006.

Tony Killeen.

Minister of State at the Department of
Enterprise, Trade and Employment.