
CIRCULAR

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No. 125 – NOVEMBER 2002

PART-TIMERS PENSION RIGHTS

Purpose of the Circular

1. This Circular has been issued to provide authorities with information in connection with the recent letter issued by the Regional Secretary to the Employment Tribunals.

Background

2. Amongst the issues that remain outstanding following the initial part timer test case hearings is the question of whether, in order to succeed, a female applicant claiming sex discrimination must identify a male comparator i.e. a full-time male employee also employed by her employer whose work was the same as, or broadly similar to, or of equal value with, her work. This question has been referred to the European Court of Justice in a case called *Allonby -v- Accrington and Rossendale College and others* and any case in which an employer asserts that no comparator exists must remain stayed until the outcome of the appeal process in the *Allonby* case.
3. Although in notices of appearance for the test cases the point had been made that a number of the part-time applicants had not named a comparator, many of the public sector employers no longer wished to pursue that point at the test case hearings because they recognised that a comparator existed and could therefore be named.

Employers' Organisation for local government
Layden House, 76-86 Turnmill Street, London EC1M 5LG
Tel 020 7296 6745 fax 0207296 6739 www.lg-employers.gov.uk/pensions/index.html
Email terry.Edwards@lg-employers.gov.uk

Executive Director: Charles Nolda
Registered in England No 2676611 Registered office: Local Government House, Smith Square, London SW1P 3HZ



INVESTOR IN PEOPLE

Letter from the Regional Secretary to the Employment Tribunals

4. The Regional Secretary to the Employment Tribunals has recently written to all employers in the part-time worker pension cases to clarify whether or not they wish to contend that no comparator exists within their workforce for all or any of the cases in which they are named as a respondent.
5. The letter asks employers to indicate their position by ticking one of three boxes on the sheet attached to the letter and returning that sheet to the address shown on the Employment Tribunal letter, preferably within 42 days.
6. For employers with many part-timer claims lodged against them it is possible that they will need to tick box 2 in respect of some employees and box 3 in respect of other employees in which case a schedule should be attached showing which employees box 2 applies to and which employees box 3 applies to.
7. The letter also requests that employers ticking box 3 in respect of any applicant or group of applicants should briefly indicate why they say no comparator exists. This reply will then be copied to the applicant and unless the applicant is at that stage able to name a comparator the case will be stayed pending the outcome of the appeal in the *Allonby* case.

Actions for employing authorities to take

8. The LGPC Secretariat understands that the Secretary of State, as one of the respondents, does not intend to raise the defence of 'no comparator'.
9. However, as a separate respondent, those employing authorities who receive the aforementioned letter from the Regional Secretary to the Employment Tribunals will need to decide whether or not they wish to contend, as a defence, that no comparator exists for one or more of their part-time applicants.
10. In making this decision, authorities may wish to weigh up the financial and other merits of making such a defence relative to the numbers of such cases, the initial work involved in assessing whether or not (in the authority's view) a comparator exists, the chances of success in using this defence, and the time and effort involved in defending the case.
11. Authorities may wish to consult their legal sections before responding to the letter from the Regional Secretary to the Employment Tribunals.

Actions for administering authorities to take

12. Administering authorities should consider copying this Circular to all employers in their Fund that may be affected by the above (other than to local authorities in England and Wales to whom this Circular has been sent direct).

Terry Edwards
LGPC Pensions Consultant
12 November 2002

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LGPC
Employers' Organisation for Local Government,
Layden House
76 - 86 Turnmill Street
London, EC1M 5LG

or e-mail terry.edwards@lg-employers.gov.uk