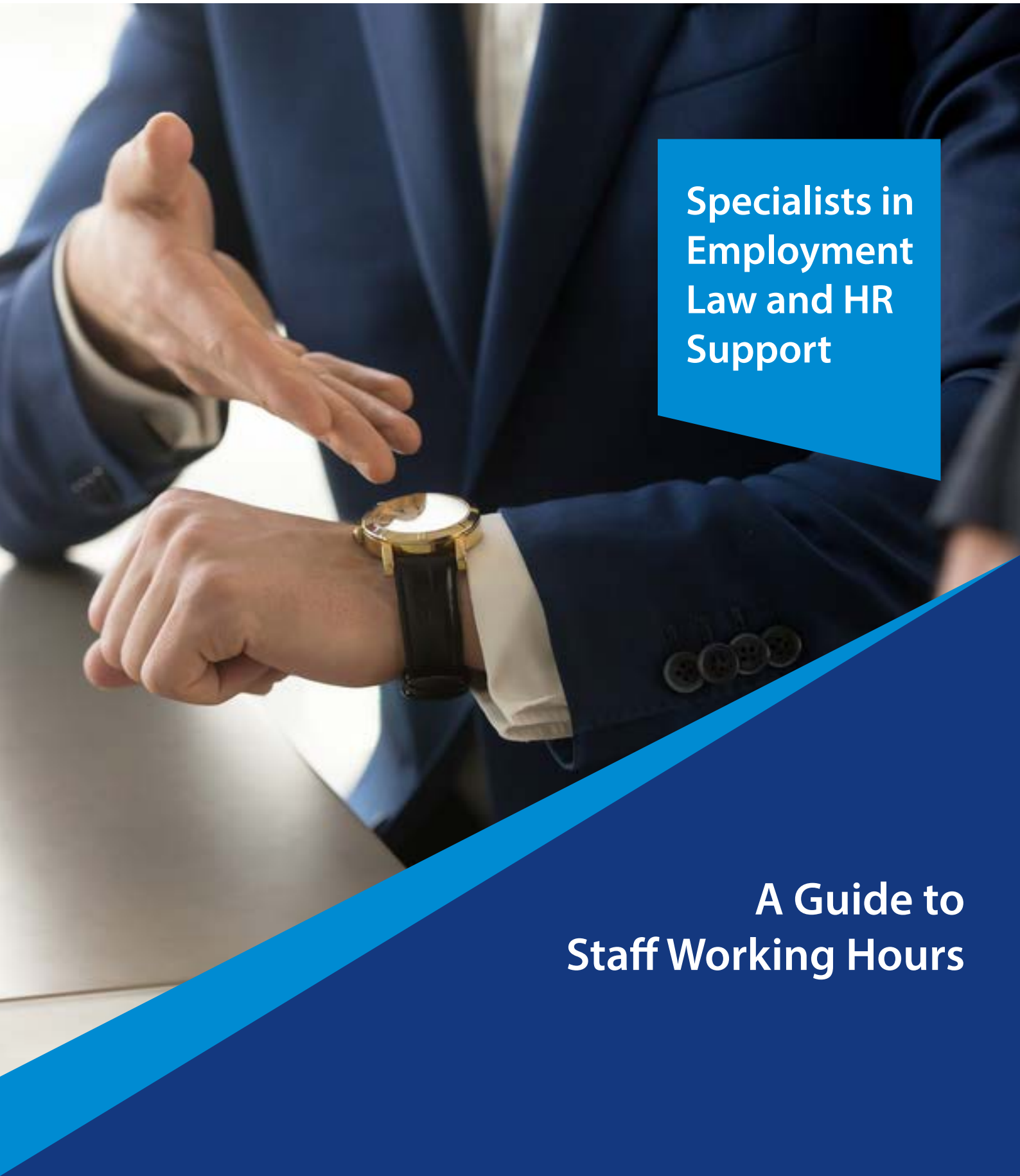
DELPHI

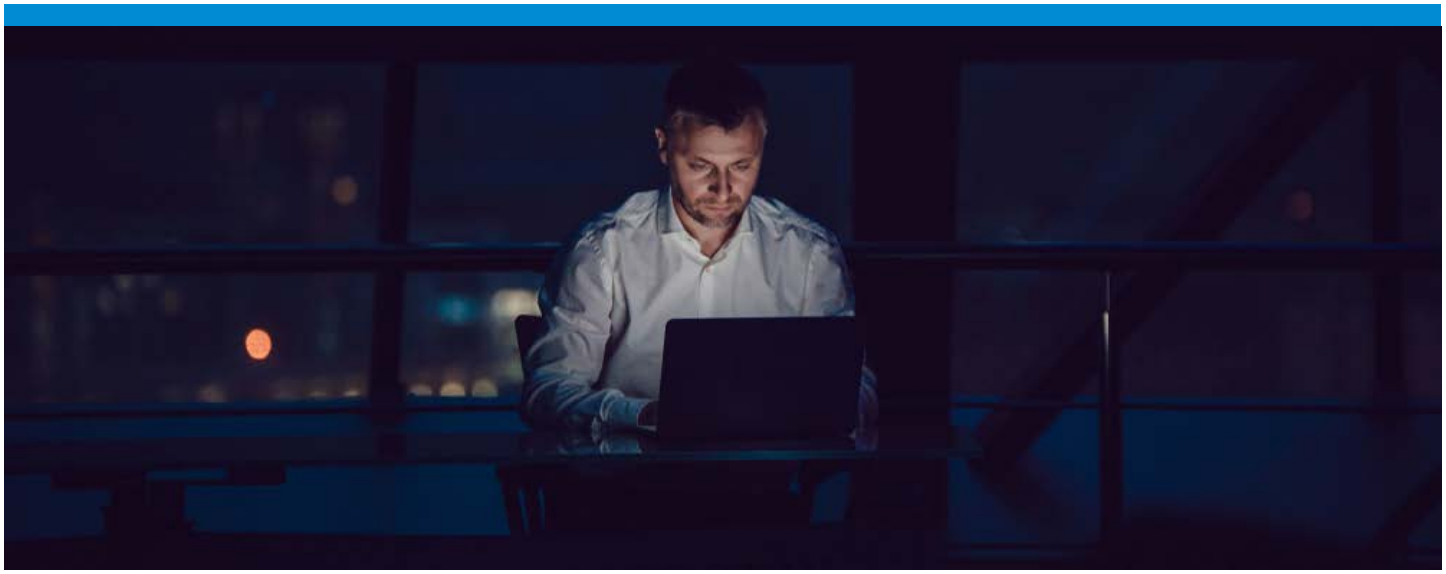
Business Support Services



Specialists in Employment Law and HR Support

# A Guide to Staff Working Hours

DELPHI
Business Support Services



# A Guide to Staff Working Hours

**Including valuable information on:**

- **Flexible Working Requests**
- **Part-time Workers' Rights**
- **Holiday Entitlement**

www.delphisupport.co.uk | Email: info@delphisupport.co.uk | Leeds Call: 0113 867 2815
Delphi Business Support Services, Princes Exchange, Princes Square, Leeds, West Yorkshire, LS1 4HY

DELPHI
Business Support Services

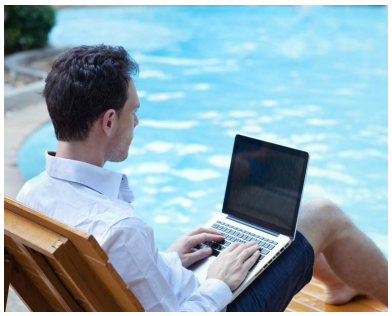
# A Guide to Staff Working Hours

## Part-time Workers' Rights

If you employ part-time workers, you must treat them the same as full-time workers who do the same or a similar job. This means they have a right to receive the same contractual terms and conditions as their full-time colleagues.

## What is part-time work?

There is no legal definition of what constitutes a part-time worker or a full-time worker, but generally a full-time worker will work approximately 35 hours or more per week.
Much depends on what the individual business regards as full-time work. A part-time worker is someone who works fewer hours than their full-time colleagues.



## What do my part-time workers' rights include?

The rights of your part-time workers include:

- Hourly rates of pay
- Access to the company pension scheme
- Entitlements to annual, maternity/paternity and adoption leave
- No less favourable treatment in access to training
- Entitlement to contractual sick pay.

Some benefits and contractual entitlements are worked out on a pro rata basis, in proportion to the number of hours worked. For example, if you employ a full-time worker doing a 35-hour week and receiving 28 days' holiday per year, a part-time worker doing 17.5 hours per week must receive 14 days' holiday per year.

Part-time workers also have a right not to be dismissed or to suffer a detriment because they have tried to exercise their legal rights or have refused to give up a legal right.

## Are there any exceptions to part time working rights?

In certain situations, you do not always have to treat a part-time worker the same as their full-time colleagues, providing you can show there is a good reason for doing so – known as 'objective justification'.

For instance, you might provide car parking permits for your full-time staff but not your part-timers, and objectively justify this decision on the basis that the costs would be disproportionate to the benefits.

Another example might be overtime – a part-time worker might not be able to earn any overtime pay until they have worked more than the usual hours of their full-time colleagues.

DELPHI
Business Support Services

## What action could a part-time worker take?

If a part-time employee thinks they have been treated less favourably because of their working status, they have a right to ask you for a written statement explaining the reasons for this.

They must put their request in writing and you must reply within 21 days.
If they are not satisfied that your actions can be objectively justified, they may be able to make a claim under the Part-Time Workers Regulations (PTWR) to an employment tribunal.

Generally, more women than men are employed in part-time work, so if you employ any part-time female staff on inferior terms and conditions to those of their full-time male colleagues, it is possible they might also be able to make a sex discrimination claim against you.

**If you need help with part-time workers' rights issues, Delphi can help.** We specialise in employment law and with extensive experience, we are highly qualified to assist you with any part-time workers' rights issues you might have. C**ontact us today on 0113 867 2815.**

## Dealing with Flexible Working Requests

Since 2014, all employees – not just parents and carers – are able to apply for flexible working. This allows employees to work in a way that best suits their needs, such as working from home or having less rigid start and finish times. This can help employees achieve a better work/life balance, look after their children or dependents or undertake a course of study. Employees do not have a right to flexible working, but they do have a right to ask for it.

## Types of flexible working

Examples of different types of flexible working include part-time work, flexi time – under which employee can choose their working hours within agreed limits – compressed hours involving working full-time hours over fewer days, job sharing where two people do one job and split the hours, working from home and taking time off in lieu.

## Who can apply for flexible working?

A person can make a 'statutory application' for flexible working, providing they are an employee (agency workers cannot apply) and have worked continuously for their employer for a minimum of 26 weeks. Employees can only make one application for flexible working a year.

## How do employees apply for flexible working?

If an employee wishes to apply for flexible working, they must:

- Write to you, stating that they are making a 'statutory request'
- Describe the type of flexible working they would like and when they want it to start
- Explain how they think flexible working would affect the business and how the business could deal with their request
- State if they have made a previous flexible working request and if so, when it was made.

DELPHI
Business Support Services

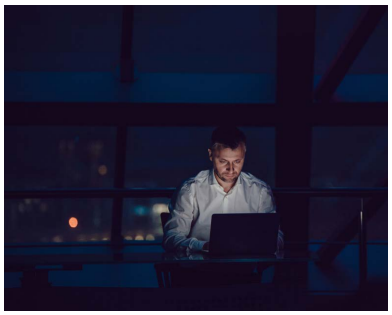
## How should employers respond?

You must consider your employee's request in a reasonable manner and make a decision within three months – unless it has been agreed by both parties that you can take longer.

You may wish to try out the new arrangement on a trial basis first to see if it suits both parties. If you agree to a request, you must confirm the changes to the employee's working hours in writing and set a date for the flexible working to start. You will also need to make relevant amendments to your employee's contract of employment. These changes are permanent and can affect your employee's pay.

If you reject their request, you must explain the business reasons – as set out in legislation – for your refusal. These are:

- Additional costs
- Ability to meet customer demand (for example, if your employee wants to take Mondays off but this is your busiest day)
- Inability to reorganise work amongst existing staff
- Inability to recruit staff
- Detrimental impact on quality
- Detrimental impact on performance
- Insufficient work in the time proposed
- A planned reorganisation.



## Can an employee appeal a decision?

If you reject the flexible working request, your employee does not have an automatic right to appeal against your decision. However, it is good practice to allow an appeal, as this helps show that you are handling requests in a reasonable manner.

## What legal action could an employee take?

If your employee thinks you have not dealt with their flexible working request in a reasonable manner, they may be able apply to an employment tribunal.

They cannot claim just because their request was rejected, they must show that you acted unreasonably – for example, that they were bullied, dismissed or denied promotion because of their request, that you treated their request as withdrawn when it was not, or based a rejection on incorrect facts.

If their claim is successful, an employment tribunal can order you to reconsider their request and/or award compensation of up to eight weeks' pay – up to the current statutory maximum of £508 per week.

And if the employee is dismissed or subjected to a detriment as a result of this procedure, then this may lead to claims of unfair dismissal and/or discrimination. However, an employment tribunal cannot force you to grant your employee's flexible working request.

**If you need help with a flexible working issue, Delphi can help.** We specialise in employment law and with extensive experience, we are highly qualified to assist you with any flexible working issues you might have. **Contact us today on 0113 867 2815.**

DELPHI
Business Support Services

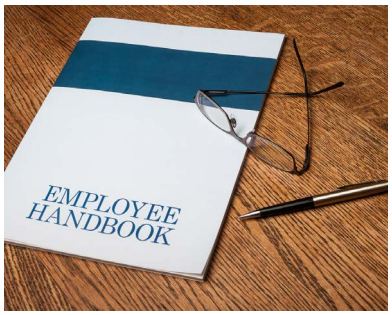
# Holiday Entitlement

The Working Time Regulations 1998 state that if an employee works a full, five-day week, they are entitled to a minimum of 28 days paid holiday per year – the equivalent of 5.6 weeks. If they work part-time, they are entitled to the pro rata amount of holiday, based on the number of days or hours they work and calculated against the full-time equivalent.

## When does my annual leave year start and finish?

When an employee starts a new job, you should tell them when the leave year begins and ends – for example, it might run from 1 January to 31 December – so they must take their holiday entitlement during this time.

If the leave year is not set out in your contract and they began work after 1 October 1998, it will begin on the first day that they started their new job. If they began work on or before 1 October 1998, their leave year will start on 1 October. Their holiday entitlement is not affected by any period of maternity, paternity, adoption or sick leave, as they continue to accrue holiday as normal during those times.




## How is an employee's holiday entitlement calculated?

An employee's holiday entitlement begins to accrue as soon as they start working for you. If they start work part-way through your company's leave year, they are allowed to take only part of their total holiday entitlement for that leave year.

## How much holiday they accrue depends on how much of the company leave year is left.

An employee can work out their holiday entitlement for their first year of employment by considering the number of months worked. They accrue one twelfth of their total annual leave each month – so for example, by the end of their third month of employment, they will have accrued 25% of their total entitlement.

## Can an employee carry their holiday over to next year?

The principle behind the minimum holiday requirement is that as an employee, your staff need some time off, so legally, they are not allowed to carry over all of their leave into the next leave year. If they are entitled to the minimum 28 days, then the most they can carry over is eight days.

However, if an employee are entitled to more than the statutory minimum, it is up to you to decide whether they can carry over any additional leave to the next year. Rules should be set out in your staff handbook or contract of employment. If an employee is unable to take all their holiday entitlement because they are on maternity, paternity, adoption or long-term sick leave, you must allow them to carry over some or all of the untaken leave into the next leave year.

You must allow them to carry over a maximum of 20 days if they were unable to take their annual leave because of long-term sickness.

## What is the procedure for booking holiday?

Your company's employment contracts or staff handbook should contain your rules as to how much notice an employee must give when booking annual leave.

If you have no specific rules then generally, an employee must give at least twice as long as the amount of leave they wish to take – so if they want a week's holiday, they must give a minimum of two weeks' notice.

If you refuse their holiday request, you must give them as much notice of the refusal as the amount of leave they had requested. You can refuse their leave request for a specific period, but as they have a legal right to paid holiday, you cannot stop them from taking their statutory leave entitlement.

## Is an employee entitled to take Christmas and bank holidays as leave?

You are not required by law to give staff time off on bank holidays or public holidays. If you prefer, you can include them as part of your staff's overall legal holiday entitlement.

The Working Time Regulations do not include many rules covering annual leave, so it is up to you to decide how certain aspects of your employees' leave year is managed.

You can insist that staff take holiday at certain times – for example, at bank holidays or over the Christmas period – and you can also impose restrictions on them taking leave at certain peak periods.

## What happens to an employee's leave when they resign?

If an employee leaves their job, any unused holiday should be included with their final pay – or you may allow them to take whatever is left of their annual leave entitlement during their notice period.

Staff are only entitled to be paid in place of statutory leave (known as payment in lieu) when they leave their job. You must pay them for any outstanding statutory leave, even if they are sacked for gross misconduct. If they are entitled to more than the statutory 28 days, you can make separate arrangements to pay them for the extra holiday if they wish. If they leave having taken more holiday than they have accrued, you cannot take the money back from their final pay unless this has been agreed in writing beforehand.

**If you need help with holiday entitlement issues, Delphi can help.** We specialise in employment law and with extensive experience, we are highly qualified to assist you with any holiday entitlement issues you might have. **Contact us today on 0113 867 2815.**