

Insights

PART-TIME WORKER DISCRIMINATION - SUPREME COURT CLARIFIES CAUSATION TEST

Aug 27, 2026

Summary

August saw a helpful Supreme Court decision which gives clarity on causation in part-time worker claims. The claim related to Mr Augustine, who worked as a private hire driver for Data Cars Ltd (*Augustine v Data Cars Ltd*). He worked part-time and brought a claim alleging that the fee he was charged for the company's booking system was discriminatory, as all drivers were charged a flat rate of £148 per week, regardless of the number of hours they worked. Mr Augustine claimed that the application of this flat fee constituted less favourable treatment of him as a part-time worker contrary to regulation 5 of the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 (the Regulations), on the basis that it resulted in him paying a higher fee per hour worked than his full-time colleagues.

The Employment Tribunal dismissed his claim, finding that the fee was not charged on the ground of his part-time status but because it was necessary to enable the business to earn revenue. On appeal, both the EAT and Court of Appeal upheld the decision. However, both considered that the Employment Tribunal had applied the wrong legal test but held that they were bound by the Scottish Court of Session's contrary decision in *McMenemy v Capita Business Services Ltd* [2007], which had required part-time status to be the sole ground for less favourable treatment. As such, a Supreme Court decision was required to resolve the question.

The Supreme Court has now unanimously allowed the appeal. It held that a part-time worker bringing a claim under the Regulations need only show that their part-time status was an effective cause of the less favourable treatment, not that it was the sole cause. The Supreme Court noted that the language of regulation 5(2) mirrors pre-existing equality legislation under which the courts had already developed the effective cause approach. It rejected the argument that the word "only" in the regulation imposed a sole cause test. The Supreme Court further observed that the Secretary of State had deliberately chosen not to adopt the narrower "solely because" formulation used in the European Framework Agreement, instead using language drawn from domestic equality legislation.

Why this matters?

This is an important clarification for employers who engage both full-time and part-time workers. The decision confirms that the causation test under the Regulations is aligned with the broader approach in discrimination law, meaning that part-time status need only be an effective cause, not the sole cause, of any less favourable treatment.

On the face of it, this is bad news for employers as the decision undoubtedly lowers the threshold for part-time workers to establish causation. However, in its judgment, the Supreme Court also made clear that the existence of other causes for the treatment is still relevant, both to whether the treatment can be objectively justified and to the amount of any compensation awarded. As such, while employers could see an increase in claims, particularly in sectors where part-time working is common, in practice, the battleground in many cases will shift from causation to justification, and employers who can demonstrate a clear and legitimate business rationale for policies that impact part-time workers should still be well placed to defend claims.

Related Capabilities

- Employment & Labor

Meet The Team



Jackie Thomas

Counsel, London

jackie.thomas@bclplaw.com

[+44 \(0\) 20 3400 4776](tel:+442034004776)

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