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Member Brief No 93

Charge Rate Guidance - October 2011

Introduction

These rates, valid from 1st October 2011, have been prepared by the ALP and are posted on the GLA. The agricultural rates for England and Wales are included as although the government has announced its plans to abolish the Agricultural Wages Board this is not expected to take place until October 2012. This Brief updates and replaces ALP Brief 85.

The rate paid by labour users is a key variable that the GLA monitors. Labour users that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both. A number of labour users have suffered reputation damaging publicity when this has been exposed.

Labour providers are encouraged to report confidentially to the GLA any labour users that are currently paying rates which indicate that legal responsibilities to workers cannot be met. Members may choose to discuss this information with the ALP beforehand.

Supermarkets and other wholesale purchasers of food have an ethical responsibility to ensure fair and legal rates are paid to labour providers throughout their supply chain.

ALP labour provider members may provide this brief and the tables to current or prospective labour user clients to facilitate discussions towards agreement of fair and legal charge rates.

What the figures mean

Statutory Charge Factors - This includes the appropriate Minimum Wage, employer's national insurance plus statutory holiday entitlement.

Labour Provider Overhead and Service Charge Costs – Defra analysis conducted in 2003 estimated labour provider overhead costs as 30% on top of the National Minimum Wage. In reaching this figure Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent / interest charges on office accommodation, which may vary widely from one business to another). It also states that this figure is likely to understate the actual costs for almost all businesses as well as making no allowance for management costs or profit. Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.

The figure for Overhead and Service Charge Costs is indicative only and will vary with each contract depending on the efficiency of a labour provider and the particular circumstances of the client and site to which labour is supplied. For example, contracts where the labour provider is required to provide workwear, where there is volatility of supply, where transport or supervision costs are high, where invoices are factored and so on will all incur a greater overhead cost.

The actual rate charged is ultimately a commercial agreement between the labour provider and user. Any agreed rate should take into account the particular costs of supply. However, charge rates lower than those in the rates tables **plus a sustainable net margin** may indicate illegal activity - unless there is a legitimate and demonstrable explanation.

CHARGE RATE GUIDANCE - EFFECTIVE OCTOBER 2011

2011/12 NATIONAL MINIMUM WAGE	Age 16-17	Age 18-20	Age 21 plus
1. Minimum wage	£ 3.68	£ 4.98	£ 6.08
2. Employers' NI Contributions	£ 0.04	£ 0.22	£ 0.37
3. Annual Holiday Pay (5.6 weeks entitlement)	£ 0.45	£ 0.63	£ 0.78
4. Total Wage Costs	£ 4.17	£ 5.83	£ 7.23
5. Guideline Statutory Sick/Maternity Pay cost	£ 0.09	£ 0.09	£ 0.09
6. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.55	£ 0.55	£ 0.55
7. Hourly Cost of Supply (not including Labour Provider Margin)	£ 4.81	£ 6.47	£ 7.87

ENGLAND AND WALES AGRICULTURAL EMPLOYEES (OVER COMPULSORY SCHOOL AGE)	Grade 1 Workers < 52 weeks	Grade 1 Workers > 52 weeks	Non Compulsory Overtime
1. Minimum wage	£ 6.10	£ 6.10	£ 9.15
2. Employers' NI Contributions	£ 0.36	£ 0.36	£ 1.26
3. Annual Holiday Pay	£ 0.87	£ 0.87	
4. Total Wage Costs	£ 7.34	£ 7.34	£ 10.41
5. Guideline Statutory Sick/Maternity Pay cost	£ 0.09	£ 0.28	
6. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.55	£ 0.55	£ 0.55
7. Hourly Cost of Supply (not including Labour Provider Margin)	£ 7.98	£ 8.17	£ 10.96

SCOTLAND AGRICULTURAL EMPLOYEES (OTHER THAN OF SCHOOL AGE)*	< 26 weeks service	> 26 weeks service	< 26 weeks Non Compulsory Overtime	> 26 weeks Non Compulsory Overtime
1. Minimum wage	£ 6.11	£ 6.67	£ 9.16	£ 10.00
2. Employers' NI Contributions	£ 0.36	£ 0.44	£ 1.26	£ 1.38
3. Annual Holiday Pay	£ 0.78	£ 0.86		
3a. Special Holiday Pay	£ 0.06	£ 0.06		
4. Total Wage Costs	£ 7.31	£ 8.03	£ 10.42	£ 11.38
5. Guideline Statutory Sick/Maternity Pay cost	£ 0.09	£ 0.09		
6. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.55	£ 0.55	£ 0.55	£ 0.55
7. Hourly Cost of Supply (not including Labour Provider Margin)	£ 7.95	£ 8.67	£ 10.97	£ 11.93

* In addition to the above minimum hourly rates workers who have been with the same employer for more than 26 weeks and who hold a relevant qualification are entitled to be paid an additional sum of at least £1.01 per hour.

AGRICULTURAL EMPLOYEES (NORTHERN IRELAND – AGE 19+) UNTIL MARCH 2012	<40 weeks Service	<40 weeks Non Compulsory Overtime	> 40 weeks Service	> 52 weeks Service
1. Minimum wage	£ 6.08	£ 9.06	£ 6.37	£ 6.37
2. Employers' NI Contributions	£ 0.36	£ 1.25	£ 0.40	£ 0.40
3. Annual Holiday Pay	£ 0.78		£ 0.82	£ 0.85
4. Total Wage Costs	£ 7.21	£ 10.31	£ 7.58	£ 7.62
5. Guideline Statutory Sick/Maternity Pay cost	£ 0.09		£ 0.09	£ 0.09
6. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.55	£ 0.55	£ 0.55	£ 0.55
7. Hourly Cost of Supply (not including Labour Provider Margin)	£ 7.85	£ 10.86	£ 8.22	£ 8.26

N.B. The NIAMW is £6.04 however where at any time the National Minimum Wage becomes higher than this then the NMW shall become the minimum rate and it is the NMW that is shown.

- **Charge items nos 1-4 shown in red cover statutory legal requirements**

- **Labour Provider Overhead Costs** – DEFRA analysis has estimated overhead costs as 30% on top of the National Minimum Wage, but state that this figure is likely to understate the **actual** costs of almost all businesses as well as making **no** allowance for management costs or profit.

In reaching this figure of 30% Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent/interest charges on office accommodation, which may vary widely from one business to another). **It also makes no allowance for any management cost or business profit.** Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.

- The Charge Rates tables should be read in conjunction with the Definitions and Explanations detailed on the following page.

Definitions and Explanations

N.B. The numbering below refers to the numbered charge elements in the rates tables:

1. The hourly minimum rate represents the National Minimum Wage or the Agricultural Minimum Wage for Grade 1 workers. This rate increases in Scotland after 26 weeks service and in N. Ireland after 40 weeks service.
Workers employed in agriculture have a statutory entitlement to overtime in accordance with the appropriate Agricultural Wages Order.
2. Since April 6th 2011, employer's NI must be paid at 13.8% on earnings above £136 per week. The first £136 is NI free. The figure for non-overtime rates is based on 40 hours worked in non-agriculture and 39 hours in agriculture.
For temporary agricultural employees on overtime, the £136 NI free amount will generally already have been used so employer's NI has been calculated at the full 13.8%.
3. Holiday Pay
 - a. Calculations of holiday pay to be charged are based on the hourly rate plus Employers' NI as when holiday pay is paid to the worker, employers' NI is paid on this and therefore must be accrued from the charge rate.
 - b. Non Agricultural Workers - are entitled to 5.6 weeks holiday (calculated pro rata as 12.07% of the hourly rate and NI = 5.6 weeks / (52 weeks-5.6 weeks).
Agricultural Employees in England & Wales - Workers are entitled under the AWO to a variable amount of "total annual holiday entitlement" depending on how many days per week they have retrospectively worked. Based on a 5 day week workers are entitled to 31 days paid annual holiday from the first day of work equivalent to 13.54% of the relevant hourly rate and NI. This is the figure shown.
Agricultural Employees in Scotland - are entitled to 5.6 weeks holiday plus 2 special days per year. A week is equivalent to the number of days that an employee would be expected to work in the course of a regular working week. This is equivalent to 13.04% of the relevant hourly rate and NI.
Agricultural Employees in Northern Ireland are entitled under the NIAWO to 5.6 weeks equivalent to 12.07% of the hourly rate and NI. After the completion of 12 months continuous employment with the same employer the annual holiday entitlement increases to 5.8 weeks paid annual holiday equivalent to 12.55% of the relevant hourly rate and NI.
 - c. How holiday pay should be calculated varies dependent on workers contracts and working patterns.
 - i. Where remuneration for normal working hours does not vary i.e. workers on a fixed wage or salary - holiday pay is based on contractual pay i.e. basic hours plus guaranteed overtime.
 - ii. Where a worker's working hours are not specified by the contract and that worker works irregular hours and is not entitled to overtime pay when employed for more than a fixed number of hours in a week he is deemed not to have "normal working hours".
In such cases holiday pay is calculated by reference to the worker's average remuneration over the previous 12 weeks (replacing weeks in which no pay was received with previous weeks) for all hours worked including any bonus linked to performance.
 - iii. Where a worker's working hours are not specified by the contract and that worker works irregular hours, he is deemed to have "normal working hours" if he is entitled to receive overtime pay after a fixed number of hours (such as workers working under the provisions of the Agricultural Wages Order).
In such cases holiday pay is based on the average hourly rate excluding non compulsory overtime over the previous 12 weeks (replacing weeks in which no pay was received with previous weeks) but including any bonus linked to performance
4. This figure shows the actual minimum unavoidable Total Wage Costs to meet minimum legal requirements.
5. Provision for statutory sick pay leave, in line with the Defra estimate, of 2 weeks is assumed at £81.60 per week. This is accrued on normal time only, not on overtime.
This figure also covers the 8% of statutory maternity pay that must be met by the labour provider.
Agricultural wages sick pay is payable in England and Wales after 52 weeks employment. In Scotland agricultural employees continuously employed by the same employer for at least 52 weeks are entitled to sick pay at normal rates for normal hours worked for a period of 13 weeks after which SSP applies.
6. Guideline Minimum Labour Provider Overhead & Service Cost - Indicative figure.
2003 DEFRA analysis has estimated overhead costs as 30% on top of the National Minimum Wage, but state that this figure is likely to understate the actual costs of almost all businesses as well as making no allowance for management costs or profit.
In reaching this figure of 30% Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent/interest charges on office accommodation, which may vary widely from one business to another). It also makes no allowance for any management cost or business profit. Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.
7. This is the total hourly cost of supply but **does not include any margin to cover labour provider profit.**