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National Minimum Wage

Introduction

This Brief provides a general overview of the National Minimum Wage. Current NMW Rates can be found on the [Business Link website](#). This Brief does not cover Accommodation and the Minimum Wage or the Agricultural Minimum Wage which are contained in other ALP Briefs.

The independent Low Pay Commission publishes an annual report which contains recommendations for the uprating of the NMW and for amendments to the Regulations. The ALP regularly makes submission to the Low Pay Commission which can be viewed on the ALP website.

The National Minimum Wage helpline **0845 6000 678** run by HMRC is available if you require further clarification on any aspect of the NMW.

Key Points

- Employers are required by law to ensure that their workers are paid at least the NMW.
- Employers need to keep sufficient records to prove that they are paying the NMW to their workers.
- Employers may not force or persuade any worker to agree to a wage below the NMW. The law prevents workers from signing away their right to the NMW.
- Employers may be required by a National Minimum Wage Compliance Officer, by an employment tribunal or by a civil court to produce evidence that they have paid the NMW.
- Where a tribunal or civil court is making a decision on an NMW case, the burden will always be on the employer to prove that the NMW has been paid.
- It is against the law to dismiss or victimise a worker because of the NMW. If a worker is dismissed because he is going to get the NMW or is entitled to a higher rate of NMW, this will be an unfair dismissal.
- Workers are legally protected against being sacked or victimised because of their right to NMW or because they have complained about non-payment.
- If a worker believes he is not getting paid at least the NMW, he is entitled to see and copy any relevant records which the employer must hold; if the employer fails to produce some or all of the relevant records to a worker on request, he may complain to an employment tribunal which can impose a penalty on the employer.
- If a worker wants to complain that their employer has not paid NMW he can make a complaint to the National Minimum Wage Helpline, or take his case to an employment tribunal or civil court independently.

Who is entitled to the national minimum wage?

Most workers over compulsory school age working in the United Kingdom are entitled to be paid at least national minimum wage rates by their employer.

If someone is supplied by an agent or agency to do work for somebody else, he is treated as a worker. The agency worker will be entitled to the NMW and must be paid at least NMW rates by

their employer. The employer is whoever pays him.

The rules apply to agricultural workers, who are also covered by the agricultural minimum wage. No agricultural worker may be paid less than the NMW. Some agricultural workers must be paid more than the NMW because there is a higher agricultural minimum wage.

Piece workers are paid by the number of things they produce rather than the number of hours they work. Piece workers must be paid at least the NMW or a fair piece rate. There are special rules for working out a fair piece rate.

Some workers are paid entirely or partly on the basis of sales made or deals completed. These "commission workers" must also be paid at least the NMW.

What is the national minimum wage?

NMW pay is calculated in a certain way. All payments paid to the worker by the employer (before deduction of income tax and National Insurance contributions) initially count towards NMW pay. This amount is then adjusted in certain circumstances to determine national minimum wage pay.

A worker might be paid at a higher rate for working at a particular time; for example, for working overtime, weekend or night shifts, or on Bank Holidays. If so, the premium element (i.e. the amount above the worker's lowest basic rate of pay) does not count towards NMW pay.

Special allowances over and above standard pay for such things as: working in dangerous conditions; working unsocial hours; performing special duties over and above a worker's normal duties; being "on call" for work; for clothing, travel, subsistence etc do not count towards NMW pay or are consolidated into standard pay. If allowances are consolidated into standard pay or are related to the performance of the worker in carrying out his work, they do count towards NMW pay.

If an employer refunds money to a worker which the worker has spent on something to do with his job, the refund does not count as NMW pay. This applies, for example, when an employer refunds travel expenses, laundry costs or the price of tools or equipment which the worker has purchased from someone else.

The time period over which national minimum wage is calculated

The pay reference period is usually the period of time for which a worker's wage is actually paid. So, workers who are paid weekly will have a pay reference period of one week, workers paid daily will have a pay reference period of one day and workers who are paid monthly will have a pay reference period of one month. For NMW purposes a pay reference period cannot be longer than one calendar month.

The worker does not have to be paid the NMW for each hour worked, but must be paid the NMW on average for every hour worked in the pay reference period.

Special rules apply for workers paid according to timesheets agreed by the client for whom they are working and sent to an agency for payment. The basic rule is that the pay for the hours shown on a timesheet will count towards the NMW calculation for the pay reference period in which the work is performed, provided the pay is received either in that pay reference period or the next one. This means the timesheet must be handed in and processed in time to get the worker's payment into the pay packet for the current pay reference period or the next one. If the worker hands in the timesheet less than four working days before the end of the pay reference period following the one when the work was done, the payment for that time can be paid in the pay reference period the timesheet was received or the next and still count towards the pay reference period when it was earned.

Working time when the national minimum wage must be paid – Time Workers Only

If a worker is paid according to the number of hours he is at work, the work is time work. A time worker must be paid at least the NMW for the times when he is at work and required to be at work (excluding rest breaks). Workers who turn up to work as required and who are available for work must be paid the NMW for that time. It makes no difference whether or not work is actually provided for that time.

The NMW is also payable for:

- Time spent on standby or on-call at or near the place of work for the purpose of doing time work e.g. a factory worker told to wait at a factory for when work is available. This rule is subject to certain exceptions.
- Time a worker is kept at his place of work but is unable to work because of e.g. plant or machinery has broken down or because of inclement weather.
- Some periods of travel time - these include i) time when a time worker is travelling in connection with his work during normal working hours or the normal range of hours that the worker does. This includes rest breaks taken on board the car, bus etc. ii) Time spent waiting for transport, however rest breaks whilst waiting do not count; iii) time travelling from one work assignment to the next but rest breaks in the travelling do not count; iv) time spent waiting to collect goods, to meet someone in connection with his work or to start a job.
- Time spent training at or away from the place of work during normal working hours and for time travelling from work (but not home) to the place of training during normal working hours.

Time when the national minimum wage need not be paid – Time Workers Only

The NMW is not payable for:

- Time on standby or on-call when the worker is at or near his place of work, if the time is time when the worker is entitled to be at home and he is not actually working or regarded as working. Special rules can apply in certain circumstances.
- Travel between home and work and back again;
- Absences from work. NMW does not need to be paid for any period when a time worker is absent from work. Recognised lunch and other rest breaks are regarded as absences from work, even if work is done during this time. However, this does not mean that the worker cannot be paid for breaks; it means that in calculating the hours for NMW purposes, the length of the rest breaks and any payment for the absence are ignored. However, if a worker is required to work in a rest break, NMW must be paid for any time worked.
- Periods when the time worker is on holiday, sick or on maternity leave. Neither the money received for such absences from work, nor the length of the absences themselves, are counted when calculating the NMW pay of time workers. However, the normal rules governing statutory paid holidays, sick pay and maternity pay apply.

Payments and Deductions

A deduction is an amount of money taken from a worker's pay before they receive it. A payment is an amount of money paid separately by the worker such as by cash, cheque or bank direct debit after they have received their pay from their employer.

Please note that other legislation requires that the provision of work-finding services must not be conditional on the worker hiring or purchasing services or items from the labour provider or from any person with whom the labour provider is connected.

Before the services or items are provided, the worker must be given comprehensible details explaining what they are and including costs charged and the worker must agree in writing to the charge or deduction.

Deductions that do not reduce national minimum wage pay

Tax and NI - An employer may make deductions from the worker's pay for income tax and employee's NI contributions. Such deductions do not reduce NMW pay.

Deduction of a penalty - If an employer deducts a sum from the worker's pay because of some

event related to the conduct of the worker, for example, misconduct, and the employer is permitted to make the deduction under the terms of the worker's contract, the deduction is ignored in calculating NMW pay.

Deduction for an advance of wages - If the employer has provided an advance of wages and subsequently deducts a sum for repayment of all or part of the advance of wages, the deduction is ignored in calculating NMW pay.

Deduction to recover an accidental overpayment of wages - Where an employer finds that he has accidentally overpaid a worker and then makes a deduction from the worker's pay to recover the overpayment, the deduction is ignored when calculating NMW pay.

Deductions that are not for the employer's own use or benefit - A worker may want to have other sums that the worker owes deducted automatically from his pay, for example, a union subscription or the worker's pension contribution. Such deductions from wages do not reduce NMW pay, so long as they are for the exact cost, are not for expenditure connected to the employment and are not for the employer's own use or benefit. In other words, so long as the deductions or any part of them do not go into the employer's pocket.

Deductions that reduce national minimum wage pay

Deductions for expenditure connected with the job - Deductions which an employer makes to cover the cost of items or expenses that are necessary for the worker's job reduce NMW pay. For example, if the employer deducts an amount from pay to cover the cost of safety clothing, a uniform, tools or other equipment needed for the job, the amount deducted reduces NMW pay. The employer must pay the worker the NMW in addition to the cost of the tools etc.

Deductions for the employer's own use or benefit - If the employer makes any deduction from the worker's pay which is for the employer's own use or benefit i.e. the money goes into the employer's pocket, the amount deducted will not count towards NMW pay. This applies even if the service is optional e.g. a deduction for meals or transport to work.

Payments that do not reduce national minimum wage pay

As for deductions, if a worker pays to the employer: a penalty payment, a repayment of a loan or advance of wages; or a refund of an accidental overpayment of wages, there is no reduction in the amount counting towards NMW pay.

Goods and services provided by the employer - A worker may want to buy goods (e.g. refreshments) or services (e.g. meals, transport to work) from his own employer. If he is completely free to choose whether to buy from his employer or from somewhere else and the goods or services do not have to be bought under the terms of the worker's contract or under any other requirement imposed by the employer in connection with the employment, then the amount of the purchase price is not taken away from the worker's NMW pay. The worker cannot subsequently claim that by having bought the goods or services from his employer, he has not been paid the NMW.

The important point, though, is that he must not be required to buy from the employer. In effect this would be a payment in kind rather than payment in wages and, apart from accommodation provided by the employer, national minimum wage legislation does not allow payments in kind to count as a payment. If he is required to buy goods or services from the employer, the amount that he pays reduces NMW pay.

So with regard to providing optional transport to work the following arrangement does not take workers' pay below NMW:

1. The worker is paid NMW and wages are paid into their account.
2. The employer provides an optional transport to work service. If used there is a charge to the worker.
3. Before the transport service is used by the worker, the employer provides the worker with comprehensive details explaining the service and the cost. This specifies in writing that the transport service is optional (and in reality this is so) and the option to use the transport is a free

choice. Use of the transport is not a requirement in the worker's contract or imposed on the worker.

4. The worker agrees by free choice in writing to use the transport service and to make a payment as a variable direct debit from his bank account or in cash or by cheque to the employer after he has been paid for the amount of days in that pay reference period for which the transport service was used. The employer should keep records of the times the worker uses the transport and the corresponding payments made.

Payments that reduce national minimum wage pay

Payments for expenditure connected with the job - If the worker has to buy tools, equipment, uniform or other items from his employer in order to do his job, the amount paid has to be taken away from the amount that counts towards NMW pay. The employer must pay the worker the NMW in addition to the cost of the tools etc.

Payments made by the worker to another person - If a worker is expected to pay, for example, his own travel costs (i.e. travel required to fulfil the duties of the job rather than normal travel to work) or board and lodging (i.e. when required to stay away from home) when he is doing his job and the amounts are not reimbursed by the employer, the payments he makes have to be taken away from the amount that counts towards NMW pay.

Payments by the worker to the employer for the employer's own use and benefit - Payments which the worker is required to make and which the employer keeps for his own use and benefit have to be taken away from the amount that counts towards NMW pay.

Enforcement

There are four approaches to enforcement.

- A worker who thinks that they are not being paid the NMW can see and copy any relevant records which the employer is required to keep. If the employer refuses access the worker may appeal to an employment tribunal which can impose a penalty on the employer.
- HM Revenue & Customs (Wages Inspectors in agriculture) enforce the NMW on behalf of the Department for Business, Enterprise & Regulatory Reform. Inspectors can require access to records and interviews with the employer. Where an employer has not paid the NMW, HMRC will require NMW to be paid immediately along with any arrears. In the event of non-compliance, the employer may be served with an enforcement notice and may be served with a penalty notice imposing a fine equivalent to twice the hourly amount of the NMW multiplied by the number of days of non-compliance with the enforcement notice for each worker shown on the enforcement notice. In the event of continued non-compliance, the employer may be prosecuted.
- Employers may appeal to a tribunal against both an enforcement notice and a penalty notice.
- Workers may pursue an employer through tribunals or the civil courts. In civil cases the burden of proof is on the employer to show that NMW was paid.
- There are six criminal offences arising from the NMW: refusing to pay the NMW; not keeping records; keeping false records; producing false records; obstructing an enforcement officer; and refusing or neglecting to give information to an enforcement officer.

HM Revenue & Customs has the power to issue enforcement notices in respect of workers who are no longer employed by the under-paying employer. Arrears on an enforcement notice are limited to pay reference periods ending within the 6-year period prior to the service date of the enforcement notice.

Whilst reasonable care has been taken in compiling this guidance, the ALP or its officers cannot be held responsible for any errors or omissions; the guidance is not intended to be a substitute for specific legal advice.