

# National Minimum Wage

The National Minimum Wage (NMW) was introduced on 1 April 1999. There have already been a number of instances of employers being penalised for not complying with the legislation. HMRC are the agency that ensures enforcement of the NMW.

We highlight below the main principles of the minimum wage regulations.

Please contact us for further specific advice.

## What is the National Minimum Wage?

The main rate of the NMW is £5.80 from 1 October 2009 and from October 2010 £5.93 for employees from 21 years old.

The development rate for employees between 18 and 21 years old is 4.83 from 1 October 2009 and from October 2010 £4.92 for those ages between 18 and 20 years old.

16 and 17 year olds must be paid a development rate which is £3.57 from 1 October 2009 and from October 2010 £3.64.

With effect from October 2010 the government will introduce an apprentice minimum wage of £2.50 per hour.

The new rate will apply to:

- apprentices under 19
- apprentices aged 19 and over, but in the first year of their apprenticeship

The Employment Equality (Age) Regulations provide a specific lawful exemption enabling young workers to continue to be paid below the standard adult NMW and allowing the different rates to be used according to the above age bands. This was in response to employers' concerns about financial pressures if the maximum rate was applied to all employees.

In addition, there is a fair piece rate which means that employers must pay their output workers the minimum wage for every hour they work based on an hourly rate derived from the time it takes a worker working at average speed to produce the work in question. The entitlement of workers paid under this system is uprated by 20%. This means that the number reached after dividing the NMW by the average hourly output rate must be multiplied by 1.2 in order to calculate the fair piece rate.

There are no exemptions from paying the NMW on the grounds of the size of the business.

## Key questions

### Who does not have to be paid the National Minimum Wage?

- The genuinely self-employed.
- Child workers - anyone of compulsory school age (ie. until the last Friday in June of the school year they turn 16).
- Company directors who do not have contracts of employment.
- Some apprentices, for example those under 19.
- Some other trainees on government funded schemes or programmes supported by the European Social Fund.
- Students doing work experience as part of a higher education course.
- People living and working within the family, for example au pairs.
- Friends and neighbours helping out under informal arrangements.
- Members of the armed forces.
- Share fishermen.
- Prisoners.
- Volunteers and voluntary workers.
- Religious and other communities.

Please note that HMRC have the power to serve an enforcement notice requiring the payment of at least the NMW, including arrears, to all family members working for a limited company.

### What is taken into account in deciding whether the NMW has been paid?

The amounts to be compared with the NMW include basic pay, incentives, bonuses and performance related pay and also the value of any accommodation provided with the job.

Overtime, shift premiums, service charges, tips, gratuities, cover charges and regional allowances are not to be taken into account and benefits other than accommodation are also excluded.

### What records are needed to demonstrate compliance?

There is no precise requirement but the records must be able to show that the rules have been complied with if either the HMRC or an Employment Tribunal requests this to be demonstrated. Where levels of pay are significantly above the level of the NMW, special records are not likely to be necessary.

It is recommended that the relevant records are kept for at least six years.

Normally there is not likely to be any serious difficulty in demonstrating compliance where employees are paid at hourly, weekly, monthly or annual rates but there may be difficulties where workers are paid on piece-rates and where, for example, they work as home-workers.

Where piece rates are used, employers must give each worker a written notice containing specified information before the start of the relevant pay period. This includes confirmation of the 'mean' hourly output and pay rates for doing their job.

### **What rights do workers have?**

Workers are allowed to see their own pay records and can complain to an Employment Tribunal if not able to do so.

They can also complain to HMRC or to a Tribunal if they have not been paid the NMW. They can call the confidential helpline 0800 917 2368.

### **What are the penalties for non-compliance?**

Enforcement notices can be issued if underpayments are discovered and there can be a penalty equivalent to twice the hourly amount of the NMW for each worker that has been underpaid multiplied by the number of days that enforcement notices are not complied with.

There could also be a maximum fine of £5,000 for having committed a criminal offence.

Employers who refuse to pay the NMW may also face a fine in excess of £200 for every worker they underpay. Employers have to pay back arrears they owe to workers and those who refused to pay up could be penalised.

### **How we can help**

We will be more than happy to provide you with assistance or any additional information required. We also offer a full payroll service - please contact us if you would like more information.

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