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National Minimum Wage

The National Minimum Wage (NMW) and National Living Wage (NLW) are the legal minimum wage rates that must be paid to employees. Employers are liable to be penalised for not complying with the NMW and NLW rules. HMRC is the agency that ensures enforcement of the NMW and NLW.

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

Please contact us for further specific advice.

What are the rates of the NMW and NLW?

There are different levels of NMW and NLW, depending on your age and whether you are an apprentice. Since 1 April 2021 the NLW has been payable for workers aged 23 and over, reduced from the previous age 25. The rates are given in the following table:

	Rate from 1 April 2022	**Rate from 1 April 2023**
NLW for workers aged 23 and over (age 25 and over prior to 1 April 2021)	£9.50	£10.42
the main rate for workers aged 21-22 (age 21-24 prior to 1 April 2021)	£9.18	£10.18
the 18-20 rate	£6.83	£7.49
the 16-17 rate for workers above school leaving age but under 18	£4.81	£5.28
the apprentice rate *	£4.81	£5.28

*for apprentices under 19 or 19 or over and in the first year of their apprenticeship

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

What is the National Living Wage?

The National Living Wage (NLW) is the single hourly rate for adults aged 23 years and above. The NLW rate is not connected to the rate used by the Living Wage Foundation.

Who does the apprentice rate apply to?

The apprentice rate applies to:

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

If you are of compulsory school age you are not entitled to the NMW.

Fair piece rate

The fair piece rate applies where a worker is classed as doing output work (paid per item produced or task performed). It can only be used in limited situations when the employer does not know the hours the worker does, for example home workers. It 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 an average speed worker to produce the work. 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 to calculate the fair piece rate.

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.
- 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.

Workers on government employment programmes such as the Work Programme.

- People working on a Jobcentre Plus Work trial for up to six weeks.
- People on the European Union Programmes: Leonardo da Vinci, Youth in Action, Erasmus+ and Comenius programmes.
- Share fishermen.
- Prisoners.
- Volunteers and voluntary workers.
- People living and working in a religious community.

Beware the family company trap

Although there is an exemption for family members working in the family business and residing in the family home of the employer, the Regulations specifically refer to the employer's family. If the family business (i.e. the employer) is a limited company, then it does not have a family. Even if the family business operates as a sole trader or partnership, the only family members exempted are those who actually live in the home of the employer.

What is considered 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 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 'average' 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?

The government can impose penalties on employers that underpay their workers in breach of the minimum wage legislation. The penalty can be as much as 200% of arrears owed to workers. The maximum penalty is £20,000 per worker.

The penalty is reduced by 50% if the unpaid wages and the penalty are paid within 14 days.

Periodically the government publishes a list of employers who have not complied. The reasons employers fail to comply vary and include topping up pay with tips and deducting sums for uniforms, among others.

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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