kirkrice
Accountants & Financial Advisors

The National Minimum Wage

Factsheet

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The National Minimum Wage (NMW) and National Living Wage (NLW) are the legal minimum wage rates that must be paid to employees.

There are different levels of NMW and NLW, depending on your age and whether you are an apprentice. The NMW is available to those of at least school leaving age. The age at which the NLW is available has changed in recent years, but from 1 April 2024, the NLW is available to those aged 21 and over. From 1 April 2023, it was available to those aged 23 and over and from 1 April 2021 it was available to those aged 25 and over.

The NLW and NMW rates change every 1 April. The table below shows the minimum wage rates applying from 1 April 2024:

	Apprentices	16 and 17	18 - 20	21 and over
National Minimum Wage	£6.40	£6.40	£8.60	-
National Living Wage	-	-	-	£11.44

There are separate minimum rates of pay for agricultural workers. Visit www.gov.uk/agricultural-workers-rights/pay-and-overtime for more information.

Apprentices

The apprentice rate applies to:

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

Key questions

Who is covered by the NMW and NLW?

NMW and NLW apply to all workers, with certain exceptions such as:

- those who are genuinely self-employed
- workers who are still of compulsory school age
- company directors
- volunteers and voluntary workers
- family members living in the family home and working in the family business
- non-family members living and working with the family, for example au pairs
- students doing work experience as part of a higher or further education or a work placement up to a year.

There are more exceptions to the NMW and NLW. Visit the following link for further guidance: www.gov.uk/national-minimum-wage/who-gets-the-minimum-wage.

How is a worker's pay calculated?

There are complex rules for determining a worker's pay for NMW and NLW purposes.

Benefits in kind, reimbursed expenses, certain allowances and most deductions are not included. Special rules apply where an employer provides accommodation. Enhanced payments for particular work will not count, but incentive or profit related payments will be included. Visit the following link for full guidance on calculating a worker's pay for NMW and NLW purposes: https://www.gov.uk/guidance/calculating-the-minimum-wage.

What working time counts for the minimum wage?

The rules on what counts as working time for which the minimum wage is payable varies depending on how the worker is paid, such as whether the worker is paid an annual salary or paid by the hour. Job-related travelling and training time is included. Periods of holiday or absence do not count (even though holiday pay is now obligatory), nor does time taken as rest breaks or industrial action. Special rules apply for workers who perform sleep in shifts. Visit the following link for full guidance on the working hours for which the minimum wage must be paid: https://www.gov.uk/guidance/calculating-the-minimum-wage/working-hours-for-which-the-minimum-wage-must-be-paid.

What is the 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.

What about Family Businesses?

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 (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 about Company Directors?

In common law, company directors are classed as office holders and can do work and be paid for it in that capacity. This is true no matter what sort of work they do and how it is rewarded.

The minimum wage does not apply to office holders, unless they also have contracts which make them workers.

It is unlikely that a company director will have an implied contract which makes him a worker. The rights and duties of an office are defined by that office, and it exists independently of the person who fills it. Directors can be removed from their office by a simple majority of the votes cast at a general meeting of the company. This contrasts with the rights and duties of an employee which are defined in a contract of employment.

What records have to be kept?

Employers must keep sufficient records to demonstrate that the minimum wage has been paid. These should be kept in a format which enables the information kept about a worker in respect of a pay reference period to be produced in a single document.

Since 1 April 2021 records should be kept for a minimum of six years.

What rights does the worker have?

If a worker thinks that they have been paid below the minimum wage, they should first discuss with their employer and can ask the employer to produce their payment records. If the employer has paid the worker below the minimum wage, the worker must be paid any arrears.

The worker can also speak to Acas which provides free, impartial and confidential advice to employers, workers, employees and their representatives. Help is available by contacting their Pay and Work Rights Helpline: 0300 123 1100.

Callers can be assisted in over 100 different languages.

Are there any criminal offences relating to the minimum wage?

Yes, there are six criminal offences:

- refusal or wilful neglect to pay the minimum wage
- failing to keep or preserve minimum wage records
- causing or allowing a materially false entry to be made in minimum wage records
- producing or furnishing materially false records or information
- intentionally delaying or obstructing a compliance officer
- refusing or neglecting to answer questions, give information or produce documents to a compliance officer.

Employers who deliberately fail to pay the minimum wage may face a potentially unlimited fine.

Enforcement

Employers will need to make sure they are paying their staff correctly as the minimum wage is enforced by HMRC. HMRC compliance officers can carry out inspections of employers instigated through either a worker complaint or a targeted investigation by HMRC.

HMRC have various powers to obtain the information required for their inspection, but the HMRC compliance officer must show an identity document on request.

In addition, HMRC is able to use the search and seize powers in the Police and Criminal Evidence Act 1984 when investigating criminal offences under the National Minimum Wage Act 1998.

Notice of underpayment

If an HMRC compliance officer believes that an employer has failed to pay at least the minimum wage to a worker, HMRC may serve a notice of underpayment requiring the employer to:

- repay arrears of the minimum wage to each worker named on the notice
- pay a penalty.

The penalty can be up to 200% of the underpayment, up to a maximum penalty of £20,000 per worker. The penalty will be reduced by 50% if the employer fully complies with all the terms of the notice of underpayment within 14 days of service of the notice.

The employer may appeal against the notice of underpayment within 28 days of service of the notice. An appeal must be made to the employment tribunal (or industrial tribunal in Northern Ireland). If the employer does not comply with the notice of underpayment, HMRC can take a case to a tribunal or County Court (or Scottish equivalent) on behalf of the worker, or prosecute the employer.

In addition to financial penalties, the government periodically publishes names of employers who have not complied with the minimum wage laws.

How we can help

We will be more than happy to provide you with assistance or any additional information required. Please contact us if you would like more information.

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