



A Guide to the National Minimum Wage

The Government introduced the national minimum wage because it wished to help protect more vulnerable workers by guaranteeing them a certain level of income and because it wished to help business by encouraging firms to compete on the quality of their products and services rather than on the expedient of very low rates of pay.

The national minimum wage applies to almost all workers in the UK. It establishes an hourly rate of pay lower than which wages must not fall. The rate is determined by the recommendations of the independent Low Pay Commission. Most other industrial countries have a minimum wage, although levels vary. The United States was the first to introduce the idea of a mandatory basic wage in 1938.

Rates of Pay

The minimum wage is defined as the minimum amount of pay per hour to which workers aged 18 or older are entitled by law.

The minimum wage falls into two categories: the main rate and the development rate.

The main rate is for employees aged 22 or older and is £5.35 per hour. A development rate of £4.45 per hour for workers aged 18 - 21 years inclusive, 3.30 per hour which applies to all workers under the age of 18 who are no longer of compulsory school age.

The development rate is for employees aged between 18 and 21. It was also for employees who are 22 or older but who were starting a new job with a new employer and were undertaking accredited training on a course which was approved by the government and which lead to a vocational qualification.

Workers who are 22 or older and who qualify for the development rate could only be paid at that level for the first six months of their employment and training. After six months, they were to be paid at least the main rate minimum wage.

The development rate for workers age 22 and over was abolished for pay reference periods starting on or after 1 October 2006. From that date, all workers aged 22 and over who qualify for the national minimum wage will be entitled to the main rate of national minimum wage. This applies even where the worker was previously in receipt of the development rate for those age 22 and over and had been receiving that rate for less than 6 months. For workers under the age of 18, there is no minimum wage.



Compliance with the Minimum Wage

It is the job of the Inland Revenue to make sure that the requirements of the national minimum wage are observed by employers in the UK.

This is done in two ways. If a complaint is made about an employer who may not be complying with the law, then the Inland Revenue will investigate the matter. The Inland Revenue is also allowed to visit selected employers about whom no complaints have been made in order to make sure, if applicable, that the terms of the minimum wage are being met.

To carry out its compliance work, the Inland Revenue has several teams of officers across the country. When investigating a complaint, they have the authority to inspect employment records if this will help them determine whether the minimum wage is being properly administered. If it is not, then they will discuss with the employer how the arrears can be made good. It is also part of their job to help explain to employers what the minimum wage law means for them and to present cases to employment tribunals on behalf of workers.

Employers and the Minimum Wage

What qualifies as pay

Not everything that an employer pays a worker is necessarily seen as pay under the terms of the minimum wage. Things like incentives, bonuses and performance-related remuneration qualify as pay. But allowances - payments that aren't consolidated into an employee's basic pay - do not qualify as earnings.

Money that a worker gets over and above the basic rate for overtime or shift work does not count either, so long as the basic and overtime rates are paid in the same pay reference period.

Other benefits like uniforms, meals or private health insurance aren't included, though accommodation is.

Calculating hours of work

The type of work an employee does has a bearing on the basic number of hours for which an employer must pay him or her the minimum wage. Types of work fall into four different categories.



1. Workers who get paid for a set number of hours or a set period of time are doing **"time work."**
2. Workers who are contracted to work a set number of basic hours per year and for which they are paid an annual salary in equal instalments - weekly, monthly, quarterly – are doing **"salaried hours work."**
3. Workers who are paid by the number of things they make or the number of sales they close are performing **"output work"**. In this case, employers should have an agreement with a worker on what is a fair estimate of the number of hours they should work.
4. Workers who are paid to carry out particular tasks but are not given any set hours in which to do are performing **unmeasured work"**. As with output work, employers can agree in writing with a worker what they think is an acceptable number of hours they should be putting in.

Staff on **"time work"** do not need to be paid the minimum wage for periods when they are not actually working, such as lunch breaks, holidays, sick leave and maternity leave. But it is important to remember that the usual rules on statutory paid holidays, sick pay and maternity pay still apply.

An employer's obligations under the law

Some employers will be asked to demonstrate that they are paying the minimum wage. This means that as an employer you must maintain records that are detailed enough to prove that you are complying with the law.

It is also the responsibility of the employer to put in writing an agreement with any worker who qualifies for the development rate of the minimum wage that the worker will be taking a course of accredited training on at least 26 days during the first six months of employment.

Should a worker reasonably think that they are not being paid the minimum wage, then they can ask in writing to see their wage records. As an employer, you must let them see those records within 14 days of the request being made.

In any dispute over the payment of the minimum wage, the obligation of proof falls on the employer not on the employee.

Any employer who is found knowingly not to have paid the minimum wage could face a fine. Workers who are released by an employer because they have become eligible for the minimum wage or for a higher rate of the minimum wage can claim unfair dismissal.



Self-employed workers

Although the minimum wage applies to most workers, including those who are part-time or casual or who earn by commission, it does not apply to the self-employed. This assumes that the worker concerned is genuinely self-employed and is paid by invoice not wages, controls their own working hours and is free to carry out work for other employers.

Agency workers

Any worker who is sent by an agency to work for a client of the agency must be paid the minimum wage. Whether the client or the agency holds responsibility for paying the worker the minimum wage is normally determined by the worker's contract, which will be with either the client or the agency. Where this is uncertain, the employer is regarded as whoever pays the worker their wages.

Students

Sometimes, as part of their course, students in higher education courses are given placements with companies for a period of time (up to one year). Employers do not have to pay these students the minimum wage.

Students who are studying for a postgraduate degree or diploma, however, do qualify for the minimum wage, even if their time with an employer constitutes part of their course.

So long as they are aged 18 or above, students who take work during holidays or gap years must receive at least the minimum wage.

Further Information

<http://www.dti.gov.uk/files/file11671.pdf>

If you want detailed guidance on your rights as a worker or your obligations as an employer the "detailed Guide to the National Minimum Wage" is for you. It provides up to date guidance on how the National Minimum Wage (NMW) legislation affects workers and employers. Its aim is to help employers ensure that they pay their workers the national minimum wage, and to help workers establish that they are getting what they are entitled to.

Tel 0844 500 2555
Email enquiries@avidplan.com
<http://www.avidplan.com>