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Employer's Factsheet:

National Minimum Wage (England, Wales and Scotland)

The National Minimum Wage Regulations came into force on 1 April 1999.

How Much Must I Pay?

The National Minimum Wage Regulations came into force on 1 April 1999. The national minimum wage (NMW) is (from 1 October 2007) set at £5.52 an hour for workers aged 22 and over. For workers aged 18 to 21 inclusive the minimum wage is £4.60. For workers aged 16 over the compulsory school age (see below) and 17 inclusive the minimum wage is £3.40.

In England and Wales a person is no longer of compulsory school age after the last Friday of June of the school year in which their 16th birthday occurs. In Scotland, pupils whose 16th birthday falls between 1 March and 30 September may not leave before 31 May of that year. Pupils aged 16 on or between 1 October and the last day of February may not leave until the start of the Christmas holidays in that school year.

Who is Entitled?

The NMW legislation applies to "workers", defined to cover not just employees but also anyone working under a contract where the individual undertakes to do work, or perform personally any work or services for another party, and where the other party is not a client or customer of any profession or business carried on by the individual.

This definition means that freelancers and subcontractors will have to be paid the NMW unless they are genuinely in business on their own account. The National Minimum Wage Act has also extended the definition of "worker" specifically to cover agency workers and home workers.

What about Apprentices?

A worker who is employed under a recognised contract of apprenticeship, such as a National Traineeship (for England and Wales), Skillseekers — to SVQ level 2 or 3 (Scotland) or a

Modern Apprenticeship, does not qualify for any of the NMW rates if:

- (a) they are aged under 18
- (b) they are aged 19 and above inclusive and are in the first 12 months of their employment.

What about Part-timers?

Part-time and casual staff are entitled to the NMW on exactly the same terms as full-timers.

Is Anyone Exempt from the NMW?

Yes. Trainees on Government funded training schemes are exempt when they do not receive wages from the employer. Such schemes include the New Deal, Work Based Learning for Adults (England and Wales), other youth training (England and Wales), "Work Trials" scheme (England & Wales), Training for work (Scotland) and Skillseekers who are not pursuing an SVQ level 2 or 3 (Scotland). Also exempt are:

- trainees receiving assistance from the European Social Fund
- students on "sandwich courses" in conjunction with higher education courses
- people living and working as part of a family such as au pairs
- family members who live in the family home and participate in the running of the family business
- charity workers who are volunteers and only receive expenses rather than a regular wage.

How is an Individual's NMW Entitlement Calculated?

The regulations divide workers into certain categories. For example, there are those workers who are paid on a "time-work" basis (in other words, employees who are paid for the number of hours they spend at work and who do not receive an annual salary or commission) and workers paid on an



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"output work" basis (such as pieceworkers and sales staff paid on a "commission only" basis).

For workers paid on a time-work basis the calculation to find out if a worker is receiving the NMW should be relatively simple — the gross pay is divided by the number of hours worked within the pay reference period. The "pay reference period" is the worker's existing pay period (for example, a week or a month). If a worker is paid less frequently than monthly (for example, every three months) the pay reference period will be a calendar month.

What Time Counts as Working Hours for the NMW Calculation

The regulations also state what time does and does not count as hours worked for which the NMW must be paid. The following count as hours worked.

- The time during which the employee is required to attend the place of business (particularly relevant for those on "zero hours" contracts or hours specified as 'hours as required by the needs of the business').
- Travelling time for business travel (excluding travel to and from the place of work) — this will mean that sales representatives must be paid the NMW for any travel to customers.
- Time spent on training whether it is on the firm's premises or elsewhere.

Hours which do not count are:

- meal and rest breaks
- holidays and sickness (although of course these are covered by the Working Time Regulations and the Statutory Sick Pay rules).

How is the NMW Calculated for Workers on Piecework?

Piece work is defined as "output work". Output work is work where the worker is paid according to the number of pieces produced or tasks performed. There are no set hours of work. Typical output workers are home workers or some agricultural workers.

The employer has to determine the "mean hourly output rate" in relation to the type of piece or task in question by working out the average number of pieces (including fractions) or tasks completed in an hour. In order to do this, the employer must carry out tests with either the whole or a sample of the workforce. It may be possible in certain circumstances for the employer to estimate the speed of production, but only where a test has previously been carried out on a piece or task, which is similar to the one in question or where they are making an adjustment for different working circumstances. An example would be where the work is going to be carried out by home workers and the test has been done at the workplace.

The employer must give notice in writing to the worker to explain that for the purposes of the national minimum wage legislation the worker will be treated as working for a certain period of time, that the employer has conducted a test and state what the mean hourly output rate is for the piece or task. The notice must also state the rate to be paid to the worker for the production of the piece or performance of the task and give the telephone number of the national minimum wage helpline run by HM Revenue and Customs (0845 6000 678). All this information must be supplied to the worker before starting work or before pay rates change.

To calculate the pay, which is known as the "fair piece rate", the mean hourly output rate has to be divided by the hourly rate for the national minimum wage and then increased by 120%. For example, if the average number of pieces produced in an hour is 10, £5.52 divided by 10 is 55.2p. 55.2 multiplied by 120% is 66.2p per piece.

The requirement to increase the fair piece rate by 120% came into force from 6 April 2005. This means that workers who work slightly slower than average will still be paid the national minimum wage.

Does all Pay Count Towards the NMW Requirement?

No. Benefits-in-kind (such as company cars) and payments by voucher (including luncheon vouchers) will not count towards payment of the NMW. Furthermore, the regulations stipulate a number of cash payments which will not count towards the NMW. These are:

- reimbursement of expenses
- unsociable hours payments
- overtime premiums
- location payments such as London Weighting
- allowances for working in unpleasant or dangerous conditions
- tips, unless they are paid through the payroll
- payments made where a worker performs over and above his normal duties
- stand-by or call-out payments
- loans and advances of wages
- pension payments
- court and employment tribunal awards
- redundancy payments
- awards under suggestion schemes.

What about Bonuses — Can they Count Towards the NMW?

Yes. Bonuses and other incentive payments can count towards the NMW. However, an annual bonus cannot be used



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to count towards the NMW for the whole year round. It will count during the pay reference period in which it is paid and for the previous reference period. For example, if an annual bonus is paid in December and the pay reference period is one month, one twelfth of the bonus can count towards the NMW for November and the remainder will count towards the NMW in December.

Can Accommodation Count Towards the NMW?

There is a daily allowance of £4.30 from 1 October 2007 for the number of days for which accommodation was provided, with the maximum weekly offset figure of £30.10 from 1 October 2007.

What about Salaried Staff?

Salaried staff are also dealt with in the National Minimum Wage Regulations. Salaried workers are defined as those workers who receive an annual salary, are paid for a set number of hours a year and are paid in equal instalments, such as on a monthly or weekly basis. Absences such as holidays, short periods of sick leave and lunch breaks will count towards the calculation for the NMW. Most office workers will fall into this category, as will employees on annual hours contracts and school staff who just work during term time, but are paid equal amounts throughout the year.

What Sort of Records are Employers Required to Keep?

Sufficient records need to be kept by employers to demonstrate that they are paying the NMW. The Regulations state that records should be kept for three years, but as civil

claims can be brought before the courts up to six years after the failure to pay the NMW, it is advisable to keep the documentation for this amount of time. Employers will need to keep copies of any training agreements and any test carried out in connection with the rated output work system for those staff on piecework.

What if an Employer Decides Not to Pay the NMW?

In the first instance, workers are likely to approach the employer to inspect the wages records to see if the NMW is paid. Workers who are denied a right of access to the records may make an application to the employment tribunal. A tribunal can make an award of 80 times the National Minimum Wage.

Workers, regardless of their length of service, will be able to make an application to the Employment Tribunal to recover the unpaid national minimum wage. An employee who is dismissed as a result of taking action or proposing to take action for enforcing his or her rights over the NMW is protected from unfair dismissal.

Enforcement Officers working for HM Revenue & Customs have the power to interview employers and inspect pay records. They may also serve enforcement notices on the employer to start paying the NMW and also to give back pay at the NMW level. If an enforcement notice is not complied with, a penalty notice will be enforced to impose a penalty of twice the current minimum hourly rate per day per worker from the time of issue of the enforcement notice. Deliberate refusal to pay the NMW is a criminal offence with up to a £5000 fine for each offence.

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