

Your NMW Factsheet

The national minimum wage (NMW) is a legal right which covers almost all workers in the UK. It became law on 1 April 1999 to prevent unduly low pay and also to help create a level playing field for employers.

With the NMW increase for 2011 almost upon us, we thought we'd compile this informative factsheet detailing some interesting historical rates, NMW entitlement and guidelines to help guide you through the increase.

Entitlement to the NMW

Most workers in the UK over school leaving age are legally entitled to be paid at least the NMW and all employers have to pay it if workers are entitled to it. It makes no difference:

- If workers are paid weekly or monthly, by cheque, in cash or in another way;
- If the worker is full time, part time or any other working pattern;
- If the worker performs the work duties your own premises or elsewhere;
- What size business you operate;
- Where the business is based in the UK.

Workers are entitled to the NMW even if they sign a contract agreeing to be paid at a lower rate. This is regardless of whether they sign of their own free will or because their employer persuades or makes them. The contract will have no legal effect and workers must still be paid the proper rate.

What is included and not included?

Only particular elements of a worker's pay count as national minimum wage (NMW) pay. To calculate a worker's NMW pay:

- take the total pay paid by the employer in the pay reference period (PRP)
- subtract amounts that do not count as NMW pay
- divide this amount by the total number of hours worked in the PRP

Some payments and expenses do not count towards NMW pay. These payments include loans, pension payments, redundancy payments and the premium element of **overtime** pay.

Expenses linked to the job, travel costs incurred when doing the job and accommodation charges above a certain limit all reduce NMW pay. However, deductions for Income Tax, National Insurance contributions and workers' pension contributions do not reduce NMW pay.

How is the NMW enforced?

From 6 April 2009 the Employment Act 2008 made changes to the enforcement regime for the National Minimum Wage.

The previous enforcement regime of penalty notices has been replaced with a notification of underpayment which will include a penalty being levied on the employer for non-compliance with NMW requirements.

The main changes are:

- An automatic penalty of 50% of the total NMW underpayment will be payable to the Secretary of State with a minimum penalty of £100 and a maximum penalty of £5,000. A 50% discount will apply if an employer settles within 14 days of the notification. This penalty is applicable to non-compliance on or after 6 April 2009.
- Serious cases of non-compliance/un-cooperation may be tried in the Crown court (liable to a potential unlimited fine).
- There is now a new method for calculating arrears according to a formula set out in the Employment Act 2008. Any arrears owed to workers will be calculated using the rate of NMW at the date of the calculation, not at the rate as it was at the date of the underpayment.
- Compliance officers will have increased civil powers i.e. the power to enter premises to investigate non-compliance, and to remove for a reasonable period, NMW records in order to copy them.

NMW Record-keeping: what are the legal requirements?

The employer of a worker who qualifies for the NMW shall keep sufficient records in respect of that worker to establish that he is paying a rate at least equal to the NMW.

The records shall be capable of being produced in a single document in respect of each pay reference period and the records shall be kept for a period of three years after the end of the following pay reference period to which the records apply. The records can be kept by means of a computer.

In order to calculate whether an employer is paying a rate equal to the NMW s/he will need to keep a record of:

- all money payments to the worker;
- any tips, service charge etc paid through the payroll;
- any reductions;
- total hours worked and total hours absent from work;
- copies of any agreement estimating hours of output work or averaging hours for unmeasured work.

Enforcement and penalties

HMRC enforces the national minimum wage. From 6 April 2009, if HMRC finds you have underpaid the national minimum wage it will issue a notice of underpayment. This will show the arrears you must pay to your workers and the penalty you must pay to HMRC.

The penalty is 50 per cent of the total underpayment that has occurred from 6 April 2009. This figure will be shown separately on the notice of underpayment. There is a minimum penalty of £100 and a maximum of £5,000. If you pay the arrears and the penalty within 14 days of the date on which the notice of underpayment is served, you only need to pay half of the penalty.

If you receive a notice of underpayment you have a right of appeal. You can appeal against:

- HMRC's decision to issue a notice of underpayment
- any requirement imposed by the notice of underpayment

Details of how and where to appeal will be included with the notice of underpayment.

Hours for which the NMW must be paid

The hours for which the national minimum wage must be paid depends on the type of work a worker is doing. The type of work does not depend on the worker's occupation. Instead, it depends on the basis on which they are paid.

This guide defines the four types of work - time work, salaried-hours work, output work and unmeasured work. It also explains how the rules and calculation of hours differ for each. Where this guidance refers to 'time worker', 'piece worker', 'salaried-hours worker' etc, it means a person who is doing that particular type of work in a pay reference period.

It is important to note that any one worker might do different types of work for the same or, more usually, different employers. In that case, the rules and calculation of hours apply differently for each type of work that the worker does.

Apprentice Minimum Wage

From 1 October 2010 an Apprentice Minimum Wage of £2.50 per hour applies to those apprentices under the age of 19 and those aged 19 and over in the first 12 months of their apprenticeship. From 1 October 2011 this rate increases to £2.60 per hour.

Historical NMW Rates

Adult Rate (for workers aged 22+ until 2010 when this rate applied to those aged 21+)		Development Rate (for workers aged 18-21)		16-17 Year Olds Rate*	
1 Oct 2011	£6.08	1 Oct 2011	£4.98	1 Oct 2011	£3.68
1 Oct 2010	£5.93	1 Oct 2010	£4.92	1 Oct 2010	£3.64
1 Oct 2009	£5.80	1 Oct 2009	£4.83	1 Oct 2009	£3.57
1 Oct 2008	£5.73	1 Oct 2008	£4.77	1 Oct 2008	£3.53
1 Oct 2007	£5.52	1 Oct 2007	£4.60	1 Oct 2007	£3.40
1 Oct 2006	£5.35	1 Oct 2006	£4.45	1 Oct 2006	£3.30
1 Oct 2005	£5.05	1 Oct 2005	£4.25	1 Oct 2005	£3.00
1 Oct 2004	£4.85	1 Oct 2004	£4.10	1 Oct 2004	£3.00
1 Oct 2003	£4.50	1 Oct 2003	£3.80	-	-
1 Oct 2002	£4.20	1 Oct 2002	£3.60	-	-
1 Oct 2001	£4.10	1 Oct 2001	£3.50	-	-
1 Oct 2000	£3.70	1 Oct 2000	£3.20	-	-
1 Apr 1999	£3.60	1 Apr 1999	£3.00	-	-

*This document has been sourced using information from the REC, www.Directgov.uk and HRMC