

**Licensee
guidance
National
Minimum
Wage**

Introduction

The National Minimum Wage was introduced from 1st April 2009. Employers in the UK are obliged to pay the national minimum wage to its employees. There are different rates applicable to different age groups and for apprentices. In the Summer Budget 2015 the Chancellor additionally announced a new National Living Wage for employees of 25 and above, to come into effect from 1st April 2016. The current and future rates are set out below.

The BBPA is currently working with HMRC to produce more detailed guidance specifically for pubs and the hospitality sector.

What rate is the national minimum wage/ national living wage?

Year	25+	21-24	18-20	Under 18	Apprentice
April 2018	£7.83	£7.38	£5.90	£4.20	£3.70
April 2017	£7.50	£7.05	£5.60	£4.05	£3.50

The vast majority of people are eligible for the national minimum wage but there are a number of exemptions, including self-employed people running their own business, company directors, volunteers, workers younger than the school leaving age and those on a JobCentrePlus work trial for six weeks.

What contributes towards the NMW?

Only accommodation can be counted towards the NMW. Other company benefits, like food, clothing, childcare vouchers, a car, etc., do not contribute.

Specific examples given are:

- payments that shouldn't be included for the employer's own use or benefit, e.g. if the employer has paid for travel to work
- things the worker bought for the job and isn't refunded for, e.g. tools, uniform, safety equipment

Accommodation is considered part of the wage if any of the following apply:

- The accommodation comes with the job
- The employer owns or rents the property even if separate to the job
- The employer gets a payment from the employee's landlord or member of their family

Accommodation can include rent, bills and laundry.

Accommodation - this can be taken into account when calculating the minimum wage. Therefore, employers allowing accommodation can pay less in wages than the minimum wage as the accommodation makes up the difference.

As of April 2018, accommodation has an offset rate of £7.00 per day. This changes every tax year. Provided that the wages paid plus the accommodation offset for the number of days that the employee lives there in a pay period exceeds the minimum wage the employer is compliant. For example, if an employee over the age of 25 works 30 hours per week and lives at the property seven days a week then the hourly wage paid must be at least $((£7.83 \times 30) - (7 \times £7.00)) / 30 = \underline{£6.20}$

Where rent is charged above the offset rate a further calculation must be made. An employer charges £8 a day rent. This takes accommodation costs to £56 per week. The amount over the offset cannot contribute to the minimum wage.

For example, if an employee over the age of 25 works 30 hours a week, is paid weekly at a rate of £7.90 and lives at the property seven days a week then:

1. $£7.90 \times 30 = £237$
2. $£8$ (accommodation rate) \times 7 (days accommodation provided in pay period) = £56
3. $£7$ (offset rate when accommodation is free) \times 7 (days accommodation provided in pay period) = £49
4. $£237$ (total pay in pay period) - £56 (total accommodation cost in pay period) + £49

(total accommodation offset in pay period) = £230

5. £230/30 (total hours in pay period) = £7.67

This is below the required £7.83 national living wage.

Taxes, items not needed specifically for the job, i.e. meals provided, and penalty charges for misconduct are included in the minimum wage.

How to calculate NMW for different types of work

Paid hourly - for each pay period the employee must receive payment equivalent to at least the number of hours worked multiplied by their relevant NMW.

Paid an annual salary - if an employee is paid a salary for a contracted number of hours then they must be paid at least the minimum wage in each payment period. If an employee has a set number of hours per week, then work out how many this is per year. Divide the salary by the number of hours worked and ensure this is at least at the level of the NMW. Any additional hours worked should all be paid at the NMW level or higher.

Paid per task or piece of work done - if you are employing someone to do a specific piece of work (cleaning, renovations, etc.) then they must be paid the minimum wage for each hour worked or a 'fair rate'.

When does the national minimum/living wage change and how?

The Government relies on the Low Pay Commission (LPC) to make recommendations to the change in the NMW following consultation with business groups and employee representatives. The Government can choose to implement this recommendation or choose its own level. In most instances it will adopt the recommendation of the LPC, but there have been examples of when this has not happened. The LPC launch a consultation annually which BBPA respond to.

What are the penalties for not paying the NMW/NLW?

It is a criminal offence not to pay the minimum wage. If an employer discovers they have not been paying the minimum wage, then they must pay this back in arrears to the employee. HMRC has the right to carry out checks at any point to ensure the NMW is being paid. This includes inspection of records, which an employer is obliged to keep for at least three years. In some instances, records may be examined dating back up to six years.

Employers who underpay minimum wage rates can face fines of up to 200% of the back pay they owe to workers and can be publically '[named and shamed](#)' by the Department for Business, Energy and Industrial Strategy.

The government will name all employers that have been issued with a Notice of Underpayment (NoU) unless employers meet one of the exceptional criteria or have arrears of £100 or less. Employers have 28 days to appeal to HMRC against the NoU (this notice sets out the owed wages to be paid by the employer together with the penalty for not complying with minimum wage law). If the employer does not appeal or unsuccessfully appeals against this NoU, BIS will consider them for naming. The employer then has 14 days to make representations to BIS outlining whether they meet any of the exceptional criteria:

- naming by BIS carries a risk of personal harm to an individual or their family
- there are national security risks associated with naming in this instance
- other factors which suggest that it would not be in the public interest to name the employer (employer to provide details)

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