

Employer guidance National Minimum Wage

Introduction

The National Minimum Wage was introduced from 1st April 2009. Employers in the UK are obliged to pay at least the national minimum wage to their staff. 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 previous and current rates are set out below.

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

| Year | 25+ | 21-24 | 18-20 | Under 18 | Apprentice |
|------------|-------|-------|-------|----------|------------|
| April 2019 | £8.21 | £7.70 | £6.15 | £4.35 | £3.90 |
| April 2018 | £7.83 | £7.38 | £5.90 | £4.20 | £3.70 |

The vast majority of people below 25 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.

The apprentice minimum wage applies to all apprentices who are either: aged 16-18; or aged 19+ and in their 1st year of apprenticeship. Those aged over 19 and are in their 2nd year (or later) of their apprenticeship must be paid the relevant age-related national minimum wage, which must be applied from the first full pay reference period when this applies.

What can count towards the NMW?

Only accommodation can be counted towards the NMW on top of wages. Other company benefits, like food, clothing, childcare vouchers, a car, etc., do not count towards the NMW. Tips and service charges received by staff do not count towards the national minimum wage.

Accommodation costs can be taken into account when calculating the minimum 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.

As of April 2019, accommodation has an offset rate of £7.55 per day, or £52.85 per week. 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 exceed the minimum wage, the employer is compliant. For example, if an employee over the age of 25 works 30 hours per week, lives at the property for 7 days a week, and is paid weekly, then the hourly wage paid must be at least $((£8.21 \times 30) - (£7.55 \times 7)) / 30 = \underline{£6.45}$

Where rent is charged above the offset rate a further calculation is made. For example, an employer charges £8.50 per day rent. This takes accommodation costs to £59.50 per week. The amount over the offset cannot contribute to national minimum wage.

For example, if an employee over the age of 25 works 30 hours a week, is paid weekly at a rate of £8.30 and lives at the property seven days a week then:

1. Their weekly salary is $£8.30 \times 30 = \underline{£249}$
2. $£8.50$ (accommodation rate) $\times 7$ (days accommodation provided in pay period) = $£59.50$
3. $£7.55$ (offset rate where accommodation is free) $\times 7$ (days accommodation provided in pay period) = $£52.85$
4. $£249$ (total pay in pay period) - $£59.50$ (total accommodation cost in pay period) + $£52.85$ (total accommodation offset in pay period) = $£242.35$
5. $£242.35/30$ (total hours in pay period) = $£8.08$

This is below the required £8.21 national living wage.

What can be deducted from the NMW?

Deductions from pay and payments by workers that do not reduce minimum wage pay include:

- Deductions for Income Tax and National Insurance contributions
- Deductions from pay by the worker to recover an accidental overpayment of wages
- Deductions from pay or payment by the worker because of an advance of wages or on account of an advance under an agreement for a loan

More examples of deductions which do not reduce minimum wage pay can be found [here](#).

As a condition of employment an employer may require a worker to wear a uniform. For example, if a worker is required to wear overalls, deductions can be made to claim back costs, but these must not reduce pay to less than NMW.

Further information on deductions and payments from workers for uniforms can be found [here](#).

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'. Guidance on calculating a 'fair rate' can be found on the [Government website](#).

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

Typically, the National Minimum Wage in the UK changes every year in April.

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.

Common tripping points

Common tripping points for employers when national minimum and living wage rates change include:

- **Annual rate changes:** Employers are required to start paying employees from the first *full* pay reference period after the rate changes annually. For example, if an employer always pay staff on the 20th of each month, they will be entitled receive the new rate of minimum wage from 21st April onwards.
- **Change in employee's age:** Employers will receive a penalty if they fail to increase wage rates in line with employee's birthdays. Wage rates will change for employees who turn 18, 21 or 25. Their pay must increase in the next pay reference period after their birthday.
- **Apprenticeship rate errors:** Apprentices aged 16-18, or aged 19+ and in their first year of an apprenticeship, must be paid at least the *apprentice minimum wage*. If an apprentice is over the age of 19 and in their second year (or more) of their apprenticeship, they must be paid the correct age-related minimum wage in the first pay reference period.
- **Pay reference periods:** If wage rates change for any reason, the employer must update the employee's pay from the first full pay reference period. If an employee is paid

weekly, their wage must be changed in time for the first full paid week after the wage rate changes. Example:

- A 21 year old employee is paid national minimum wage monthly, on the 12th of every month. On 1st April 2019, NMW will change from £7.38 to £7.70. That means, from 13th April, the employee must be paid the new wage rate of £7.70. Their first pay cheque under the new wage rate will therefore be received on 12th May.
- **Compliance issues for the hospitality** – issues such as what is defined as uniform, the time in work before and after a shift finishes, training and salary sacrifice schemes have all arisen as potential compliance issues for the hospitality sector.

(If any members have an upcoming audit please inform the BBPA)

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 publicly 'named and shamed' by the Department for Business, Energy and Industrial Strategy (BEIS).

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 the NoU, BEIS will consider them for naming. The employer then has 14 days to make representations to BEIS outlining whether they meet any of the exceptional criteria:

- naming by BEIS 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)

External links

[HMRC series of bite sized webinars](#) – aims to help employers avoid the most common errors. Each episode is under 10 minutes long.

The [national minimum wage pages](#) on Gov.uk

[An employer's guide](#) produced by the Department for Business, Energy and Industrial Strategy to help employers meet the national minimum wage legislation.

ACAS (Advisory, Conciliation and Arbitration Service). You can speak with an ACAS Advisor on 0300 123 1100 www.acas.org.uk/nmw

The National Minimum Wage Regulations are available online at www.legislation.gov.uk

Updated April 2019