

## The National Minimum Wage

**Employers must pay their workers a minimum amount per hour as defined by law. This amount is called the National Minimum Wage (NMW).**

### Who is covered by the NMW?

NMW applies to all workers, with certain exceptions such as:

- children who are still of compulsory school age
- those who are genuinely self employed
- family members working in the family business
- people working and living as part of a family (e.g. *au pairs*)
- voluntary workers

### What are the rates of NMW?

The rates from 1 October 2011 are:

- £6.08 per hour for workers aged 21 and over;
- £4.98 per hour for 18-20 year olds; and
- £3.68 per hour for 16-17 year olds.
- £2.60 per hour for apprentices\*

\* *Under 19, or 19 and over in the first year of their apprenticeship*

Please note, there are separate minimum rates of pay for agricultural workers. Visit [www.businesslink.gov.uk](http://www.businesslink.gov.uk) for more information.

### How is the NMW calculated?

The Regulations set out a rather complex procedure detailing the calculation of the NMW.

Benefits in kind, expenses, certain allowances and most deductions are not included.

Enhanced payments for particular work will not count, but incentive or profit related payments will be included

### What working time counts for NMW?

Job-related travelling and training time is included. Periods of holiday or absence do not count (even though holiday pay is now obligatory), nor does time taken as rest breaks or industrial action.

### What if the pay is not time-related?

Piece workers and other non-time workers (e.g. pub landlords) may come to an agreement with their employer about a fair estimate of hours.

### What about Family Businesses?

Although there is an exemption for family members working in the family business, the regulations specifically refer to *the employer's family*. If the family business (i.e. the employer) is a limited company, then it does not have a family. Even if the family business operates as a sole trade or partnership, the only family members exempted are those who actually live at home.

## What about Company Directors?

In common law, company directors are classed as *office holders* and can do work and be paid for it in that capacity. This is true no matter what sort of work they do and how it is rewarded.

The NMW does not apply to office holders, unless they **also** have contracts which make them workers.

It is unlikely that a company director will have an implied contract which makes him a worker. The rights and duties of an office are defined by that office, and it exists independently of the person who fills it. Directors can be removed from their office by a simple majority of the votes cast at a general meeting of the company. This contrasts with the rights and duties of an employee which are defined in a contract of employment.

## What records have to be kept?

For workers earning in excess of £12,000 per year, employers simply have to keep sufficient records to demonstrate that the NMW has been paid. For workers earning less than £12,000 per year, full details of the NMW calculation must be kept.

Records should be kept for six years.

## What rights does the worker have?

Individuals have the right to apply to a court or tribunal for non payment of the NMW. They are also protected from suffering any loss for such proceedings. There is a national helpline that operates from Monday to Friday from 8am to 6pm:

Telephone 0845 600 0678

Minicom 0845 915 3296

Orderline 0845 845 0360

Callers can be assisted in 30 different languages.

These lines take complaints from workers, employers and third parties.

## What about employers who do not comply?

The minimum wage regulations are enforced by HM Revenue & Customs (HMRC), who can issue enforcement notices. They can also issue penalty notices, imposing civil fines of £9.70 a day until the underpayment is made good. However officers will give employers every chance to comply before considering any penalty. The maximum penalty is a fine of £5,000 for committing a criminal offence, covering refusal or wilful neglect to pay the national minimum wage; failure to keep national minimum wage records or keeping false records; and obstructing an enforcement officer.

Under a new scheme, which came into effect on 1 January 2011, employers who deliberately pay their staff less than the NMW may have their breaches publicised by the Department for Business, Innovation and Skills.

HMRC have created a Dynamic Response Team which will concentrate on the most complex and high profile cases.