

# PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 14

# The NATIONAL MINIMUM WAGE

HOW DOES IT APPLY TO YOU?

*Community  
Legal Service*



## August 2009

## WHAT IS IT?

The National Minimum Wage (NMW) is a basic minimum hourly rate of pay to which most workers are entitled. The government sets the NMW after considering the advice of the Low Pay Commission, an independent body of representatives from workers' and employers' organisations and other experts. The NMW is **not** a 'fair' wage or the 'going rate' for most jobs. If you want more information about 'going rates', contact your trade union or the Pay & Employment Rights Service (PERS).

There are different NMW rates depending on your age and whether you are being trained in a new job. ***See the end of this leaflet for the current rates.***

## ARE YOU COVERED?

Most workers aged 16 or over are covered by the NMW. This includes part time and casual workers as well as agency workers, home workers and people over retirement age. The rates are the same for all parts of the UK and for all kinds and sizes of firms.

You are not covered if you are self employed or if you are a volunteer, a prisoner, a share fisherman or if you work for the armed services or live and work as part of a religious community.

Neither are you covered if you are a non-employed trainee on a government funded scheme, in a workplace as part of a sandwich course or on post-graduate work experience. Apprentices with an explicit contract of apprenticeship, Modern Apprentices and people on National Traineeships are not covered until they are 19. Apprentices of any age are not covered for the first 12 months of the apprenticeship or traineeship.

***NB. A minimum wage for 16 & 17 year olds was introduced on 1st October 2004.***

If you live in your family home and work in your family business, or if you live and work as part of a family (for instance, as an 'au pair') you are not entitled to the minimum wage. People doing household chores within their family or for friends and neighbours do not qualify either.

Most agricultural workers are legally entitled to the pay rates and terms of work laid down by the Agricultural Wages Board. These are generally better than the NMW.

## WHAT COUNTS AS WAGES?

Your basic wage must average out at an hourly rate which is no less than the legal minimum for eligible work done in working time (see below). The average should be worked out over your normal pay period (usually a week, a fortnight, 4 weeks or a month).

The averaging out period must not be more than one calendar month. The calculation should be applied to your **basic wage**. This **must include** work done on piecework rates (see below for details). It **can include** incentive payments or performance bonuses (that is, rewards for doing your basic job better) and systems of distributing tips and gratuities through the payroll. \*

Things that should be **excluded** in calculating your pay rate are: overtime and shift premiums, allowances (such as unsocial hours, 'on call', attendance or responsibility allowances), most benefits in kind, redundancy and pension payments, court awards or settlements and tips\* paid directly by customers to staff. Where accommodation is provided as a benefit in kind, a maximum of £31.57 per week [from October 09, up from £31.22] or £4.51 per day [from October 09, up from £4.46] may be deducted from the calculation. This is known as the National Minimum Wage Accommodation Offset. It can be adjusted on an hourly or daily basis if you only live in part-time.

**NB. Apprentices over age 19 and in the first 12 months of their apprenticeship will not qualify for the national minimum wage Accommodation Offset.**

\* Since 1999, tips "paid directly" to waiting staff by a customer have not been counted as wages under the NWM legislation. However, tips collected by an employer, e.g. *tronc*, service charges distributed via the payroll, are used to make wages up to NMW. This practice will cease from October 2009. Note tips should be declared as income to the HMRC.

Contact the Pay and Work Rights Helpline on **0800 917 2368** if you work in a restaurant or club with a 'tronc' system and ask for the latest information and advice.

Money that you have agreed to have taken out of your wage for 'misconduct', or for repayment of a previous overpayment, loan or advance of wages, is still counted as part of your NMW payment.

## **WHAT IS 'WORKING TIME'?**

You should earn no less than the minimum rate for all hours when you are:

- a) required by your employer to be at your place of work (that is, not on a rest break or other time off, or laid off)
- b) at your place of work (or travelling on your employer's business, or on relevant training)
- c) available for work (that is, not sick, on maternity, parental or dependants' leave, on unpaid holiday or on strike).

You should still be paid at least the minimum rate if these conditions apply but **no work is available** (for instance, if your machine has broken down or there are no customers in your shop). If you are laid off (that is, not required to be at work) for a complete day or more you may be entitled to **guarantee pay**.

Contact PERS for more information about this. Most people should also receive their normal pay, which must be at least the minimum rate, while they are on **statutory annual holidays**.

At present, if you are allowed to sleep on work premises and are provided with suitable sleeping facilities (for example care workers, wardens) you are entitled to the NMW for all times when you are **awake and are required to work**. Additionally, your employer may give you an allowance for non-working time which need not be at NMW rates. If you are **on standby**, on call or waiting to be given work at or near your place of work, you should be paid the NMW. On the other hand, if you are on standby or on-call during time when you are at home, you do not have to be paid the NMW for that time, regardless of where you work. However, recent case law suggests that some home-based workers may be entitled to the minimum wage for all the time they are on duty, even if they are not actually working. Contact PERS for advice if you are in this situation.

## **CALCULATING YOUR RATE OF PAY**

Most people can calculate whether they are getting the NMW by dividing their wage by the number of hours they work (**time work**). For this, it is important to know your contractual hours of work. This should be in your written statement of employment particulars. See the PERS leaflet ***Contracts of Employment***.

*For example:* You are paid £250 per week to work from 8.00am to 5.00pm for 5 days a week, with one hour (unpaid) off for lunch. You work for 8 hours a day, 40 hours a week. Your hourly pay is £250 divided by 40 hours. This is £6.25 an hour.

You may be a **salaried hours** worker. This means you are contracted to work for a certain number of basic hours over the course of a year and you are paid in weekly or monthly instalments of this agreed annual amount. In this case, the pay rate is usually calculated according to the total number of hours agreed in the contract. Salaried hours workers include term time and annual hours workers.

Some people are paid by **output** rather than by time. Common examples of this are piecework, commission work and work done at your own convenience in your own home (outwork or homework). In this case your employer should *either* pay you the hourly rate at no less than the NMW for each hour that you work *or* your employer should apply the “system of fair piece rates”. This means that your employer will carry out tests to find the speed an ‘average’ worker would take to complete the work and then set a piece rate so that an ‘average’ worker can earn at least 120% of the NMW. You must be given written notice of how the pay is worked out. However you are paid, make sure you keep a record of your actual hours and check that your rate of pay meets the NMW for those hours. Contact the National Group on Homeworking on 0113 245

4273 or look at their website [www.ngh.org.uk](http://www.ngh.org.uk) for more information on how the NMW applies to homeworkers and pieceworkers.

A few jobs are classed as **unmeasured work**. These include, for instance, live-in jobs such as pub managers, wardens and carers. In this case you and your employer need to agree how many hours it normally takes to complete your contractual duties. Your pay should then be calculated either as a daily average of these hours, or on the basis of the hours you record as being actually worked.

As with output work, if you do unmeasured work your employer must give you written notice of any agreements you make about working hours.

## **WHAT RECORDS MUST BE KEPT BY YOUR EMPLOYER?**

Most workers have a right to receive an itemised payslip each time they are paid. Your employer must also keep records of your pay and hours worked in such a way that it is possible to see if you are getting the NMW.

If you have good reasons for suspecting that you are not being paid at or above the legal minimum, you have the right to ask your employer to let you see and copy the relevant pay records. You have the right to take someone with you when you do this. If your employer does not produce the relevant information, you can complain to an Employment Tribunal (ET) within 3 months of the refusal (provided that you have written a grievance letter to your employer first). If the ET finds in your favour, your employer must pay compensation to you for not keeping records, as well as any back payments you may be owed.

## **ENFORCEMENT**

NMW teams are part of Her Majesty's Revenue and Customs (formerly known as the Inland Revenue). They have powers to inspect employers' records, serve a notice of underpayment and to take them to court for non-payment of this notice. Your employer will have to pay back all underpayments since the NMW came into force on 1 April 1999. It is up to your employer to prove that you have been paid the NMW if you are eligible. He or she will be liable even if you agreed to be paid less. He or she could also be fined (£100 - £5,000) for the offence of failing to pay NMW and up to a further £5000 for each other criminal offence relating to NMW, e.g. improper record keeping, or obstruction of enforcing officers.

If you want to make a complaint about non-payment of the NMW, you should contact the Pay and Work Rights Helpline on **0800 917 2368** or at <https://payandworkrights.gov.uk/>. They will take your details and contact your employer to try and sort out the situation. If they are unable to do so, they will refer the case to your regional compliance officers. They will visit your employer to check the records and ensure correct payment. The helpline and compliance officers will keep your identity confidential as long as they can, but

they will need to reveal it if your employer contests the case. Anonymous complaints are accepted but do not receive priority.

Alternatively, you can make a claim yourself to an ET for unauthorised deductions. You can also complain to an ET if you are dismissed in order to avoid paying you the NMW, or are dismissed or put at a disadvantage (a detriment) because you have claimed your rights under the NMW regulations. Or you can complain on line at <http://www.hmrc.gov.uk/nmw/complaint.htm>. This can be anonymous or not. Your final option is to put in a claim at county court, see: <http://www.hmcourtsservice.gov.uk/infoabout/claims/index.htm>

Please contact PERS if you need more information about making a claim. More detailed guidance can also be obtained from the Pay and Work Rights Helpline on **0800 917 2368** or at <http://www.businesslink.gov.uk/bdotg/action/layer?topicId=1081658554>

## **NMW RATES from 1st OCTOBER 2009**

**(2008 - 09 rates in brackets)**

**Full adult rate** (workers aged 22 and over): **£5.80** an hour (from £5.73)

**Young workers' rate** (workers aged 18 - 21): **£4.77** an hour (from £4.77)

**16 (above school leaving age) and 17 year olds:** **£3.57** an hour (from £3.53)

NB: 16 and 17 year old apprentices will be exempt from the new young workers rate.

**Confidential Pay and Work Rights Helpline: 0800 917 2368**

# PERS LEAFLETS

This is one of a series of leaflets which look at aspects

of your rights at work:

- 1 Contracts of Employment
- 2 NI and Income Tax
- 3 Statutory Sick Pay
- 4 Paid Holidays
- 5 Maternity and Paternity Rights
- 6 Redundancy
- 7 Equal Pay
- 8 Race Discrimination
- 9 Sex Discrimination
- 10 Part Timers
- 11 Dismissal
- 12 Trade Unions
- 13 Disability Discrimination
- 14 The National Minimum Wage

This leaflet is intended as a guide and is not a full statement of the law. Please seek advice before taking any action.

PERS has a complaints and comments procedure. Please contact us for a copy if you wish to make a complaint or comment about our services.

# **PAY & EMPLOYMENT RIGHTS SERVICE**

**Unit 14 • Batley Enterprise Centre**

**513 Bradford Road**

**Batley • WF17 8LL**

**01924 428030**

**[www.pers.org.uk](http://www.pers.org.uk)**

**Telephone advice is available from PERS at the following times:**

**Monday: 10am to 1pm**

**Tuesday: 10am to 4pm & 5.30pm to 7.30pm**

**Wednesday: 10am to 4pm**

**Thursday: 10am to 4pm**

**Friday: 10am to 1pm**

*Pay & Employment Rights Service is funded by*



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