

# The National Minimum Wage and National Living Wage

The **National Minimum Wage** (NMW) was introduced on 1 April 1999. It is applicable to workers aged 24 and under and changes annually on 1st April.

The **National Living Wage** (NLW) was introduced on 1 April 2016. It is applicable to workers aged 25 and over and changes annually on 1st April.

The Government appointed HMRC as the agent responsible for ensuring enforcement of the National Minimum Wage and National Living Wage.

Since its introduction numerous employers have been penalised by HMRC for non-compliance of the legislation. Highlighted below are the main points of the minimum and living wage regulations.

Please contact your local **abacus** accountant if you have any concerns about complying with the legislation.

## What is the National Minimum and Living Wage?

The rates of NMW and NLW (for 1<sup>st</sup> April 2017 - 31<sup>st</sup> March 2018) are as follows:

Age of Employee	Hourly Rate
16 - 17 year old (NMW)	£4.05
18 - 20 year old (NMW)	£5.60
20 - 24 year old (NMW)	£7.05
25 and over (NLW)	£7.50
Apprentices under 19 or in the first year of their apprenticeship	£3.50
Apprentices aged 19 or over and past the first year of their apprenticeship	the appropriate age rate above

The rates for employees above the compulsory school age to 20 year olds are called the development rates.

The Employment Equality (Age) Regulations provide a specific lawful exemption enabling young workers to continue to be paid below the standard adult NMW and allowing the different rates to be used according to the above age bands. This was in response to employers' concerns about financial pressures if the maximum rate was applied to all employees.

In addition there is a fair piece rate which means that employers must now pay their output workers the minimum wage for every hour they work based on an hourly rate derived from the time it takes a worker working at average speed to produce the work in question. The entitlement of workers paid under this system is up-rated by 20%. This means that the number reached after dividing the NMW by the average hourly output rate must be multiplied by 1.2 in order to calculate the fair piece rate.

There are no exemptions from paying the NMW/NLW on the grounds of the size of the business.

## Key Questions

### Who does the National Minimum Wage / National Living Wage not apply to?

- The genuinely self-employed
- Child workers – anyone of compulsory school age (i.e. until the last Friday in June of the school year they turn 16)
- Company directors who do not have contracts of employment
- Some apprentices, for example those under 19

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- Some other trainees on government funded schemes or programmes supported by the European Social Fund
- Students doing work experience as part of a higher education course
- People living and working within the family, for example au pairs
- Friends and neighbours helping out under informal arrangements
- Members of the armed forces
- Share fishermen
- Prisoners
- Volunteers and voluntary workers
- Religious and other communities.

Please note that the Revenue has the power to serve an enforcement notice requiring the payment of at least the NMW, including arrears, to all family members working for a limited company.

## What is taken into account in deciding whether the NMW/NLW has been paid?

The starting point is total pay, that is, the pay received by the worker before deductions, such as tax and national insurance contributions.

Types of pay that are included in the NMW/NLW calculation are:

- Basic pay
- Incentives
- Bonuses
- Performance related pay
- The value of any accommodation provided with the job.

Items that are not included in calculating NMW/NLW are:

- Overtime
- Shift premiums
- Regional allowances
- Employee Loans
- An advance of wages
- A pension payment
- A lump sum on retirement
- A redundancy payment
- A reward under a staff suggestion scheme
- Tips, gratuities, service charges and cover charges.

Please note that before 1st October 2009 tips, gratuities, service charges and cover charges did count towards the NMW as long as you paid them to your workers through your payroll.

However after 1st October 2009 this is no longer the case. They no longer count towards the NMW/NLW regardless of whether they are paid through your payroll or are given direct to workers by customers or a troncmaster.

## What records are needed to demonstrate compliance?

You must keep records that show you pay the national minimum wage to anyone who works for you and is entitled to it. If you pay your employees using a payroll system then it is likely that the standard payroll reports and other business records will be sufficient for this purpose.

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You are required to keep records relating to the national minimum wage for at least 3 years. However it is recommended that the relevant records are kept for at least six years in order to show that you have paid at least national minimum wage rates if a civil claim is brought against you.

HMRC compliance officers are entitled to ask you to produce your records for inspection. In certain circumstances, you must also produce your records if one of your workers asks to see them because they believe they're not being paid the national minimum wage.

Where piece rates are used, employers must give each worker a written notice containing specified information before the start of the relevant pay period. This includes confirmation of the 'mean' hourly output and pay rates for doing their job.

## What rights do workers have?

Workers are allowed to see their own pay records and can complain to an Employment Tribunal if not able to do so.

They can also complain to the Revenue or to a Tribunal if they have not been paid the NMW/NLW. They can call the confidential helpline 0845 6000 678.

## What are the penalties for non-compliance?

Enforcement notices can be issued if underpayments are discovered and there can be a penalty equivalent to twice the hourly amount of the NMW for each worker that has been underpaid multiplied by the number of days that enforcement notices are not complied with.

There could also be a maximum fine of £5,000 for having committed a criminal offence.

Employers who refuse to pay the NMW/NLW may also face a fine in excess of £200 for every worker they underpay. Employers have to pay back arrears they owe to workers and those who refused to pay up could be penalised.

## How abacus can help

**abacus** is more than happy to provide you with assistance or any additional information required. We also offer a full BACS approved payroll service - please contact us if you would like more information.

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