

## OUR GUIDE TO PAYING THE NATIONAL MINIMUM WAGE (NMW) AND NATIONAL LIVING WAGE (NLW) FROM 1 APRIL 2018

A REAL ASSET

The National Minimum Wage (NMW) and the National Living Wage (NLW) are the minimum pay per hour most workers are entitled to by law. The rates will depend on a worker's age and if they are an apprentice.

The Government's National Living Wage (NLW) was introduced on 1 April 2016 for all working people aged 25 and over, and from 1 April 2018 will be set at £7.83 per hour. The current NMW for those under the age of 25 still applies.

An employer is responsible for ensuring that workers are paid at least the appropriate rate of NMW or NLW.

### Key points

- Most workers over school leaving age will be entitled to receive the NMW;
- The NMW / NLW rate is reviewed annually by the Low Pay Commission;
- HM Revenue & Customs (HMRC) can take employers to court for not paying the NMW/NLW;
- There are a number of exemptions to those who receive the NMW/NLW. These do not relate to the size of the business, sector, job or region;
- The compulsory NLW is the national rate set for people aged 25 and over.

### Rates of pay

It is important to note that these new rates, which come into force 1 April 2018, apply to pay reference periods beginning on or after that date.

#### The rates from 1 April 2018 will be:

- £7.83 per hour - 25 yrs old and over;
- £7.38 per hour - 21-24 yrs old;
- £5.90 per hour - 18-20 yrs old;
- £4.20 per hour - 16-17 yrs old;
- £3.70 for apprentices under 19 or 19 or over who are in the first year of apprenticeship.

The pay rates will only affect someone's pay from the first full pay reference period after that date unless the employer chooses to pay the rate from an earlier date.

#### For example:

If the Pay Reference Period starts between the 19 March - 19 April the pay between the 1 April - 18 April will be based on the current NMW/NLW rates. The allocated pay from the 19 April - 19 May would be at the new NMW/NLW rate because this is the first full pay reference period after the 1 April.

The same rules apply when a monthly paid employee reaches the age of 25. For example if the employee's birthday falls on the 25 May and the next pay reference period starts on 10 June, the employee is entitled to receive the NLW pay rate on the 10 June and not their birthday.



## Exemptions

There are a number of people who are not entitled to the NMW / NLW:

- Workers younger than school leaving age (usually 16)
- Self-employed people;
- Volunteers or voluntary workers;
- Company directors;
- Family members or people who live in the family home of the employer who undertake household tasks;
- Members of the armed forces.

All other workers including pieceworkers, home workers, agency workers, commission workers, part-time workers and casual workers must receive at least the NMW/NLW.

## The difference between the National Living Wage and the Living Wage

The new National Living Wage is different from the Living Wage, which is an hourly rate of pay and updated annually. The Living Wage is set independently by the **Living Wage Foundation** and is calculated according to the basic cost of living in the UK. Employers choose to pay the Living Wage on a voluntary basis. Currently £8.75 for the UK with the exception of London which is £10.20 per hour.

## Ways in which you could breach the NMW and NLW pay rates without realising

There are certain deductions made by employers from workers' pay or indeed payments made by workers to third parties which can reduce their pay for NMW purposes.

Here are some examples where employers' could potentially fail to pay the correct rates:

### Agricultural Wages

Agricultural and horticultural workers in England employed after 1st October 2013 must be paid the appropriate NMW/NLW rate (see above).

Workers who were already employed before 1 October 2013 will still be entitled to the same terms and conditions set under their contract of employment; this may include overtime rates, agricultural wages, sick pay, or dog allowance. DEFRA will continue to enforce complaints made by workers in respect of underpayments or non-compliance with terms and conditions of an Agricultural Wages Order before 1 October 2013 for up to six years after the breach occurred.

For agricultural workers in Scotland there is no change, and in Wales workers must be paid at least the Agricultural Minimum Wage, or the NMW/NLW if that's higher.

### Family member exemption

For this exemption to apply, workers must either be a member of the employer's family, or live in the employers' family home.

Either the worker is a **member** of the employer's family and:

- Resides in the family home of the employer;
- Shares in the tasks and activities of the family.

Or the worker **resides** in the family home of the employer, and:

- Is not a member of that family, but it treated as such (in regards to the provision of living accommodation, meals and the sharing of tasks and leisure activities);
- Is neither liable to any deductions, nor to make any payment to the employer, or any other person, as respects the provision of the living accommodation or meals;
- If the work had been done by a member of the employer's family, it would not be treated as work.

## ACCOMMODATION RATES

Accommodation provided by an employer can be taken into account when calculating the [National Minimum Wage or National Living Wage](#).

No other kind of company benefit (such as food, a car, childcare vouchers) counts towards the minimum wage.

### Accommodation offset rates

The accommodation rates are set in April each year.

Year	Daily accommodation offset rate	Weekly accommodation offset rate
April 2018	£7.00	£49.00

Use the [minimum wage calculator](#) to check if it's been paid.

### Using the offset rate to work out the minimum wage

If an employer charges more than the offset rate, the difference is taken off the worker's pay which counts for the NMW or NLW.

This means the higher the accommodation charge, the lower a worker's pay when calculating the minimum wage.

If the accommodation charge is at or below the offset rate, it doesn't have an effect on the worker's pay.

If the accommodation is free, the offset rate is added to the worker's pay.

### What counts as accommodation charges

Include these costs as part of your overall accommodation charges:

- Rent;
- Charges for gas, electricity, furniture, etc;
- Laundry.

### Working out if the employer provides the accommodation

The employer is providing accommodation if any of these apply:

- The accommodation comes with the job;
- The employer (or a connected person or company) owns or rents the property the worker lives in, even if there's no direct link between the job and the accommodation;
- The employer (or an owner, business partner, shareholder or director) gets a payment or benefit from the worker's landlord or a member of the landlord's family.

Accommodation costs count towards the NMW or NLW, even if the worker doesn't have to use the accommodation to do the job. If the accommodation is optional, it only counts as a cost if the worker uses it.

### Local housing authority and social housing providers

If someone working for a local housing authority or social housing provider gets accommodation from their work, this doesn't automatically count towards the NMW or NLW.

It only counts if the accommodation is linked to the employment. For example, a care warden who has to live on site has their accommodation linked to their job.

### Higher or further education institutions

Accommodation isn't counted when working out the NMW or NLW if it's provided by a higher or further education institution to a worker who's enrolled on a full-time course with the institution.

## Effect on the minimum wage

This effect of accommodation rates on the NMW or NLW depends on how much an employer charges for accommodation.

It's calculated by 'pay period', the intervals at which someone is being paid. This can be weekly, monthly or in irregular intervals like every 10 days.

If the accommodation is free, it still affects the NMW/NLW. There is an offset rate of £7.00 per day for this.

It doesn't matter if the cost of the accommodation is taken from the worker's wages beforehand or if the worker pays the cost after they get their wages.

### Examples

#### Example 1: Accommodation is free

John is 27 and gets £6.50 an hour. This is below the NLW (which he should get as he's over 25).

He works 30 hours a week.

He gets paid every 7 days (his pay period).

His employer provides free accommodation 7 days a week.

This brings John's pay up to £8.13 an hour, which is above the NLW of £7.83.

#### Calculation:

1. £7.00 (offset rate used when accommodation is free) × 7 (days accommodation provided in pay period) = £49;
2. £49.00 + (£6.50 × 30 – the total pay in reference period) = £244.00;
3. £244.00 ÷ 30 (total hours in pay period) = £8.13.

#### Example 2: Accommodation is charged below the maximum rate

Lisa is 23 and gets £7.10 an hour. This is above NMW.

Her employer charges £3.50 per day for accommodation which is below the threshold of £7.00. No offset rate is applied.

The accommodation charge doesn't affect Lisa's pay of £7.10 an hour.

#### Example 3: Accommodation is charged above the maximum rate

Sam is 35 and gets £7.90 an hour. This is above the NLW (which he should get as he's over 25).

He works 40 hours a week.

He gets paid every 3 weeks (his pay period).

His employer charges £7.80 per day for accommodation.

Sam lives in the accommodation full time which is 21 days for his pay period.

This brings Sam's pay down to £7.76 an hour, which is below the NLW.

#### Calculation:

1. £7.90 (hourly rate) × 120 (total hours in pay period) = £948.00;
2. £7.80 (accommodation rate) × 21 (days accommodation provided in pay period) = £163.80;
3. £7.00 (offset rate used when accommodation is free) × 21 (days accommodation provided in pay period) = £147.00;
4. £948.00 (total pay in pay period) – £163.80 (total accommodation cost in pay period) + £147.00 (total accommodation offset in pay period) = £931.20;
5. £931.20 ÷ 120 (total hours in pay period) = £7.76.

## **THE COST OF STAFF UNIFORMS MAY IMPACT THE NATIONAL MINIMUM WAGE AND NATIONAL LIVING WAGE**

A court case by the HMRC against Monsoon will have large ramifications for businesses.

It is often the case that clothing shops require staff to wear and thus market their own brand, and therefore require the staff to only wear their products. The high street store Monsoon was no exception. By having the staff wear the clothing that they are selling it also helps sell the clothes to the public. Some companies give a discount on their clothing to staff, others a budget. Some simply make them pay for the clothes themselves. The problem comes when staff are paid near to, or at, the NMW/NLW.

The case decided that if an employee is forced to wear certain brands, but they have to put any monies towards buying these items, then this should be taken into account when calculating the NMW/NLW. If they are only paid the NMW/NLW, then clearly this is going to take the employees earnings below that level, and thus be unlawful.

Not only that, but businesses which simply have a uniform of which you have to supply yourself, such as only wearing black trousers and tops if in a restaurant, should also be taken into account when calculating the NMW/NLW.

Similarly, an employer who deducts a payment for damage or the non-return of a uniform on termination runs the risk of a breach unless there is a clear contractual entitlement to make the deduction i.e. the failure to return uniform is expressly identified in the contract as incurring the charge.

The obvious solution for many of these issues would be to ensure that staff receive a rate of pay slightly higher than the NMW/NLW so as to build in a 'buffer' for any unexpected eventualities. However, the commercial reality is that margins, particularly in the leisure and retail sectors, do not allow for such luxuries. Employers therefore have little choice but to keep a vigilant eye on all employment practices to ensure that staff are compensated for all their working time. Rigorous processes should be put in place to avoid unnecessary administrative oversights which could result in a breach for example, failing to realise workers have moved from one age band to another. Organisations should pay close attention to HMRC guidelines to ensure compliance with any policy changes.

## **TRAVEL & SUBSISTENCE AND OTHER ARRANGEMENTS INCLUDING SALARY SACRIFICE**

HM Revenue & Customs have said that any travel schemes and umbrella business models that are being used to provide savings for the employer must be compliant with the NMW/NLW such as:

- Paying subsistence expenses rather than travelling expenses;
- Classifying workers as directors;
- "Holiday Pay adjustments"; and
- Under recording hours worked.

HMRC have confirmed that none of these models, including those listed above, would comply with the requirements of NMW/NLW legislation for workers paid at, or close to, the NMW/NLW.

## **NON-PAYMENT OF THE NMW**

**It is against the law for employers to pay workers less than the NMW or to falsify payment records.**

Numerous household names have recently been publicly 'named and shamed' by HMRC, often for very innocent mistakes in applying the legislation to their working environment. Given the potential brand damage such negative publicity can cause, employers need to learn the lessons identified by these cases.

If an employer doesn't pay the correct rate, a worker should talk to their employer and try to resolve the issue informally first. If this doesn't work a worker may make a formal grievance to their employer.

A worker can make a complaint to HMRC who will investigate the complaint. If HMRC find that an employer hasn't paid at least the NMW, they can send a notice of arrears plus a penalty for not paying the correct rate of pay to the worker.

## **PENALTIES FOR FAILURE TO COMPLY WITH THE NLW**

With the introduction of the NLW the penalty for non-payment will be 200% of the amount owed, unless the arrears are paid within 14 days.

The maximum fine for non-payment will be £20,000 per worker. However, employers who fail to pay will be banned from being a company director for up to 15 years.

If you are in any doubt whatsoever regarding compliance in ensuring you are paying the correct rates please don't hesitate to contact our payroll team on the details below:

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