



## Employment and related matters

# The National Minimum Wage

The National Minimum Wage (NMW) was introduced on 1 April 1999. There have already been a number of instances of employers being penalised for not complying with the legislation. The Revenue is the agency that ensures enforcement of the NMW.

We highlight below the main principles of the minimum wage regulations.

Please contact us for further specific advice.

### What is the National Minimum Wage?

The current standard rate of the NMW is £4.50 per hour. It will rise to £4.85 in October 2004.

The current rate for employees between 18 and 21 years old is £3.80 per hour. This will rise to £4.10 in October 2004.

Also from October 2004, 16 and 17 year olds will be paid a legal minimum wage for the first time. The rate will be £3 per hour.

Workers of 22 years and over can be paid a minimum of £3.80 per hour for the first six months of a new job for a new employer if they are receiving accredited training, which means attending certain training courses where the training institution involved is receiving government support.

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

### Key Questions

#### Who does not have to be paid the National Minimum Wage?

- Volunteers.
- The genuinely self-employed.
- Apprentices over 16 but under 26 for the first 12 months of their employment (the apprenticeship must be a genuine one).
- People such as au pairs who live and work as part of a family.
- Company directors who do not have contracts of employment.
- Family members who live at home and participate in a family business.

Please note in relation to the last point 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 has been paid?

The amounts to be compared with the NMW include basic pay, incentives, bonuses and performance related pay and also the value of any accommodation provided with the job.

Overtime, shift premiums and regional allowances are not to be taken into account and benefits other than accommodation are also excluded.

#### What records are needed to demonstrate compliance?

There is no precise requirement but the records must be able to show that the rules have been complied with if either the Revenue or an Employment Tribunal requests this to be demonstrated. Where levels of pay are significantly above the level of the NMW, special records are not likely to be necessary.

It is recommended that the relevant records are kept for at least six years.

Normally there is not likely to be any serious difficulty in demonstrating compliance where employees are paid at hourly, weekly, monthly or annual rates but there may be difficulties where workers are paid on piece-rates and where, for example, they work as home-workers.

In such cases it will be necessary for employers to have written agreements stating fair (meaning realistic) estimates of the number of hours that will need to be worked to achieve certain output and this agreement should demonstrate compliance with the rate.

#### 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. They can call the confidential helpline 0845 6000 678.



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### 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.

### How We Can Help

We will be more than happy to provide you with assistance or any additional information required.