

Guide to national minimum wage

April 2024

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This guide covers the following aspects of the national minimum wage (NMW):

- what is the NMW?
- who is covered?
- who is not covered?
- what are the NMW rates?
- what is the pay reference period?
- what does and does not count as NMW pay?
- calculating the hours for which the NMW must be paid;
- calculating whether the NMW has been paid;
- record keeping;
- best practice; and
- enforcement and penalties.

What is the NMW?

The NMW is a prescribed minimum hourly rate of pay which employers must pay to most of their workers.

The NMW is primarily governed by the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015.

Who is covered?

The right to receive the NMW under the National Minimum Wage Act 1998 applies to most workers who work or ordinarily work in the UK and are over compulsory school age. The right applies to groups such as:

- homeworkers;
- commission workers;
- part-time workers;
- casual workers; and
- piece workers.

A worker does not have to have a written contract of employment to qualify for the NMW. For the purposes of the NMW, an individual is a worker if they are doing work personally for someone else (under a worker's

contract) who is not a client or customer of any profession or business undertaking carried on by the individual. Recent case law indicates that the courts can take a narrow view of whether the person for whom the individual is carrying out the work can truly be said to be the individual's customer or client, meaning that the definition of "worker" is likely to have fairly broad application.

Work experience and internships

A question which often arises is whether interns or those on work experience qualify for the NMW. In practice, unless one of the specific exceptions applies, eg for school age children, participants in specified training, qualifying student work experience placements or certain types of volunteers, an individual is likely to be categorised as a "worker" and qualify for the NMW.

Additionally, the Government continues to encourage employers to pay interns except where the scheme genuinely involves only work shadowing with no actual work being performed or the prospect of future paid work being offered. The Government's guidance on [Employment rights and pay for interns](#) contains information about when the NMW should be paid to interns and those on work experience.

Who is not covered?

The NMW does not apply to several categories of workers, including:

- the genuinely self-employed;
- genuine voluntary workers;
- most non-executive directors; and
- workers who are based permanently outside the UK, or in the Channel Islands or the Isle of Man.

What are the NMW rates?

There are now four different NMW rates for different age-related categories of worker including the national living wage (NLW) which applies to workers aged 21 or over from April 2024, and the 21-22 year old rate (previously known as the standard adult). The NMW rates are based on the recommendations of the independent Low Pay Commission which reviews the rates annually.

Further details are set out in the table below.

Category	From 1 April 2021	From 1 April 2022	From 1 April 2023	From 1 April 2024
NLW rate for workers aged 21 and over (*23 or over prior to April 2024)	£8.91 per hour	£9.50 per hour	£10.42 per hour	£11.44 per hour
21-22 year old rate (*disappearing from April 2024)	£8.36 per hour	£9.18 per hour	£10.18 per hour	N/A
18-20 year old rate (previously known as the development rate)	£6.56 per hour	£6.83 per hour	£7.49 per hour	£8.60 per hour
16-17 year old rate (previously known as the young workers rate)	£4.62 per hour	£4.81 per hour	£5.28 per hour	£6.40 per hour
Apprentice rate for those: – aged under 19; or – aged 19 and over who are in the first year of their apprenticeship	£4.30 per hour	£4.81 per hour	£5.28 per hour	£6.40 per hour

What is the pay reference period?

The [pay reference period](#) is used to calculate whether the NMW has been paid over a period of time. The worker does not have to be paid the NMW for each hour worked, but they must be paid the NMW on average for the time worked in the pay reference period. As the rate to be considered is the average hourly rate, it is necessary to establish:

1. the total pay received; and
2. the total number of hours worked

in the relevant pay reference period.

How long is the pay reference period?

The pay reference period is usually the period of time by reference to which a worker's wage is calculated so that workers who are paid monthly will have a pay reference period of one month and workers who are paid weekly will have a pay reference period of one week. A pay reference period cannot be longer than a month. So, if a worker is paid less frequently than once a month, for example quarterly, they will still have a pay reference period of one month.

Allocating payments to pay reference periods

The pay that is allocated to a pay reference period is:

- the pay earned and received during that period; and
- the pay earned in that period but not received until the next period, eg overtime, bonus or commission payments.

What does and does not count as NMW pay?

Not all pay counts for the purposes of the NMW and care must be taken when deciding what elements to include in the calculation. Wrongly including an element of pay that does not count could result in an inadvertent breach of the NMW legislation.

To calculate a worker's NMW pay in respect of the pay reference period:

- take the total gross pay (see below);
- subtract payments and deductions that do not count as gross pay; then
- divide this amount by the total number of hours worked in the pay reference period.

Total gross pay for the NMW **includes** certain allowable payments and deductions such as:

- income tax;
- employee's National Insurance contributions;
- bonuses;
- payments for accommodation costs at or below a certain limit (see [The accommodation offset](#) below); and
- incentive payments.

However, total gross pay **excludes** various payments such as:

- loans;
- pension payments;
- redundancy payments;
- overtime and shift premia (that is, the premium element above the normal payment rate); and
- tips, gratuities and service charges.

With the exception of certain accommodation provisions (see [The accommodation offset](#) below) no benefits in kind, for example meals, fuel, a car or employer pension contributions count towards the NMW. Expenses linked to the job paid for the worker and travel costs do not count as gross pay.

This is not a comprehensive list of the elements that do or do not count towards gross pay. For further information, see the Government guidance on [The National Minimum Wage and Living Wage](#).

Accommodation offset

Under the NMW legislation, the provision of accommodation by the employer is the only benefit in kind that *can* count towards NMW pay. There is a limit to the amount that an employer providing accommodation can count towards NMW pay, known as the **accommodation offset**.

The accommodation offset is calculated at a rate of £9.99 per day from 1 April 2024 for each day that the employer makes the accommodation available to the worker in a pay reference period (up to a maximum prescribed weekly limit).

The accommodation offset provisions will apply whenever an employer provides accommodation to the worker.

When the accommodation is provided free of charge, the notional value of the accommodation offset counts towards NMW pay so the effect may be that a worker's contractual pay *can* be less than the NMW.

Where the employer charges the worker for the accommodation, either by making a deduction from the worker's pay or accepting a payment from the worker, the worker's NMW pay will only be affected if the employer charges *more than* the accommodation offset. The amount of the charge over and above the level of the offset will reduce the worker's pay for the purposes of NMW pay.

The Government takes the view that an employer provides a worker with accommodation in a broad set of circumstances, not only in situations where the employer owns the property occupied by the worker. The rules on this are particularly complicated and further advice should be sought when using the accommodation offset.

Calculating the hours for which the NMW must be paid

The hours for which the NMW must be paid depend upon the type of work done by the worker. There are four types of work – time work, salaried hours work, output work and unmeasured work – and the rules and calculations of hours differ for each. The type of work does not depend on the worker's occupation, but depends on the way in which the worker is paid for their work. A worker might do different types of work for the same or different employers. Therefore the rules and calculation of hours apply differently for each type of work that the worker does.

Time work

A worker's work will be categorised as "time work" if:

- they have **set** hours or times at which they are expected to work and are not paid an annual salary;
- they do piece work in **set** hours; or
- their pay goes **up or down** depending on the actual hours worked.

An example might be a factory worker who is expected to clock in and out every day and be working for that time.

Salaried hours work

A worker's work will be categorised as "salaried hours work" if:

- they are paid under their contract for a set basic number of minimum hours in a year; and
- they are entitled under their contract to an annual salary; and
- they are paid in equal instalments, for example 12 monthly or 52 weekly instalments.

An example would be an office worker whose contractual hours are 9 am to 5 pm and is paid an annual salary.

Output work

A worker's work will be categorised as "output work" where it is paid for according to the number of pieces that the worker makes or tasks they perform, or the number of sales or deals that they make. It is commonly known as "piece work" and is often done at home, but equally can be done at the employer's premises. However, if the worker's hours of work are fixed, this will be "time work", even if the worker is paid according to how much they produce.

Employers are permitted to pay their workers at least the NMW for every hour they work or a "fair" piece rate that allows an average worker to receive the minimum wage. Fair piece rates must be set so that piece workers who are slightly slower than the average will still have the opportunity to earn the NMW.

The employer will need to give each worker a written notice detailing specified information, including what the "mean hourly output rate" for the piece or task is and state the rate or sum to be paid for the production of the piece or performance of the task.

Unmeasured work

Broadly, a worker's work will be categorised as "unmeasured work" if it does not fit into one of the other three categories. Unmeasured work includes work where there are certain tasks to be done, but no specified hours or times when the work must be done or where the employer will simply require the worker to work when needed or when work is available.

An example would be a member of domestic staff without set hours or an annual salary.

There are two ways the employer can define the hours of unmeasured work to be done, either by:

- paying the NMW for every hour worked; or
- entering into a written "daily average" agreement before the start of the pay reference period. The agreement must set out the realistic average number of hours that the worker is likely to spend each day in doing the tasks assigned.

Calculating whether the NMW has been paid

Follow the steps below to calculate the hourly rate of a worker's pay in order to check that the NMW has been paid.

1. Calculate the NMW pay (see [What counts and does not count as NMW pay?](#) above).

2. Calculate the hours for which the NMW must be paid (see [Calculating the hours for which the NMW must be paid](#) above).
3. Calculate the worker's hourly rate of pay (divide NMW pay (1), by the number of hours worked (2)).
4. Finally, compare the worker's hourly rate with the relevant NMW rate.

Record keeping

Employers must keep records that are “sufficient” to establish that they are paying a worker at at least the relevant NMW rate. The records must be kept in a form which enables the information about a worker in respect of a pay reference period to be produced in a single document. The rules deliberately do not define what amounts to sufficient records, therefore it is left to the employer's judgement in each case.

The records will be used if there is a dispute, and the burden is on the employer to prove that they have paid the NMW. The records may also have to be produced for inspection at the request of a worker or an HMRC enforcement officer.

The records must be kept for a minimum of six years after the pay reference period following the period to which they relate.

Best practice

To limit the likelihood of confusion or complaints where payment of the NMW could be an issue, it is recommended good practice to display information in the workplace setting out basic facts about the NMW and the current rates.

Enforcement and penalties

HMRC has overall responsibility for enforcing the NMW (except for agricultural wages) and its enforcement officers have certain powers to obtain information from employers for this purpose.

A worker has the right to recover unpaid NMW through the employment tribunals or the courts, and also to complain that they have not been given access to NMW records within 14 days of requesting the records. A worker may also bring a claim in the employment tribunals for unfair dismissal or victimisation if their employer dismisses them or subjects them to a detriment because:

- the worker became eligible for NMW or a different NMW rate;
- the worker took action to ensure they received the appropriate NMW; or
- the employer was prosecuted for an offence under the NMW legislation.

Any dismissal of an employee for the above reasons will be automatically unfair and there is no qualifying period of employment required to bring such a claim.

HMRC's enforcement officers have the power to issue a notice of underpayment which requires the employer to pay to the worker sums due in respect of arrears of NMW. The notice of underpayment will also require the employer to pay a financial penalty which is currently set at 200% of the total underpayment of the NMW subject to an overall maximum penalty of £20,000 per underpaid worker. The penalty will be reduced by 50% if the employer complies with the notice of underpayment within 14 days of its service. If the employer fails to comply with a notice of underpayment, the enforcement officer can issue civil and/or criminal proceedings.

An employer may appeal to an employment tribunal against a notice of underpayment. The appeal must be brought within 28 days of the date on which the notice was served.

When the employer makes a payment of arrears of NMW, they should ensure that they account for the tax and National Insurance contributions due.

Criminal offences

For employers who deliberately breach their obligations, there are six criminal offences which, broadly, are as follows:

- refusing or wilfully neglecting to pay NMW;
- failing to keep sufficient NMW records;
- keeping false records;
- providing false records or information;
- intentionally obstructing an enforcement officer; and
- refusing or neglecting to give information to an enforcement officer.

Serious instances of the criminal offences listed above can be triable as indictable as well as summary offences. HMRC officers have also been given the same investigation powers to deal with criminal offences relating to NMW as they have when investigating other criminal offences.

If any offence under the National Minimum Wage Act 1998 is committed with the consent, connivance or by the neglect of a company officer (eg a director, manager or secretary), then that officer, as well as the company, may be prosecuted individually.

Naming employers for failing to pay the NMW

The Government's naming scheme, which was originally launched in 2011, was intended to raise awareness of NMW enforcement and to deter employers from breaching the NMW legislation. The scheme covers any employer issued with a notice of underpayment subject to any appeal process and other exceptional circumstances (such as the risk of personal harm to an individual or their family).

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Further resources

Government's guidance on [national minimum wage](#)

Government's guidance on [employment rights and pay for interns](#)

Low Pay Commission [information and resources](#)

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