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National Minimum Wage and National Living Wage - who must be paid it

Introduction

You must pay people who do work for you at least the minimum wage if they are a 'worker' for minimum wage purposes, are at least school leaving age (16) and a specific exemption doesn't apply to them.

This guide explains who must be paid the National Minimum Wage and National Living Wage.

The meaning of worker for minimum wage purposes

It is **your responsibility** to determine the employment status of individuals who do work for you or your business, and to pay at least the National Minimum Wage or National Living Wage to workers who are eligible for it (those over 23).

The term 'worker' is defined in minimum wage law. Whether someone is a worker or not depends on the arrangements you made with the individual when they agreed to work for you.

In most cases it is clear whether an individual is a worker or not - see **National Minimum Wage and National Living Wage worker checklist** to help you decide if you need to pay someone the minimum wage. But there are borderline cases where it is unclear whether someone is working for you as a worker, and in these cases only a tribunal can make a final decision on whether someone is entitled to the minimum wage.

Workers' entitlement to the minimum wage

The following types of workers are all entitled to be paid the National Minimum Wage or National Living Wage.

Agency workers

If an agent or agency supplies someone to do work for you, then that person is a worker for minimum wage purposes. They are entitled to be paid at least the minimum wage. Whoever is responsible for paying them - generally the agency - will be responsible for paying the minimum wage.

Agricultural workers

Agricultural workers are entitled to the Agricultural Minimum Wage rates, rather than the NMW or NLW, unless the NMW or NLW rate is higher. Paying them the agricultural minimum wage will usually mean you are paying them at least the minimum wage. However, it is your responsibility to make sure that payment of the agricultural minimum wage also results in paying them at least the minimum wage.

Commission workers

If you pay someone entirely or partly on the basis of sales made or deals completed they are a commission worker. Commission workers are output workers for minimum wage purposes and must be paid either 'fair' piece rates or at least the minimum wage for every hour worked. For more information on calculating minimum wage pay for output workers see **National Minimum Wage and National Living Wage - paying workers for output work.**

Disabled workers

Entitlement to the National Minimum Wage or National Living Wage applies to all workers. If a person with a disability is a worker for minimum wage purposes they must be paid at least the minimum wage.

However, some people with a disability undertake work-related activities for therapeutic reasons. Where these people are undertaking a purely therapeutic activity with no contractual obligation to work or right to any payment or other reward, they may not count as workers and, if not, will not be entitled to the minimum wage.

Trainees and staff on probation

If you have engaged someone as a trainee or on a period of probation they are entitled to be paid at least the minimum wage. There are some exemptions for workers on specified training courses - see **National Minimum Wage and National Living Wage - who is not entitled to it.** For apprentices, see **apprentices' entitlement to the minimum wage rate.**

Workers from outside the UK

Foreign workers, working in the UK are entitled to the minimum wage in exactly the same way as other workers. This is regardless of how long or short their stay may be or whether their employer is based in the UK or another country.

It is important you **ensure your workers are eligible to work in the UK.**

UK workers working abroad

If you send a worker, who usually works in the UK under their contract, temporarily outside of the UK to work, they must be paid at least the minimum wage for their work performed abroad.

If a worker works overseas for the majority of the time, then they generally do not need to be paid the minimum wage for the overseas work. However, they are likely to be covered by the employment rules in the country where they work. The situation for a worker will depend on their individual arrangements and employment relationship.

Apprentices' entitlement to the minimum wage rate

All apprentices under the age of 19 or aged 19 and over and in the first year of their apprenticeship are **entitled to the apprentice rate** if they are participating in an apprenticeship at Level 3 or below.

Once the apprentice is aged 19 or over and has completed a year of their apprenticeship, they are then entitled to the minimum rate for their age.

This does not apply to Higher Level Apprenticeships.

If the individual is not engaged on an apprenticeship contract or participating in a government funded apprenticeship you must pay them at least the minimum rate for their age unless they fall into one of the groups who are exempt from the minimum wage.

Who is an apprentice for national minimum wage purposes?

Apprentices for National Minimum Wage purposes are either:

- those employed on a government funded apprenticeship
- workers engaged under a contract of apprenticeship

Workers on other training schemes may not be entitled to the minimum wage. For more information, see **government or EU funded schemes and programmes and the minimum wage**.

Apprenticeship contracts

Generally speaking, an apprentice will have a written contract specifying:

- the rights and obligations of the employer and the apprentice
- what training is to be provided and to what level
- the length of the apprenticeship
- the pay rates

In the event of a dispute as to whether any particular contract is an apprenticeship contract, it will ultimately be a matter for tribunal to decide.

Training schemes to be treated like apprenticeships for minimum wage purposes

In Northern Ireland, workers engaged through the Apprenticeships scheme are to be treated as if they have an apprenticeship contract.

Participants on this scheme should normally have written agreements, in accordance with guidance from the Department for the Economy (DfE).

Piece workers' and homeworkers' entitlement to the minimum wage

Piece workers are paid by the **number of items they produce** or tasks they perform rather than the number of hours they work. Often piece workers work at home or in factories.

Piece workers must be paid **at least the National Minimum Wage or National Living Wage for every hour they work** unless they are a rated output worker for minimum wage purposes. If they are rated output workers, they can be paid a 'fair' piece rate for each piece produced or task performed.

Homeworkers or workers who do not work on your premises

Homeworkers and other workers who do not work on your premises are **entitled to the minimum wage** unless they are running their own business and are genuinely self-employed. If the worker is working for another person or company on your behalf they are probably not self-employed and so are entitled to the minimum wage, even if they are told they are self-employed.

Many homeworkers are classed as output workers for minimum wage purposes and may be paid a 'fair' piece rate if all the conditions are met. If not they must be paid minimum wage for every hour worked. Homeworkers must receive at least the minimum wage, even if they pass some of the work to others, such as close friends or family.

You should not rely on a worker's tax status to determine whether they are a worker or self-employed for minimum wage purposes. A person who has been assessed as self-employed by HM Revenue & Customs for tax purposes will not necessarily be deemed self-employed for the purposes of the minimum wage.

Seafarers' and offshore workers' entitlement to the minimum wage

Whether seafarers and offshore workers are entitled to the National Minimum Wage or National Living Wage depends on what work they are doing and where they are working.

Seafarers

Regardless of where their ship is registered, seafarers are entitled to be paid at least the minimum wage whilst employed to work on a ship working in the UK. For minimum wage purposes the UK includes its internal waters, eg estuaries, and the sea between the UK

mainland and many islands. This also applies to non-UK resident seafarers working in the UK.

When working on board a ship registered in the UK, a seafarer who is ordinarily a UK resident must be paid at least the minimum wage wherever in the world that ship may be, unless all their work takes place outside the UK.

Offshore workers

Unless offshore workers are in the course of navigation or are working on a ship which is engaged in dredging or fishing, they must be paid at least the minimum wage if they are working or ordinarily work:

- in UK territorial waters
- in the UK sector of the continental shelf
- in the UK sector of the continental shelf where the employment is connected with the exploration of a cross boundary petroleum field in a foreign sector of the continental shelf

Offshore workers, who qualify for the minimum wage, are entitled to the minimum wage whether or not they, or their employer, are based in the UK itself.

National Minimum Wage and National Living Wage checklist

If all of the following apply the individual is likely to be a 'worker' who is entitled to the National Minimum Wage or National Living Wage:

- There is a contract or other arrangement with you or your organisation, which entitles the individual to financial consideration. The contract does not have to be written: it may be implied (ie reflecting what happens in practice in the workplace) or oral (ie a spoken agreement of work in exchange for rewards).
- The financial consideration is a monetary payment (ie cash or other form of financial payment) or a benefit in kind and the reward is not simply the reimbursement of genuine out-of-pocket expenses. Whilst such consideration would typically involve you or your organisation incurring a cost, the promise of a contract or future work could be considered a benefit in kind.
- The individual has to turn up for work even if they don't want to, providing personal service. In deciding if someone had to turn up for work a tribunal would look at factors such as whether you can impose sanctions on the individual for failing to do work, your grievance and disciplinary procedures, and whether you or the individual are able to terminate the contract or arrangement by giving notice.
- You have to provide work for the duration of the contract or arrangement (this would include individuals doing 'casual work' and using someone's labour on a 'zero hours' contract).
- The individual has to perform the work or services personally and only has a limited right to send a substitute. Note, being able to delegate to another member of staff does not amount to substitution or subcontracting out the work for minimum wage purposes.
- You are not the individual's client or customer.
- The individual is provided with the majority if not all tools and equipment necessary to undertake the work required.

Referring to someone as 'self-employed' or the fact that they are registered as self-employed for tax purposes does not necessarily make you their client or customer.

When don't I have to pay the minimum wage?

The following are indicators that an individual who is performing work for you or your organisation may not be entitled to the National Minimum Wage or National Living Wage.

The individual is a worker who is exempt from the minimum wage by law

A limited number of groups are classified as workers but are exempt from the minimum wage under minimum wage law. This includes students undertaking work experience as a required part of a UK higher or further education course, some participants in specified government work or training schemes, and voluntary workers.

The individual is performing work as a volunteer

In general an individual working as a volunteer is someone who:

- Undertakes work for a particular organisation for no financial reward or benefit, aside from reimbursement of out-of-pocket expenses.
- Does not have to turn up for work if they do not wish to. It is irrelevant whether the work is performed for altruistic or other reasons, eg to enhance the individual's CV. For further information see [National Minimum Wage and National Living Wage - volunteers and voluntary workers](#).

An individual's entitlement to the minimum wage - and your liability to pay them - does not depend on their job title but on the contract or arrangement you have with them. For further guidance on workers who are entitled to the minimum wage, see the [National Minimum Wage and National Living Wage checklist](#). If in doubt, call the Labour Relations Agency Helpline on Tel 03300 555 300 for free, confidential advice.

National Minimum Wage and National Living Wage: things to consider

In determining whether an individual is a worker who is entitled to the National Minimum Wage or National Living Wage, you should note the following:

- An individual can be a volunteer even if they are carrying out activities under the supervision or control of a manager/director, having to meet specific standards or guidelines, or holding a position for a particular duration. However, HM Revenue & Customs may investigate further if they consider that there may be an underlying contract of employment or other arrangement which entitles the individual to the minimum wage.
- Whether someone is a worker does not depend on what job title you give them - for example calling someone an 'unpaid worker', 'intern' or a 'volunteer' does not prevent them from qualifying for the minimum wage if they really are a worker.
- An employer may not force or persuade a worker who is entitled to the minimum wage to agree to a wage below the minimum wage. The law prevents workers from signing away their right to the minimum wage and such an agreement would not be enforceable.
- If an individual claims that they are a worker who is owed arrears of the minimum wage, the onus of proving that they are not rests with the person they consider to be their employer.