



National Minimum Wage and National Living Wage - who is not entitled to it

Introduction

In general you must pay people who work for you at least the National Minimum Wage or National Living Wage if they are a worker for minimum wage purposes.

They will not be entitled to the minimum wage if they are not a worker or they are excluded from minimum wage entitlement.

This guide describes the groups of people who are not entitled to the minimum wage.

Self-employed and the minimum wage

Are the self-employed entitled to the minimum wage?

The **minimum wage does not apply to the genuinely self-employed**. In most cases it is easy to distinguish between someone who is self-employed and someone who is a 'worker'.

Generally, a self-employed person:

- agrees a price for the job in advance and gives you an invoice or a bill on completion
- controls their own time and decides whether or not to take each job
- provides their own equipment
- keeps the profit they make and bears any loss themselves
- accounts for their own tax and national insurance contributions to HMRC

See **National Minimum Wage and National Living Wage - who must be paid it**.

When it is not clear if someone is self-employed

Sometimes it is not easy to tell if a person is really self-employed. For example, if someone is paid 'commission-only' they may control their own time and keep a share of any profits they make, but they may not be genuinely **self-employed for minimum wage purposes** if it is not them but someone else, usually their employer, who bears any losses that are made.

You should not simply rely on a person's tax status when determining their entitlement to minimum wage, since someone who has been assessed as 'self-employed' by HM Revenue & Customs (HMRC) for tax purposes may not necessarily be self-employed for the purposes of the minimum wage.

Employed or self-employed?

Check your **employment status** or contact HMRC to check if you or someone else is classed as employed or self-employed on Tel 0300 123 2326.

If you are unsure, you can call the Labour Relations Agency Helpline on Tel 03300 555 300

If someone you claim is self-employed makes a complaint about minimum wage entitlement it is up to you to prove that you don't employ them as a worker and that they are not entitled to it.

Company directors and the minimum wage

The minimum wage does not apply to company directors unless they also have contracts that make them workers or employees. Company directors are office holders in common law and can do work and be paid for it in that capacity. This is true no matter what sort of work is done or how it is rewarded.

However, company directors who also have an employment or worker's contract with their company will need to be paid the minimum wage for work done under that contract. If a company director is unsure whether they have entered into a contract with their company which makes them a worker for minimum wage purposes, they may wish to take independent legal advice.

Government or EU schemes and the minimum wage

People may not be entitled to the minimum wage if they take part in a government employment programme which is meant to provide them with training or work experience, or to help them get or look for work. If you are going to take part in a scheme of this kind, check with the organisers to see whether the participant should be paid the minimum wage.

You should note, however, that individuals taking part in some government arranged employment schemes **may be entitled to receive the minimum wage**.

Participants on certain European Community programmes may also not be entitled to the minimum wage.

Family, friends or neighbours and the minimum wage

The minimum wage entitlement for people in your family home or for friends or neighbours carrying out informal work for you will depend on the nature of your relationship with them. If you are unsure about their entitlement, you can call the Labour Relations Agency Helpline on Tel 03300 555 300

Non-family members living and working within your family

If non-family members live in your family home you do not need to pay them the minimum wage for work done in relation to your family household if they:

- share in the work and leisure activities of your household
- are treated as part of the family in respect of the provision of accommodation and meals and are not charged for these

Family members

The minimum wage does not need to be paid to members of your family who carry out work in relation to your family household if they:

- live at home
- share in the tasks and activities of your family, and the work is carried out in that context

The minimum wage does not need to be paid to workers who participate in the running of your family business, so long as they are members of your family and live in your home.

Friends and neighbours

The minimum wage does not need to be paid when jobs are done under informal arrangements between people where no contractual obligation is formed.

For example, someone who helps out a neighbour by doing the shopping - and who receives a token payment in return - is not entitled to the minimum wage unless there is a binding worker's contract.

Similarly, someone who cleans a neighbour's car on this basis cannot claim the minimum wage.

Members of the armed forces and the minimum wage

The minimum wage does not apply to members of the armed forces, including reservists. This does not affect a reservist's entitlement to the minimum wage outside of their reservist activity. For example, if they have another job as a fire-fighter unrelated to their activities as a reservist they are entitled to the minimum wage for their work as a fire-fighter.

Civilians who are working for an association of reservists, or civilians working for the Ministry of Defence **must be paid at least the minimum wage**.

Cadet Force Adult Volunteers

People who assist in the activities of the cadet forces as Cadet Force Adult Volunteers do not qualify for the minimum wage for their work in this capacity.

Other instances where the minimum wage is not applicable

There are some instances where paying the minimum wage is not required.

Work experience as part of an education course

A person doing work experience which is a requirement of a higher or further education course is not eligible for the minimum wage.

Share fishermen and the minimum wage

Share fishermen are fishermen who do not receive a fixed wage or salary but who agree among themselves to divide up the proceeds or profits from a catch. The minimum wage does not apply to share fishermen.

Prisoners and the minimum wage

A prisoner working under prison rules is not entitled to be paid the minimum wage.

A person detained under immigration legislation doing work in a removal centre under their rules is not entitled to be paid the minimum wage.

A person doing work under an order imposed by the courts to discharge a fine does not qualify for the minimum wage.

Members of religious and other communities and the minimum wage

A residential member of a community does not qualify for the minimum wage in respect of employment by the community, providing the following all apply:

- the community is a charity or is established by a charity
- the purpose of the community is to practice or advance a belief of a religious or similar nature
- all, or some of its members, live together for that purpose

This does not apply to a community which is an independent school or provides a course of further or higher education.