

HOW TO.....AVOID COMMON ISSUES WITH THE NATIONAL MINIMUM WAGE (NMW) RULES

Employers may incorrectly be thinking they are compliant with the National Minimum Wage (NMW) just because they have fixed their rates of pay at or above the national minimum rate.

This might not be the case though, and HMRC are getting serious. In the last 3 years the number of enforcement inspectors has increased from 130 to 410, and this is growing, and in the past, enforceable penalties were £5,000.

They can now be as much as 200% of the underpayments made over a 6-year period.

The most common issues are employers:

1. Making deductions that reduce the actual hourly rate a worker receives
2. Not paying workers for all hours worked
3. Not paying for hours where workers are required to be 'available for work'
4. Not paying a worker because they are 'volunteering'
5. Assuming salaried workers are covered because they have set earnings above the national minimum wage
6. Thinking an apprentice is entitled to apprentice rates whatever their age

If HMRC believe an employer has not been paying the national minimum wage, it will be for the employer to prove they have, not HMRC to prove they haven't. This will mean providing evidence such as pay slips and working-time records, and potentially for the last 6 years (as that is how far back a claim can go).

Employers will need robust records to evidence they have not breached the law. This is easier if they employ workers who are paid by the actual time worked and where there is a time and attendance system.

It might not be as easy where there are 'salaried' workers, 'unmeasured' workers (paid in other ways) or 'output workers (those paid by task), so having an effective way of calculating *actual hourly rates of pay* in each pay period for all employees is essential to ensure hourly rates of pay are not less than the minimum hourly rate applicable.

Example 1: A worker finishes their shift late because of security checks being completed at the end of the shift. They are not paid for this because they have finished their shift.

Example 2: Workers are required to be available for overtime or on-call. This is not included in their worked hours as it is a requirement rather.

It's 'working hours' or the 'need to be available to work' that matters, and whether the employer benefits from the activity. In both examples, the activity is clearly to the benefit of the employer and if a worker is not paid for the work undertaken, their *actual hourly rate of pay* for the total hours work will be depreciated. If it falls below the national minimum level it will cause a breach.

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There are some *simple steps you can take.....*

1. Remember it's all about *worked hours and hourly paid hours*
2. Assess your workforce to understand the different types of workers you have, and how you record their actual worked hours and their actual hourly rate of pay within a pay period
3. Use this information to check you are not unknowingly under paying the national minimum wage, and if you are correct it there and then to avoid prosecution
4. Check contracts of employment, especially those for salaried workers to ensure they are robust and lawful
5. Check policies and working practices to make sure there are no contradictions between these and the NMW legal requirements
6. Review the deductions you make to ensure they are not reducing the actual hourly rate of pay of the worker to below the national minimum requirement. If they are top this back up to avoid a breach.
7. Ensure your managers understand the definition of 'hours worked' and the need to monitor and record these.

On a more strategic level:

1. Review how you and your managers are allocating and controlling worked hours. You don't want people doing extra hours unless you have asked them to and need them to.
2. Make sure you have a system in place to record why you are not paying for hours that might at first glance look like worked hours. For example, if the worker was late leaving because they chose to have a chat to their colleague document this so that you can prove why you did not make a payment.

Remember the rates are:

Year	25 and over	21 to 24	18 to 20	Under 18	Apprentice*
April 2018	£7.83	£7.38	£5.90	£4.20	£3.70

** if they're either aged under 19 or aged 19 or over and in the first year of their apprenticeship*

I hope you found this guide useful. Contact me at karen@KDHRSolutions.com if you would like more information.