

## ***THE NATIONAL MINIMUM WAGE***

The National Minimum Wage (NMW) was introduced by the National Minimum Wage Act 1999 which came into effect on 1 April 1999. The detailed provisions are contained in Regulations issued under the Act.

### Who is covered by the NMW?

NMW applies to all workers, with certain exceptions such as:

- those under the age of 18
- apprentices under the age of 26 during their first year of apprenticeship
- those who are genuinely self employed
- family members working in the family business
- people working and living as part of a family (eg *au pairs*)
- voluntary workers
- company directors (unless they have a service contract)

### What is the rate of NMW (October 2005)?

- £5.05 p/h for adults over 22
- £4.25 p/h development rate for workers 18-21 and for the first six months for workers over 22 and who are receiving accredited training
- £3.00 p/h for workers 16-17 years old

From October 2006 the rates are:

- £5.35 p/h for adults over 22
- £4.45 p/h development rate for workers 18-21 and for the first six months for workers over 22 and who are receiving accredited training
- £3.30 p/h for workers 16-17 years old

### How is the NMW calculated?

The Regulations set out a rather complex procedure detailing the calculation of the NMW.

Benefits in kind, expenses, certain allowances and most deductions are not included.

Enhanced payments for particular work will not count, but incentive or profit related payments will be included

### What working time counts for NMW?

Job-related travelling and training time is included. Periods of holiday or absence do not count (even though holiday pay is now obligatory), nor does time taken as rest breaks or industrial action.

### What if the pay is not time-related?

Piece workers and other non-time workers (eg pub landlords) may come to an agreement with their employer about a fair estimate of hours.

### What about Family Businesses?

Although there is an exemption for family members working in the family business, the regulations specifically refer to *the employer's family*. If the family business (ie the employer) is a limited company, then it does not have a family. Even if the family business operates as a sole trade or partnership, the only family members exempted are those who actually live at home.

### What records have to be kept?

For workers earning in excess of £12,000 per year, employers simply have to keep sufficient records to demonstrate that the NMW has been paid. For workers earning less than £12,000 per year, full details of the NMW calculation must be kept.

Records should be kept for six years.

### What rights does the worker have?

Individuals have the right to apply to a court or tribunal for non payment of the NMW. They are also protected from suffering any loss for such proceedings. There is a national helpline (0845 6000 678) which takes complaints from workers, employers and third parties.

### What about employers who do not comply?

The minimum wage regulations are enforced by HM Revenue & Customs, who can issue enforcement notices. They can also issue penalty notices, imposing civil fines of £8.20 a day until the underpayment is made good. However officers will give employers every chance to comply before considering any penalty. The maximum penalty is as fine of £5,000 for committing a criminal offence, covering refusal or wilful neglect to pay the national minimum wage; failure to keep national minimum wage records or keeping false records; and obstructing an enforcement officer.

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