

National Minimum Wage – do we comply?

The National minimum wage (NMW) is applicable to almost all workers; not just employees.

The NMW hourly rates (which are age dependent) change on 1 April every year and can be located at:

<https://www.gov.uk/national-minimum-wage-rates>.

For many, it is clear whether their workers are receiving that rate. But there are a few traps which can inadvertently result in underpayments being made and any suspected/alleged underpayment can leave your organisation open to an investigation by the HMRC.

The following checklist enables you to self-audit and readily identify if your organisation needs to further investigate whether it is, in fact, paying the NMW.



NMW – self audit checklist

Does the organisation...	Yes/No	So?
Require workers to wear certain items (e.g. white blouse/shirt, black shoes or a navy blazer)?	Y/N	<p>If workers are directed to wear specific items this may be deemed a “uniform” irrespective both of whether:</p> <ul style="list-style-type: none"> it bears the company logo name; and/or they can wear the clothes for non-work purposes. <p>The cost of the item(s), if not paid for by the organisation, will be taken into account when determining NMW compliance.</p>
Operate a salary sacrifice scheme?	Y/N	Any salary sacrificed must not put a worker below the NMW rate that applies to him/her/them.
Require workers to pay a deposit(s) (e.g. for clothing/uniform or equipment)?	Y/N	Deposits will reduce the salary for NMW purposes. Further, those deposits will not be set-off by the corresponding deposit returns unless both transactions occur within the same reference period.
Allow workers to receive tips?	Y/N	Tips must be disregarded when determining NMW compliance.
Have a staff canteen?	Y/N	Payments are made for food voluntarily purchased

		from a canteen via a deduction to their pay, will be taken into account when determining NMW compliance.
Require workers to attend pre-employment induction/training or trial shifts?	Y/N	This will be regarded as working time and will be taken into account when determining NMW compliance.
Require workers to carry out training in their own time/outside normal working hours?	Y/N	Job related training agreed to by the employer can be working time and can be taken into account when determining NMW compliance.
Require workers to travel between jobs/sites/offices or for other business related reasons?	Y/N	Any work-related travel time (with the exception of travelling to and from their place of work) counts as working time for NMW compliance purposes. This is regardless of whether that travelling time is within their normal working hours. Travel costs will also be taken into account.
Require workers to carry out tasks prior to starting or after their shift (e.g. change into/out of uniform, clocking on/off, bag checks)?	Y/N	Any non-voluntary tasks will amount to working time when determining NMW compliance.

Any “yes” answers should be properly considered when deciding on NMW compliance.

What about workers who have TUPE transferred to us?

All liability for NMW breaches by their former employer will transfer with them. It becomes your organisation’s liability irrespective of the fact the breaches:

- are historic,
- were at the hands of another employers; and
- ceased at the point of the transfer to your organisation.

What can we do if we have paid below the NMW?

Provided the organisation makes up the difference before any investigation by the HMRC commences, action and penalties can be

avoided. Underpayments need to be carefully handled and labelled as such – specialist payroll/tax advice should be taken about this.

Organisations will also need to consider whether additional pension contributions need to be made on top of the underpayments.

How can the Wilson Browne Employment Team help you?

We advise employers of all sizes on the full range of employment law issues and, as a small, closely knit, team, we are proud of the personal relationships we build with our clients.

Our Employment Team has assisted clients to both conduct self-assessments and NMW inspections by the HMRC.

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