



# HOTEL

**DEPARTMENT FOR BUSINESS  
ENTERPRISE & REGULATORY REFORM**

## **NATIONAL MINIMUM WAGE**

The National Minimum  
Wage and the hotel sector

A Guide for Employers

September 2007



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# Entitlement to the National Minimum Wage (NMW)

## The National Minimum Wage (NMW) and the hotel sector

All employers must pay their workers at least a minimum amount set by law. This is called the National Minimum Wage (NMW). NMW compliance officers may visit employers to make sure the rules are met.

This guide is produced by the Department for Business, Enterprise & Regulatory Reform (BERR) and HM Revenue & Customs (HMRC) in association with the Department for Culture, Media and Sport to advise the hotel sector of the NMW requirements and covers areas which are particularly relevant for employers in this sector.

## New rates of NMW in force from 1 October 2007

The NMW provides a legally binding minimum hourly rate of pay for most workers over compulsory school age. The rates are reviewed each year and usually increase on the 1 October each year. The current rates and the increased rates due from 1 October 2007 are shown below.

You can check the rates on the website:  
[www.businesslink.gov.uk](http://www.businesslink.gov.uk)

	Rate from 1 October 2006	Rate from 1 October 2007
<b>Workers aged 22 and over</b>	£5.35	£5.52
<b>Workers aged 18-21</b>	£4.45	£4.60
<b>Workers aged 16-17</b>	£3.30	£3.40

## Who must get the NMW?

Most workers in the United Kingdom who are over compulsory school age are entitled to be paid at least NMW rates.

A worker is someone who works for you under a contract and is not genuinely self-employed. The contract does not have to be written; it can be an implied contract or an oral (verbal) contract.

All workers who are working legally in the United Kingdom must be paid at least the minimum wage for the hours they work. Foreign workers working in the UK are entitled to the national minimum wage in exactly the same way as any other worker, regardless of how long or short their stay may be.

## Workers who do not qualify for the NMW

Some workers do not qualify for the NMW or only qualify after a specified period of time. For example:

- Apprentices under the age of 19 do not qualify for the NMW.
- Apprentices aged 19 or over do not qualify for the NMW for the first 12 months of their apprenticeship with their employer.

Apprentices as far as the minimum wage is concerned are either:

Workers who have contracts of apprenticeship; or workers who are taking part in specific training programmes i.e. in England, Apprenticeships or Advanced Apprenticeships; in Scotland, Skillseekers or Modern Apprenticeships; in Northern Ireland, Jobskills Traineeships or Modern Apprenticeships and in Wales Modern Apprenticeships or Foundation Modern Apprenticeships.



**Students doing work experience as part of a higher education or further education course, or as part of certain European programmes**

Students on higher education courses at a UK university or college are sometimes placed with an employer as part of their course. They need not be paid the NMW if the placement does not last longer than a year.

From 1 October 2007, post 16 learners who are required to undertake a period of work experience lasting for less than a year as part of a funded further education course do not qualify for the NMW.

Participants in the European Union's Leonardo da Vinci and Youth in Action programmes are also exempt from the National Minimum Wage.



## **Making sure workers get the NMW**

Sometimes it is not clear whether someone is being paid the NMW, for example if they are not clearly paid an agreed rate per hour. However employers need to ensure that payments made for workers are at least equal to the NMW for the period worked (worked out as a rate per hour worked). Failure to pay the worker at least the NMW for the time worked is unlawful and enforcement action may be taken. Information about working out whether you are paying your workers at least the NMW is available at: [www.businesslink.gov.uk/employment](http://www.businesslink.gov.uk/employment)

Individuals can ask HM Revenue & Customs (HMRC) to give an opinion about whether or not they are entitled to the NMW. HMRC officers may also visit employers to ensure the NMW is being paid. In order to give an opinion officers will need to gather facts and find out actual working arrangements.

They do this by speaking to the employer, the 'worker' and others. The NMW officer gives his opinion based upon the actual working arrangements and assesses any arrears.

If HMRC conclude that arrears are outstanding it may issue an enforcement notice to the employer. The enforcement notice will specify the amount owed to the worker (or workers) and the time in which the employer has to pay the worker. It also gives details of how to appeal the enforcement notice. If the employer does not comply with the enforcement notice they may be penalised. There is a minimum fine of £224.70 per worker underpaid.

An employer can appeal against an enforcement notice or a penalty. Both of these appeals go to an Employment Tribunal.

If there is a dispute with HMRC only an Employment Tribunal or Court can make a decision about an individual's NMW entitlement.

# Issues for the Hotel Sector

## **Providing accommodation to a worker and the rules on accommodation offset**

Accommodation is the only benefit in kind that can be taken into account for national minimum wage purposes. When an employer provides accommodation to a worker the employer may charge the worker for that accommodation. This is done by deducting an amount for the provision of accommodation from the worker's pay or by requesting the worker to make a separate payment to him in respect of the provision of accommodation.

The maximum amount that an employer may charge for NMW calculations is referred to as the 'accommodation offset'. An employer providing accommodation to a worker must take into account the effect of the accommodation offset when calculating the worker's national minimum wage pay. The minimum an individual can take home is the minimum wage minus the accommodation offset.

An employer cannot make charges for, e.g. utilities or meals on top of the offset. Any charge the worker is obliged to pay as a precondition of being provided with accommodation by any employer (including charges for gas and electricity, laundry and provision of furniture) must be regarded as a charge paid in respect of the provision of accommodation. These charges should therefore be taken into account when determining the total charge for accommodation and when calculating NMW pay taking into account the accommodation offset rules.



The accommodation offset provisions will apply whenever an employer provides accommodation to the worker.

When the accommodation is provided free of charge, the notional value of the accommodation offset counts towards national minimum wage pay so the effect may be that a worker's contractual pay can be less than the NMW.

The offset is currently set at £4.15 per day or £29.05 per week, rising to £4.30 per day or £30.10 per week from 1 October 2007.

Detailed guidance on the accommodation offset, including how to calculate NMW pay when accommodation is provided by the employer is set out at: [www.businesslink.gov.uk](http://www.businesslink.gov.uk)

## Workers paid by output

When employers pay their workers wholly by the number of rooms cleaned or the number of tasks performed, the worker may be performing 'rated output' work for national minimum wage purposes.

Rated output workers must be paid either the minimum wage for every hour they work, or a fair piece rate for each task performed or, for example, each room cleaned. Fair piece rates can only be paid in certain circumstances and special provisions apply.

See: [www.businesslink.gov/employment](http://www.businesslink.gov/employment)

A worker cannot be classed as a rated output worker if the hours they are expected to work are controlled in any way by their employer. For example, a worker cannot be a rated output worker if their employer sets normal, minimum or maximum hours of work in their contract, or if their employer tells them the hours they are required to work. In these circumstances, the worker must be paid national minimum wage for every hour worked.

## Scenario

Janette cleans rooms in a hotel and prepares them for the next guests. Her employer requires her to work from 7 am until she has cleaned the room of the last guest checking out that day. Her employer pays her £3.00 for every room cleaned and prepared.

## Comment

Janette is not a rated output worker. Even though she is paid by the number of rooms, because her employer sets the start and finish time that she is required to work, she cannot be paid fair piece rates for NMW purposes and must be paid the NMW for every hour she works.

## Tips, service charges, gratuities and cover charges

Tips, service charges, gratuities and cover charges only count towards NMW pay if they are paid to the worker by the employer via the employer's payroll. They should be shown on the payslip issued by the employer. If they are not paid to the worker through the payroll the employer cannot count them towards satisfying his requirement to pay NMW.

Many hotel restaurants operate systems known as 'tronc' schemes which are administered by a troncmaster. In these cases whether the amounts allocated to workers count towards NMW pay depends on whether or not each worker's share is paid to the worker by the employer via the employer's payroll.

## Scenario

Ned, a hotelier, passes all tips left by customers into an independently run tronc except for the equivalent of £2 per hour, which he pays to workers through his own payroll along with their wages and shows this on their payslips. The workers receive their share of the tronc each week directly from the troncmaster.

## Comment

The £2 per hour equivalent Ned retains from the tips and pays directly to his workers are monies paid by the employer through the employer's payroll and count towards NMW pay. Ned must ensure the total amount paid to workers is at least equal to the NMW. Monies paid from the tronc do not count towards NMW pay because they are not paid to workers through the employer's payroll.





## **Deductions for expenditure connected with the job**

Deductions which an employer makes to cover the cost of items or expenses that are necessary for the worker's job do not count towards minimum wage pay. For example, if the employer deducts an amount from pay to cover the cost of a uniform or other equipment needed for the job, the amount deducted reduces pay. The employer must pay the worker the minimum wage in addition to the cost of the uniform/tools.

# Wider Employment Issues

## Pay statements

All employees are entitled to an individual written pay statement, at or before the time they are paid. The statement must show gross pay and take home pay, with amounts and reasons for all variable deductions. Fixed deductions must also be shown, with detailed amounts and reasons. Alternatively, fixed deductions can be shown as a total sum, provided a written statement of these items is given to each employee in advance or at the time of issue of the first pay statement showing the total sum, and after that at least once a year. An employer is only entitled to make deductions in certain specified circumstances.

Further details can be found in the document '*Pay Statements. What they must itemise*', available from: [www.businesslink.gov.uk/employment](http://www.businesslink.gov.uk/employment)

## Holiday entitlement

From 1 October 2007 all workers are entitled to 4.8 weeks' annual leave, (increased from 4 weeks). From 1 April 2009 this will increase to 5.6 weeks. The holiday entitlement is expressed as the weeks that a worker would usually work. So if a worker usually works 3 days a week, then from 1 October 2007 the holiday entitlement will be 4.8 weeks of 3 days.

You cannot usually pay workers in lieu of annual leave, but as a temporary measure (to provide time to make necessary changes) payment can be given in lieu of additional days introduced on 1 October 2007 (4 days for those working a 5 day week). From 1 April 2009 payment in lieu cannot be provided for anything less than 5.6 weeks (28 days for those working full-time). More detail on the holiday entitlement can be found at: [www.businesslink.gov.uk/employment](http://www.businesslink.gov.uk/employment)

## Agency workers

Employment agencies (which introduce work seekers into the direct employment of employers) and employment businesses (which engage temporary workers and supply their services to client hirers for temporary assignments), referred to collectively here as 'agencies', must not charge workers fees for finding or seeking to find them employment (exceptions apply within the modeling and entertainment sectors).

An agency engaging temporary workers for supply onto client hirers must give those workers written terms, and must pay workers at the agreed rate which must be at least at the NMW for all time worked in the pay reference period. This applies even if the agency has not been paid by the client hirer.

An agency should check workers have the authorisations or qualifications required by law and should obtain enough information to show a worker is suitable for the job.

The conduct of agencies is governed by the Conduct of Employment Agencies and Employment Businesses Regulations 2003, compliance with which is overseen by the Employment Agency Standards Inspectorate at BERR.

If you need to know more you can call the Employment Agency Standards Helpline on 0845 955 5105 or email: [eas@berr.gsi.gov.uk](mailto:eas@berr.gsi.gov.uk). Inspectors investigate public complaints about agency conduct and will take action against an agency if necessary.



# Common Scenarios in the Hotel Sector

The following are some common scenarios found in the hotel sector. They may help you decide if the NMW applies to your situation. For general help and advice contact the confidential NMW Helpline on **0845 6000 678**. You can also visit: [www.businesslink.gov.uk/employment](http://www.businesslink.gov.uk/employment)

Please note that all names in these examples are entirely fictitious and comments made are purely an opinion. Only an Employment Tribunal or Court can make decisions in any matter of dispute.

## Scenario

Dave works as a waiter in a hotel. His employer gives him a free meal at the end of his shift each day.

## Comment

The only benefit in kind that can count towards NMW pay is accommodation provided to a worker by an employer. Therefore, the value of the meals provided by the employer do not count towards his NMW pay.

## Scenario

Raj started work as a Chef just after his 18th birthday. He has been working at the hotel for 2 years. As soon as he started work, Raj and his employer entered a contract of apprenticeship. His employer pays him the rate suggested by a local training organisation which is below NMW rates.

## Comment

Raj was not entitled to receive the NMW for the first 12 months of his apprenticeship. However, he qualifies for NMW from his 19th birthday. His employer must now pay arrears of the NMW and ensure he is paid NMW in future. The fact that the training organisation has advised his employer that a minimum amount should be paid does not affect Raj's entitlement to be paid the NMW after the first 12 months of his apprenticeship.

## Scenario

Rebecca is studying at a UK university. As part of her course of higher education, she is placed with a hotel chain for 6 months, working Monday to Friday. Rebecca is saving for a holiday and has made her own arrangements with the hotel management to work in the bar on Saturday evenings to earn some money.

## Comment

The work she does on weekdays is part of a higher education course and the placement is not longer than 12 months so the hotel chain does not have to pay the NMW for this work. The work Rebecca is doing in the bar on a Saturday is not part of her higher education course and she must be paid the NMW for that work.

Students who perform work, which is not part of their higher education course, in their spare time and holidays, are entitled to the NMW in the same way as any other worker.

If Rebecca had been studying at a non-UK university, then she would have been entitled to the NMW for her work experience.

## Scenario

Ania is a migrant worker from Poland working during the summer as a hotel cleaner. Her employer has told her that she does not qualify for the NMW because she is not a British citizen and does not normally live in the UK.

## Comment

Ania is entitled to the NMW in the same way as anyone else working in the UK. Nationality and residency are not requirements for entitlement to the national minimum wage in this situation.



## Scenario

Simon works at a hotel reception. He is provided with a uniform which he is required to wear on duty. The employer makes a deduction of £10 per week for the first 4 weeks of his employment as a deposit for the uniform. The deposit is refunded if the uniform is returned in reasonable condition at the end of the employment.

## Comment

The £10 deductions will not count in the calculation of Simon's NMW pay, as the worker must receive at least the NMW after the employer has deducted the cost of uniform (or tools). So after the £10 has been deducted, Simon's pay must not fall below the NMW.

However, if Simon returns the uniform as requested at the end of the employment, any deposit refunded can be included as NMW pay in the pay reference period in which it is paid back to him.

This means that in his final week he will have earned an extra £40 when calculating his NMW pay.

# How can I find out more?

For general help and confidential advice contact the NMW Helpline on **0845 6000 678**. The helpline is run by HMRC on behalf of BERR.

In **Northern Ireland** there is a separate NMW Helpline on **0845 6500 207**. This helpline is run by Citizen's Advice on behalf of BERR.

Calls will be charged at local rates. To help us improve the quality of our service, your call may be monitored or recorded for internal training purposes only.

You can also write to NMW enquiries, Freepost PHQ1, Newcastle upon Tyne, NE98 1ZH or email your enquiry to [nmw@hmrc.gov.uk](mailto:nmw@hmrc.gov.uk).

You can also visit [www.direct.gov.uk/employment](http://www.direct.gov.uk/employment)

Employers can find out more about employment rights and get personalised guidance from: [www.direct.gov.uk](http://www.direct.gov.uk)

[www.businesslink.gov.uk](http://www.businesslink.gov.uk) offers practical advice for business on various employment issues.

For up to date information and independent advice on employment relations you can go to: [www.acas.org.uk](http://www.acas.org.uk)

**The information contained in this guide is intended to provide general guidance only. It should not be regarded as a complete authoritative statement of the law.**







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