

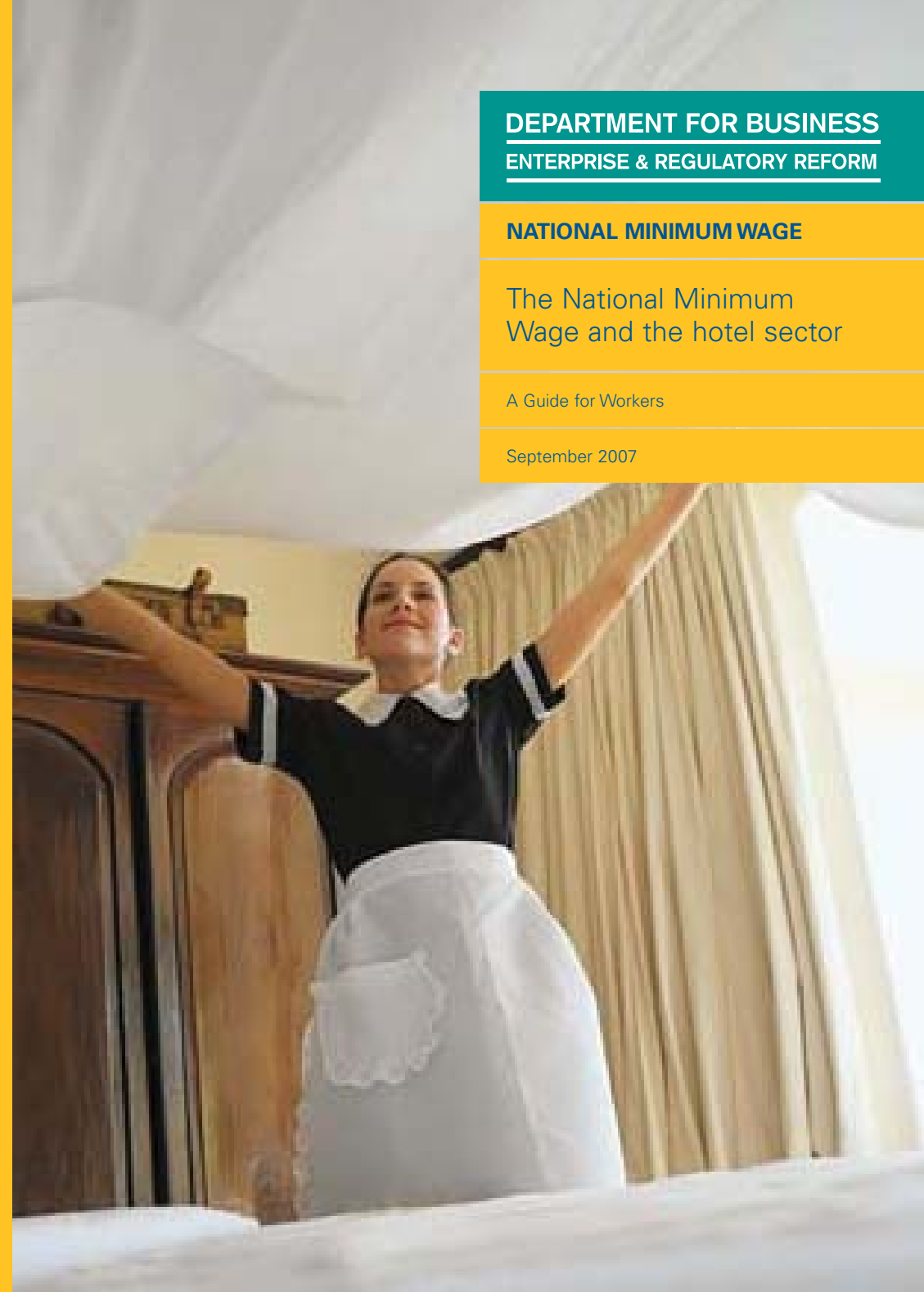
**DEPARTMENT FOR BUSINESS
ENTERPRISE & REGULATORY REFORM**

NATIONAL MINIMUM WAGE

The National Minimum
Wage and the hotel sector

A Guide for Workers

September 2007



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Entitlement to the National Minimum Wage (NMW)

This guide is produced to provide information on the National Minimum Wage (NMW) and covers areas which are particularly relevant for workers. The examples we have used in this leaflet are common to the hotel industry but will equally apply to all workers.

The national minimum wage

Almost everyone who legally works in the UK is entitled to receive at least a certain level of pay. This is called the national minimum wage.

There are a few workers who don't have to be paid the minimum wage (see page 3).

So long as you are not in one of these groups and are legally entitled to work in the UK, it does not matter whether you are a foreign worker or how much experience you have, your employer must pay you at least the national minimum wage.

The amount is set by law. You can be paid more than this but you must not be paid less.

How much is the national minimum wage?

The rate changes on 1 October each year. The rates for 2006 and 2007 are listed below.

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

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

Workers who do not qualify for the NMW

Some workers do not qualify for the NMW or only qualify after a set period of time. For example your employer does not have to pay you the minimum wage if you are:

- An apprentice under the age of 19.
- An apprentice who is 19 or over during the first year of your apprenticeship.
- A student on a work placement of up to a year as part of a UK higher education course or from 1 October 2007 a funded further education course
- Taking part in the European Union's Leonardo da Vinci or Youth in Action programme.

There may be other reasons why you aren't entitled to the minimum wage.

If you are unsure contact the national minimum wage helpline on **0845 6000 678**.

How to know if you are getting the right pay

Sometimes it may not be clear if you are getting the correct minimum wage, for example if you are not clearly paid an agreed rate per hour. To calculate if you are getting the correct minimum wage see: www.direct.gov.uk/nmw. Or call the national minimum wage helpline on **0845 6000 678**.



Output workers

Some workers are paid by the amount of work they do instead of by the hour. This is sometimes called piece work. For example chambermaids may be paid by the number of rooms cleaned. Your employer can only pay you in this way if you are able to fix your own hours. If your employer tells you the hours to work then your employer must pay you at least the minimum wage for each hour worked.

Even if you are an output worker you must still be paid a fair rate. Call the national minimum wage helpline on **0845 6000 678** to check what you should be paid.

Example

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 piece rates for NMW purposes and must be paid NMW for every hour she works.

Living in accommodation provided by your employer

If an employer provides you with accommodation they can count some of the cost as part of your minimum wage. The most they can count towards your minimum wage is set out by law. The rates for 2006 and 2007 are in the table below.

Your employer can only offset these amounts when calculating if you have been paid the minimum wage. Although he can charge you more it must not take your hourly rate below the minimum wage less the offset. Your employer cannot make extra charges for things like heating and lighting, meals or uniform on top of the accommodation offset.

Detailed guidance on this, including how to calculate NMW pay when accommodation is provided by the employer is set out at www.direct.gov.uk/nmw or call the national minimum wage helpline on **0845 6000 678**.

Tips, service charges, gratuities and cover charges

If you get paid tips in your job and your employer pays them to you through the payroll as part of your wages then the tips can count as part of your pay for NMW purposes.

If your tips are paid to you in a different way, and the money does not go through the payroll your employer cannot count these as part of your pay for NMW purposes. For example many restaurants operate systems known as “tronc” schemes where the tips are shared out by a troncmaster.



From 1 October 2006	From 1 October 2007
£4.15 per day (£29.05 per week)	£4.30 per day (£30.10 per week)

Example 1

Miguel, the proprietor of a restaurant, pays his workers an hourly rate that is less than the hourly NMW rate. Tips are pooled and paid into an independent tronc run by the troncmaster, Conchita. At the end of every week Conchita tells Miguel how much is due from the tronc to each tronc member. Miguel pays these amounts to each worker in addition to their wages and shows the details on their payslips. Conchita gives Miguel a payment from the tronc equivalent to the total amount due to all tronc members that week.

Comment

As the tips are paid to the workers via the employer's payroll they count towards NMW pay. Each week Miguel must ensure the total amount he pays via his payroll (the wages plus the amounts from the tronc) is at least equal to the NMW. If not, he must make an additional payment to each worker to bring their pay up to at least the NMW.

Example 2

Jane works in a hotel restaurant as a waitress. She keeps any tips left behind by customers on the tables she waits. Other waitresses in the restaurant have decided to pool their tips which are collected in a tin held behind the bar and shared out equally at the end of the week.

Comment

Jane retains any tips left specifically for her by customers. The rest of the staff retain a share of the tips left by customers. None of the tips will count towards national minimum wage pay as they are not paid to the workers via the employer's payroll.

Example 3

Ned, the proprietor of a restaurant, 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 on their payslips. The workers receive their share of the tronc each week directly from the troncmaster.

Comment

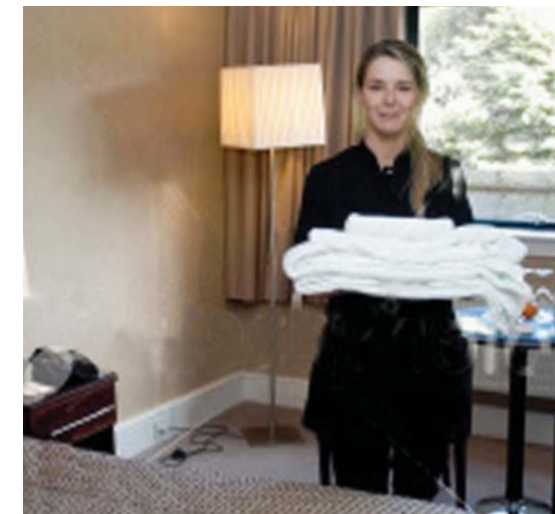
The £2 per hour equivalent Ned retains from the tips and pays directly to his workers are monies paid by the employer through the employer's payroll and count towards NMW pay. Ned must ensure the total amount paid to workers is at least equal to the NMW. Monies paid from the tronc do not count towards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

What to do if you don't think you are getting the right pay

You should call the national minimum wage helpline on **0845 6000 678**.

They will help you work out if you are being paid enough. If you are not getting enough money they can help you get what you are owed.

If your employer does not pay you the right amount your employer can be fined.



Wider Employment Issues

Pay statements

Your employer must give you a written pay statement. They can give you this either before they pay you or at the time they pay you.

Your pay statement must explain any deductions your employer has made. It must show the amount deducted and the reason for it.

If you need advice about getting a pay statement or do not think your employer is showing all the details on your statement you can contact Acas for advice.

www.acas.org.uk, or telephone **08457 47 47 47**.

Holiday entitlement

Until 1 October 2007, all workers are entitled to four weeks' paid holiday. A week's holiday should be the same hours as you would usually work in a week. So if you work four days a week you would be entitled to 16 days' holiday in a year (4 weeks x 4 days). This is the minimum amount of paid holiday you should get. Your employer may give you more time off.

From 1 October 2007 the law is changing and all workers will be entitled to 4.8 weeks' annual leave per year. So if you work four days a week you will be entitled to 19.2 days' holiday a year (4.8 weeks x 4 days).

From 1 April 2009 this will increase to 5.6 weeks.

You must be allowed to take your holidays but your employer can tell you when to take them.

Your employer cannot usually pay you instead of letting you take holidays, but to help everyone get used to the extra holidays, until March 2009, your employer can pay you for the

extra days introduced on 1 October 2007. More detail on the holiday entitlement can be found at: **www.direct.gov.uk/employees** or contact Acas on **08457 47 47 47**, see: **www.acas.org.uk**

Agency workers

If you get work through an agency then you are still entitled to the minimum wage and other rights outlined in this leaflet. The agency must give you a written statement of your terms.

The agency must pay you at least the national minimum

wage for the hours you work. They must pay you on time – the agency cannot pay you late just because the agency has not been paid by the hirer.

The agency cannot charge you for looking for or finding work for you. (There may be some exceptions if you work in the modeling or entertainment sector).

If you need to know more you can call the Employment Agency Standards Helpline on **0845 955 5105** or e-mail: **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. These examples apply equally in other sectors. 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**. See www.direct.gov.uk/nmw.

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. 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. The value of the meals provided by the employer does not count towards his NMW pay.

Scenario

Dawn works as a cleaner. Her employer offers her a discounted lunch each day.

Comment

If Dawn has a free choice to purchase the lunch and it is not a contractual requirement to purchase this meal then any payment she makes does not reduce her pay for NMW purposes. However, if the employer contractually obliges Dawn to purchase the lunch or deducts the cost directly from her wages (regardless of whether she agrees to this or not) then the amount she pays will reduce her pay for NMW purposes and the employer must make sure it does not bring her pay under the minimum wage.

Scenario

Raj started work as a chef just after his 18th birthday. He has been working in the kitchen 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 the NMW rates.

Comment

Raj was not entitled to receive the NMW for the first 12 months of his apprenticeship. However, he qualifies for the NMW from his 19th birthday. His employer must now pay arrears of the NMW and ensure he is paid the 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

Tina, aged 17, started work in a hotel restaurant kitchen straight after leaving school in June 2007. Her employer took her on for a three month trial period before enrolling her on a two year Government apprenticeship in food preparation. During the initial three month trial period Tina generally helped out with jobs around the kitchen and restaurant. She started her training course in September 2007. Her employer paid her below the NMW rate for workers aged 16-17 because she was not experienced.

Comment

As Tina is under 19, she does not qualify for the NMW whilst she is an apprentice. However, her apprenticeship contract did not start until September 2007. She is entitled to the NMW for the work she performed from the start of her employment up until the start of her apprenticeship. Her employer must pay her arrears for this period. The fact that she was inexperienced during this time does not have any effect on her entitlement to the NMW. As an apprentice, Tina will be entitled to the NMW from her 19th birthday.

Scenario

Jacqueline, aged 20, started work as a receptionist and immediately began a Government apprenticeship in customer service through an arrangement with a local training provider. After 12 months her employer correctly started paying her the NMW. However 6 months later the hotel closed and Jacqueline entered into a new contract of apprenticeship with another employer. The second employer advised her she did not qualify for the NMW.

Comment

Because Jacqueline is now employed under a completely new apprenticeship contract with the second employer, she will not be entitled to the NMW for the first 12 months of that new contract.

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 NMW in this situation.





Scenario

Simon works at a health club 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

Workers 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 count towards the minimum wage in the pay reference period in which it is paid back to him.

How can I find out more?

National Minimum Wage

For general help and confidential advice about the minimum wage contact the confidential NMW Helpline on **0845 6000 678**. The helpline is run by HM Revenue & Customs (HMRC) on behalf of the Department for Business Enterprise and Regulatory Reform (BERR). The helpline can deal with calls in 100 languages.

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 write to NMW enquiries, Freepost PHQ1, Newcastle upon Tyne, NE98 1ZH or email your enquiry to **nmw@hmrc.gov.uk**. You can also visit the NMW website at: **www.direct.gov.uk/nmw**

Other Employment Rights

To find out more about your employment rights go to: **www.direct.gov.uk/employees**

For free confidential employment rights advice call Acas on **08457 47 47 47** or see **www.acas.org.uk**

If English is not your first language this leaflet will be available on the website **www.direct.gov.uk/nmw** in other languages.

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.



