



NATIONAL MINIMUM WAGE ENFORCEMENT

Penalty Notice Policy

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National Minimum Wage Enforcement: Penalty Notice Policy

Introduction

1. Almost all workers over compulsory school age working in the United Kingdom are entitled to the National Minimum Wage (NMW). Entitlement is underpinned by an escalating enforcement process which ranges from educating employers to criminal prosecutions. Penalty notices are an element of this process.

2. Penalty notices financially penalise employers who do not comply with an enforcement notice. Penalty notices therefore encourage employers to comply with enforcement notices and in doing so persuade employers to pay arrears to workers and deter employers from failing to pay NMW in the future. This paper sets out the government's policy in issuing penalties. It is arranged as follows:
 - Background
 - The circumstances in which a penalty notice will be issued
 - The penalty notice process
 - Penalty calculation
 - Recovering arrears
 - Appeals

Background

3. Her Majesty's Revenue and Customs (HMRC) enforce NMW legislation on the government's behalf. Where a complaint is made to HMRC and arrears are subsequently identified and remain unpaid, an HMRC compliance officer may serve an enforcement notice on an employer specifying the amount owed to workers and the time the employer has to pay or appeal the enforcement notice. Employers who do not comply with an enforcement notice in full may be served with a penalty notice. This levies a financial penalty calculated by a

statutory formula. Penalties are paid centrally to government and held in the Consolidated Fund.

4. The Department of Environment and Rural Affairs enforce the National Minimum Wage in agriculture in England and Wales, and are also covered by this policy in respect of their National Minimum wage enforcement responsibilities.

The circumstances in which a penalty notice will be issued

5. In deciding when to issue a penalty notice compliance officers will refer to NMW legislation, this policy and the available facts.
6. Penalty notices will generally be issued when the enforcement notice has not been complied with in full by the end of the appeal period. A penalty may be applied even if it is the first time an employer has failed to comply with an enforcement notice.
7. The most serious cases of non-compliance with NMW legislation may be criminally prosecuted.

The penalty notice process

Penalty calculation

8. The penalty formula is contained in statute as *twice the hourly amount of the NMW in force at the date of the penalty notice in respect of each worker to whom the failure to comply relates for each day during which the failure to comply has continued in respect of the worker¹.*
9. The hourly amount of the NMW in force is always taken to be the main adult rate of NMW².

¹ Section 21(3), National Minimum Wage Act (1998)

² The adult rate of National Minimum Wage in force on the date of issue of the penalty notice. As at 1st October this is £5.35.

10. An enforcement notice specifies that the employer must pay the arrears on the enforcement notice within 7 days of the date of service of the notice. An employer has 4 weeks to appeal the enforcement notice.
11. When the appeal period has expired HMRC will commence checks to establish whether any of the workers named on the enforcement notice have been paid their arrears in full. A penalty will not be incurred for any worker who has been paid their arrears in full within 7 days.
12. A penalty notice will be issued to employers who remain non compliant at the end of the appeal period. Failure to comply will be dated from the 8th day after the date of service of the enforcement notice. An employer will normally receive a penalty notice dated within 10 days of the end of the appeal period.
13. The minimum penalty an employer could face would be for defaulting on an enforcement notice which named one worker. The calculation³ would be:

$(5.35 \times 2) \times (1 \text{ worker}) \times (21 \text{ days of non compliance with the enforcement notice}) = \text{£}224.70$

Recovering arrears on the Enforcement Notice

14. If an employer remains non compliant with an enforcement notice at the end of the appeal period, HMRC may not wait for the penalty to be paid or appealed before commencing action in a civil court to recover the arrears for workers outlined on the enforcement notice, separate to any later action to recover any penalty debt incurred.

Appeals

15. There are two points at which an employer can appeal in the NMW enforcement process. Both appeals are initially to an Employment Tribunal. The appeals mechanisms for the enforcement notice and the penalty notice are separate, and employers should treat them as such.
- a) If an employer believes an enforcement notice to be incorrect, they may appeal within 4 weeks of the date of service of the enforcement notice.
 - b) If an employer believes a penalty notice to be incorrect, they can appeal within 4 weeks of the date of service of the penalty notice.

³ Rate and multiplier in this example correct as at 1st October 2006. Section 21(4) of the National Minimum Wage Act allows for the Secretary of State, from time to time, to amend the multiplier.

