



NATIONAL MINIMUM WAGE

The National Minimum Wage
and the hairdressing sector



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This guide is produced by the Department of Trade and Industry (DTI) and HM Revenue and Customs (HMRC) to advise the hairdressing sector of National Minimum Wage (NMW) requirements.

The DTI is responsible for the policy requirements for NMW: the rules and regulations. HMRC is responsible for making sure employers pay their staff correctly. NMW compliance officers sometimes visit employers to make sure the rules are met.

An employer must pay their workers a minimum amount as defined by law. This is called the NMW.

New rates of NMW in force from 1 October 2005

The NMW provides a legally binding minimum hourly rate of pay to workers over compulsory school leaving age - with some exceptions.

There are currently four levels of minimum wage:

- Workers aged 22 and over have a wage rate of £5.05 per hour;
- Workers over compulsory school leaving age but under 18 and not on a specified apprenticeship programme have a wage rate of £3.00 per hour;
- Workers aged 18 to 21 inclusive (that is up to the employees 22nd birthday) who are not apprentices have a wage rate of £4.25 per hour;

- Workers aged 22 and over in a new job with a new employer and who are being provided with accredited training have a wage rate of £4.25 per hour for the first six months of their employment. The definition of accredited training differs in England, Northern Ireland, Scotland and Wales.

The main exceptions

All workers under the age of 19 on a deed or contract of apprenticeship or an *Apprenticeship* are exempt from the minimum wage until their 19th birthday.

All workers 19 and over but under 26 with a new employer and on a deed of apprenticeship or on an *Apprenticeship* are exempt from the minimum wage for the first year only.

Special Note

In England only, if apprenticeship funding is provided by the Learning Skills Council it is a requirement that employed apprentices earn a minimum of £80 per week. Part time apprentices are required to receive the same pro-rata level of pay.

Who must get the minimum wage?

Most adult workers in the UK are entitled to be paid at least the minimum wage. If you have a contract of employment you are a worker. Even if you do not have a contract of employment, you are a worker if you are personally working for someone else and are not genuinely self employed. The contract does not have to be written; it can be an implied contract or an oral contract.

An apprentice is either:

1. A person employed under a deed or contract of apprenticeship. This is normally a written document signed by both parties but on rare occasions may be a verbal agreement; OR
2. If, and only if, a person is engaged under a Government training programme:
 - In England under the Government arrangements known as *Apprenticeships* or *Advanced Apprenticeships*;
 - In Scotland under the Government arrangements known as *Skillseekers* or *Modern Apprenticeships* and the arrangements are for the purpose of gaining a Scottish Vocational Qualification (SVQ) at Level 2 or 3 or a National Vocational Qualification (NVQ) at level 2 or 3;
 - In Northern Ireland under the Government arrangements known as *Jobskills Traineeships* or *Modern Apprenticeships*;
 - In Wales under the Government arrangements known as *Modern Apprenticeships* or *Foundation Modern Apprenticeships*.

A person undertaking a traditional apprenticeship may also be undertaking an NVQ/SVQ.

Some other trainees on Government funded schemes

People on specified Government schemes at pre-apprenticeship level are not entitled to the NMW.

These schemes are:

- In England, *Entry to Employment*;
- In Scotland, *Get Ready for Work*;
- In Northern Ireland, *Access*;
- In Wales, *Skillbuild*.

“Non-employed Status” Trainees

We understand the working arrangements set up between employers and their workers often differ from employer to employer. However, a common problem NMW compliance officers find during visits to hairdressing salons involves advice given by training providers about “non-employed status” trainees and issues surrounding apprenticeships. The term “non employed status” is a term commonly used by training providers. It has no bearing on entitlement to the NMW which is determined by examining the relationship between the employer and the person placed with them. However, it appears that when some training providers, arrange placements for “non-employed status” trainees, they advise the salon owner that the trainee will not be entitled to payment of the NMW. In such cases any exemption from the NMW is likely to be coincidental rather than directly because of the advice from the training providers about “non-employed status”.

These “non-employed” trainees generally do not have a written contract with the business they are placed in. The written contract that is shown to the NMW compliance officer is usually a training agreement or individual training plan between the training provider and the trainee. This contract may contain a term that the trainee has “non-employed status”. Generally these trainees are paid a nominal amount each week, which is called a training allowance and can be paid by the training provider or the business where the trainee is placed. Any payment except reimbursement of genuine expenses covered by receipts made to the trainee and not covered by some external source, for example a government grant, is payment from the salon or training provider to the trainee for work done. This payment for work done will bring the trainee within scope of the NMW Regulations meaning they should be paid NMW, and will probably grant them worker status regardless of statements made within their training agreement.

In reaching an opinion as to what type of contract is involved NMW compliance officers look to establish what the overarching purpose of the contract is. They need to establish whether it is teaching/learning or service? There may well be elements of both, but it is the **primary** purpose that matters.

In order for NMW compliance officers to give their opinion as to the type of contract that exists, they need to establish the actual working arrangements. They do this by trying to verify the evidence by speaking to both employer and “worker” and

resolving any inconsistencies in either side's version of events. They need to do this because people like putting labels onto the jobs that they do or that they employ people to do. However, people have different interpretations as to what such labels mean. So labels such as "apprentice", "trainee", "non-employed", have no meaning in themselves. It is what actually happens in practice that forms the basis on which the NMW compliance officer forms their opinion.

For NMW purposes a contract does not have to be in writing as it can be oral or implied. More importantly, the "non-employed" tag does not prevent the trainee from being a "worker" which is the crucial test for NMW.

Common scenarios

This guide contains a number of common scenarios found in the hairdressing industry. They may help you decide if the NMW applies to your situation. For general help and advice contact the NMW Helpline on 0845 6000 678 or visit the DTI NMW website at www.dti.gov.uk/er/nmw.

Please note that all names are entirely fictitious and comments made are purely an opinion. Only Courts and Employment Tribunals can make decisions in any matter of dispute.

Example 1

When Heidi was 17 she wanted to train to be a hairdresser. She signed up with a local training provider that found her a placement with John Smith Hairdressing Salon who agreed to train her to become a hairdresser. She attended the training provider's premises one day a week where she studied hairdressing techniques. She signed a training agreement with the training provider stating that she was "non-employed status". She had no written contract with John Smith Hairdressing Salon. She did set hours at the salon. The salon paid her £60.00 per week as a training allowance. Everyone, including Heidi herself, described her as the "trainee".

For the first year she just spent her time at the salon sweeping up, shampooing hair, making tea, doing some reception work and handling appointments. She also started to learn to dress, cut and colour hair on manikins and models under supervision. For the second and third years she will have her own list of clients, and will continue to work under supervision. At no time has there been any written contract or agreement between Heidi and the salon. Now aged 18, she is paid £70.00 per week by the salon.

Comments

Heidi is a "worker". The term in her agreement with the training provider stating that she was "non-employed" has no affect on the contractual arrangement between her and the salon. She was working under some type of contract with the salon.

Since the purpose of her contract with John Smith Hairdressing Salon, as indicated by the fact that she was introduced to the salon by the training provider, was to learn skills in hairdressing she can be considered for NMW purposes to be working under an oral contract of apprenticeship for the first four years. So Heidi is not just a worker but is also an employee of the salon.

In Heidi's case she is not entitled to the NMW until her 19th birthday at which time she must be paid at least the 18-21 year old rate of £4.25 per hour (rates effective from 1st October 2005).

The fact that everyone refers to her as a trainee is simply a label that has been attached to her. For NMW purposes she is an apprentice not a trainee as she is learning a specific trade or profession rather than learning in general.

Example 2

Kelly has spent 3 years training to be a hairdresser. She is now 21. For the first year she just spent her time sweeping up and shampooing hair, making tea and handling appointments. For the second year she actually cut hair under supervision. For the third year she had her own list of clients, and had virtually no supervision. Most trainee hairdressers are following an NVQ/SVQ, but Kelly is not. There is no written agreement and no external training provider has been involved. She is paid £70.00 per week.

Comments

As Kelly was not actually being taught very much in her first year, it is unlikely that Kelly would be an apprentice. She would be a worker and probably an employee and entitled to the NMW from the time she started at the salon. The fact that she subsequently started training does not automatically make her an apprentice and exempt from the NMW and the employer is not entitled to reduce her wages just because she is now being trained.

At the time she started her employment the purpose was to provide a service to the salon and only later did the purpose change to teaching and learning. If Kelly is to be exempt from the NMW the employer should have negotiated a new employment contract incorporating a period of apprenticeship at the time it was agreed that Kelly should start training for a career.

Example 3

Susan is 18 and studying A levels at college. After college and at weekends she works in her local hairdressers where she spends her time sweeping up and shampooing hair, making tea and handling appointments and generally helping out. She receives £30 a week. Susan is not looking to learn how to become a hairdresser, she works in the salon as a way of making some money to help her pay her way through college. She has no written contract.

Her friend Carol is the same age and also works in the hairdressers and started on the same day. However, she wants to be a hairdresser and the salon owner has agreed to train her i.e. not on an accredited Government subsidised training programme. She works full time and currently spends her time sweeping up and shampooing hair, making tea and handling appointments and generally helping out. She receives £70 a week and also has no written contract.

Comments

Susan is a worker and is entitled to the NMW. Carol would have been an apprentice had she entered into an apprenticeship agreement with the salon underpinned by supervised training, and Carol would then have been exempt from the NMW until she was 19. She has no apprenticeship agreement and her pattern of work is not consistent with training practice within the industry. She would therefore be regarded as a worker entitled to receive the NMW.

Example 4

Julie wants to train as a hairdresser. She joined a salon as an apprentice, signed a Deed of Apprenticeship and started an NVQ course at the local college. In the salon she is expected to shampoo clients, sweep up and make the tea and because there are never enough staff the salon said it was not possible to give her time off to attend the college.

Comments

Although Julie was employed as an apprentice and enrolled onto a college course no genuine training is being provided. The apprenticeship arrangement is not supported by a training programme and the employment is essentially one of service to the salon. Julie would be entitled to the NMW.

Example 5

Jane, aged 27, wanted to be a hairdresser when she decided to return to work after having her baby, but was having difficulty in finding a salon that would employ and train her. Eventually a salon agreed to take Jane on and to provide her with in-salon training, but would only pay her £4.25 per hour (the accredited training rate after 1 October 2005) for the first six months and £5.05 an hour thereafter.

Comments

Jane is entitled to the adult rate of the NMW from the date she started work and not only after six months of employment. Only new workers with a new employer, who are aged 22 and over and on accredited training are to receive the rate of £4.25 per hour for the first six months of their employment. In-salon training is not recognised as a form of accredited training. Had Jane been enrolled on an NVQ/SVQ course then the wage arrangements would have complied with the NMW Regulations.

Example 6

Kevin, aged 21 has worked in a hairdressing salon as a junior stylist for eighteen months. He receives a basic wage of £4.00 an hour plus commission. He questions whether this complies with the NMW. Kevin works from Tuesday to Saturday from 09.00 – 18.00 with an hour for lunch. He receives £160.00 per week basic wage and £20.00 commission.

Comments

The NMW for Kevin's age is £4.25 per hour, and can be made up from basic wage and commission. Therefore, provided Kevin receives at least £4.25 per hour including commission for the time worked the requirements of the NMW have been met.

Kevin's time worked excludes his one hour lunch break and totals 40 hours a week. The calculation is therefore $£160.00 + £20.00 = £180.00 \div 40 \text{ hours} = £4.50$ per hour and the requirements of the NMW regulations have been met.

Example 7

Ayesha works in a salon on a self-employed basis receiving 60% of the amount she takes before VAT, paying her own tax and National Insurance. Following a quiet day she received little income for the time worked and has asked for a NMW of £5.05 per hour. All clients make payment to the salon and it gives Ayesha her 60% at the end of the day.

Comments

The Regulations refer to “workers” not “employees” and unless there is very strong evidence to establish that Ayesha is self-employed she will be entitled to receive the NMW. A statement in a contract that a person is self-employed and the payment of their own tax and National Insurance does not necessarily make them self-employed. In this instance the clients are contracting with the salon and not Ayesha. She should therefore be paid at least the NMW.

Example 8

Pam is 22 and has been an apprentice in a salon for the past two years attending the local college under the Government’s Apprenticeship programme. She works Wednesday to Saturday from 09.00 – 18.00 with an hour for lunch. She also attends a late night training session in the salon for two hours on Wednesday nights. She spends seven hours at the college every Monday.

Pam is paid £200 per week.

Comments

The NMW for Pam’s age is £5.05 per hour. The time worked by Pam includes the salon time on the floor; her Wednesday evening training night, and the time spent at the college but excludes her lunch hours. This totals 41 hours a week.

The calculation for the NMW is therefore 41 hours x £5.05 per hour = £207.05. The employer will need to increase the wage to at least £207.05 per week and make good any back pay. Had Pam been in the first 12 months of her training she would have been exempt.

Background to the opinions on the application of NMW legislation in these examples

If the trainees are employed, then the employer is likely to be the hairdressing salon not the training provider. The fact that a contract or training agreement states that the trainees are “non-employed” is largely meaningless as the labels which parties choose to describe their relationship cannot alter or decide their true position.

Many factors are taken into account in assessing whether somebody is a worker. They include who pays the wages; the amount of control exercised by the business over what the trainee does and when and how he or she does it; whether the trainees have to perform the work personally, and how the trainee fits within the organisation. The existence or absence of a permanent job after the period covered by the contract is not a relevant factor. In most cases the “trainee” will be a worker under the NMW legislation.

If it is established that there is a contract between the hairdressing salon and the “worker”, NMW may not be due because the worker comes within specific exemptions, for example an employed apprentice or

a person undergoing the government training programme (such as *“Apprenticeship”* or *“Advanced Apprenticeship”* in England; *“Skillseekers”* or *“Modern Apprenticeships”* in Scotland; *“Jobskills Traineeships”* or *“Modern Apprenticeships”* in Northern Ireland or *“Modern Apprenticeships”* or *“Foundation Modern Apprenticeships”* in Wales.)

There are no hard and fast rules that amount to a contract being either one of *“apprenticeship”* or *“employment”*. Also there is no specific test for deciding whether a worker is an apprentice or not. It will depend on the circumstances of each individual arrangement. The safest arrangement is to have a contract of Apprenticeship that incorporates the employment contract, or a straightforward written contract of employment. This way everybody is aware of their rights and responsibilities.

A contract of apprenticeship does not, for the purposes at least of NMW, have to be written but does need to be in written form for other employment law purposes. If a qualified or experienced practitioner of a particular trade or profession - including hairdressing, engages someone, and they agree between them that the engager will teach them the trade/profession and not simply require them to work for money, then that may be an apprenticeship. However, this is very uncertain and it would be dangerous to rely on such a defence if challenged about the NMW.

To summarise, if the worker is learning a skill rather than only providing services for their employer, it is possible that a contract of apprenticeship will exist. This can either be:

- in writing;
- implied from the circumstances because the overall purpose of the relationship is to teach a trade or skill, or
- oral (it is strongly recommended that all contracts are in writing).

This means that the NMW compliance officer will have to decide on the main or primary purpose of the contract. Is it to train the worker? Or is it to provide services for the employer? **It cannot be both.**

How can I find out more

National Minimum Wage

For general help and confidential advice contact the NMW Helpline on **0845 6000 678**. The helpline is run by Her Majesty's Revenue and Customs on behalf of DTI.

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

You can also write to Minimum Wage Enquiries, Freepost PHQ1, Newcastle Upon Tyne, NE98 1ZH or visit the DTI Minimum Wage website at: www.dti.gov.uk/er/nmw. A short guide for the hairdressing sector is also available from the website.

Training programmes and minimum earning levels for apprentices

For people in England details are available from the Learning and Skills Council (LSC) via its helpline **0870 900 6800** or for people in Wales via ELWa on **08456 088 066**. In Scotland details are available from Careers Scotland on **0845 8 502 502**, the Local Enterprise Companies and the relevant Sector Skills Council. In Northern Ireland details are available from the Department of Employment and Learning on **028 904 41875**.

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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