

dti

NATIONAL MINIMUM WAGE

A short guide for the
hairdressing sector



The DTI drives our ambition of 'prosperity for all' by working to create the best environment for business success in the UK. We help people and companies become more productive by promoting enterprise, innovation and creativity.

We champion UK business at home and abroad. We invest heavily in world-class science and technology. We protect the rights of working people and consumers. And we stand up for fair and open markets in the UK, Europe and the world.

What is the national minimum wage?

The minimum wage is a legal right which covers almost all workers over compulsory school leaving age. It became UK law on 1 April 1999.

There are different minimum wage rates for different groups of workers as follows:

- The main rate for workers aged 22 and over. On 1 October 2005 this rate was raised to £5.05 an hour, from £4.85.
- The accredited training rate for workers aged 22 and over who are receiving accredited training in the first six months of a job with a new employer. On 1 October 2005 this rate of minimum wage was raised to £4.25 an hour, from £4.10.
- The development rate for 18 – 21 year olds. On 1 October 2005 this rate of minimum wage was raised to £4.25 an hour, from £4.10.
- The development rate for 16 – 17 year olds. This rate is £3.00 an hour.

Position of apprentices

Apprentices who are under the age of 19 are not entitled to the minimum wage. Apprentices aged 19 to 25 who are in the first 12 months of their apprenticeship are also not entitled to the minimum wage. For example, someone starting an apprenticeship just before their 19th birthday would not need to be paid the minimum wage until just before their 20th birthday.

Example: Apprentice starting at age 16

A young worker starts a four-year apprenticeship at 16 years old. Apprentices under the age of 19 are not entitled to the minimum wage. It is not until the fourth year of the apprenticeship, on reaching the age of 19, that he/she must be paid at least the hourly rate of £4.25.

As far as the minimum wage is concerned, 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. A person 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 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 or SVQ.

People on these courses should normally have written agreements or contracts with their employer. For more information on these programmes see the 'How can I find out more' section below.

Contracts of apprenticeship

For National Minimum Wage purposes a contract of apprenticeship has been defined by the Court of Appeal as "a contract in which a master undertakes to educate and train the apprentice in the practical and other skills needed to practise a skilled trade (or profession) and the apprentice binds himself to serve and work for the master and comply with all reasonable directions".

Generally speaking, there will be a written contract which specifies the rights and obligations of both the employer and the apprentice; what training is to be provided and to what level; the length of the apprenticeship and the rates of pay. But in the event of a dispute as to whether any particular contract is a “contract of apprenticeship”, it must ultimately be a matter for the courts or tribunals to decide.

Some other trainees on Government-funded schemes

People on specified Government schemes at pre-apprenticeship level are not entitled to the minimum wage, whether they are employed by the employer or not. 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 minimum wage compliance officers find during visits to hairdressing salons involves advice given by training providers about “non-employed status” trainees. The term “Non employed status” has no bearing on entitlement to the minimum wage which is determined by examining the relationship between the employer and the person placed with them.

Minimum Earning Levels for Apprentices in England

Although apprentices are not entitled to the minimum wage until aged 19, from 1 August 2005 in England, the Learning and Skills Council has made it a requirement for training providers to introduce minimum earning levels for employed apprentices. **This requirement is not part of the National Minimum Wage.**

The Learning and Skills Council has set a minimum weekly rate of £80. This is the equivalent to £2.29 an hour for a 35 hour week. Part-time apprentices should receive the same level pro-rata to their hours.

Some useful pointers for employers

What counts as pay?

Not all the money paid to a worker counts as pay for the purposes of the minimum wage. For example, incentives, commission, bonuses and performance related pay do count as pay, while allowances - such as regional allowances - which are not consolidated into a workers' basic pay do not. Most benefits in kind such as uniforms, meals or private health insurance are also excluded.

What counts as time worked?

All time when a person is working in the salon counts towards the minimum wage, but rest breaks such as the lunch break are excluded. The time spent at a college or training provider also counts as time worked.

What are my legal obligations as an employer?

You may be asked to prove that you are paying the minimum wage.

This means making sure that you keep sufficient records of the time worked and money paid. If a dispute arises the burden will be on you to prove that the minimum wage has been paid, rather than on the worker to prove that it has not.

Refusing to pay the minimum wage is a criminal offence. If you fail to do so, you could face a fine of up to £5,000.

Dismissing a worker because he or she becomes eligible for the minimum wage or for a higher rate of the minimum wage will count as unfair dismissal. Workers do not have to serve any qualifying period in order to gain protection against this form of unfair dismissal.

Some useful pointers for workers

What if my employer wants me to work for less than the minimum wage?

If you are entitled to the minimum wage, then your employer must pay it. If the employer does not, he is breaking the law. If you think you are not being paid the minimum wage, raise this first with your employer.

Am I entitled to the minimum wage if I work part time?

It makes no difference whether you work part time or full time. The law applies to almost all workers, including those taken on casually without written contracts, those who work from home and those who are paid by commission.

What if my employer sacks me because of the minimum wage?

It is automatically unfair to dismiss a worker because they are entitled to the minimum wage, or a higher rate of minimum wage, regardless of how long you have worked for the employer. Should this happen you can take your complaint to an Employment Tribunal.

Some general points

Who is covered by the minimum wage?

Most workers over the age of 16 are subject to the minimum wage (unless they are covered by the apprentice exemptions described earlier). It does not matter whether they work part-time, are casual workers, or in their “trial period”, are undertaking training, or visiting a client’s home. This also includes foreign nationals.

What about tips and expenses?

Tips, unless paid through the payroll and subject to deduction of tax and NI, do not form part of the wages for the purposes of the minimum wage. Expenses paid to reimburse costs incurred in carrying out the workers duties are not wages.

What about tax and National Insurance?

The calculation of income for the minimum wage is before any deductions are made for tax and National Insurance.

What records should be kept?

The employer should keep sufficient records to be able to establish the rate of pay. These should be kept for at least three years.

How can I find out more

National Minimum Wage

Ask your employer, and raise queries through your line manager or the formal grievance procedure.

Alternatively, contact the minimum wage helpline on **0845 6000 678** to ask questions, seek confidential advice or to report underpayment.

The helpline is run by Her Majesty's Revenue and Customs on behalf of the 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: <http://www.dti.gov.uk/er/nmw>

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**.

Detailed Guidance

A more detailed guide specific for the hairdressing sector will soon be available from the following websites:

<http://www.dti.gov.uk/er/nmw/index.htm>

HABIA www.habia.org or **NHF** www.the-nhf.org

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.

