

THE NATIONAL MINIMUM WAGE ACT

The National Minimum Wage Act 1998 came into force on 1 April 1999, introducing for the first time a minimum rate of pay for workers. It is now an offence for any employer to pay less than the minimum wage to its workers.

The Act has imposed three rates:

- The standard minimum rate of £3.60 per hour, for workers aged 22 and over;
 - For workers aged 22 and over who are undertaking certain accredited training, a rate of £3.20 per hour;
 - And for workers aged 18 to 21, a rate of £3.00 per hour
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The new Act defines a worker as "an individual who has entered into or works under (a) a contract of employment, or (b) any other contract, whereby the individual undertakes to do or perform personally any work or services for another party to the contract." This definition is sufficiently broad to ensure that workers employed under oral or implied contracts, as well as those with written contracts, are within the scope of the Act. Workers covered include homeworkers, agency workers, casual labourers, part-time workers and those on short-term contracts. The manner in which an individual is paid (monthly, weekly, or daily) is not relevant. The Act applies equally to all employers, regardless of the size of their business and it is not open to employers and workers to agree that the worker will receive less than the statutory minimum rate.

Certain groups are outside the scope of the legislation, the most important of these being the self-employed, those under the age of 18 and voluntary workers.

An employer seeking to establish whether a worker's pay is at the required level should use that individual's gross pay, before deduction of Income Tax and National Insurance as the starting point. The Act contains detailed provisions relating to how rates of pay should be calculated, stating which payments should be taken into account when calculating the rate of pay (for example, commission payments) and which should be excluded (for example, benefits in kind).

The Act imposes upon the employer the obligation to keep sufficient records to enable an individual's rate of pay to be established. Each worker has a statutory right to inspect these records. Such paperwork must be kept for a minimum of three years, but given that in the event of a claim by a worker the onus is placed upon the employer to demonstrate that the minimum wage has been paid, the retention of records for a longer period is advisable. As with a failure to pay the minimum wage, failure to comply with the provisions of the Act relating to paperwork is an offence.

The new rights given to workers will also be policed by the Inland Revenue. Amongst powers given to the Revenue are the right to require an employer to produce records relating to the minimum wage, the right to enter premises and interview employers and the right to require employers to attend the Revenue's offices for the purpose of an interview. The Revenue may act upon a complaint from a worker, from others on behalf of workers or on its own initiative.

For an employer found to be paying less than the minimum wage, the likely sanction will be an enforcement notice, requiring the employer to start paying at least the minimum wage and to make

good previous underpayments. The enforcement notice can impose a penalty of £7.20 per day in respect of each worker paid less than the minimum wage until the employer complies with the Act.

Along with the powers given to the Revenue, the Act gives individual workers powers to bring claims in the employment tribunal or other civil courts if they are paid less than the statutory minimum or suffer detriment (eg. unfair discrimination or dismissal) as a result of seeking to assert their rights under the Act. There is no qualifying period for asserting these rights and no upper age limit.

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further information:

If you would like more information about any of Goodman Derrick's Employment Law services please telephone and ask to speak to a member of the Employment Group.

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