National Minimum Wage

National Minimum Wage: What are the key issues in the hospitality sector?

All workers in the UK are entitled to be paid the national minimum wage. It applies regardless of the size of the employer's business and whether the worker is part-time, on probation, an apprentice or agency staff.

Although the rules have been in place for many years, employers often struggle to ensure that basic rates of pay reaches at least the minimum wage threshold due to the technical nature of the regulations.

The Department for Business, Energy and Industrial Strategy actively monitors compliance and enforcement. Its annual naming scheme attracts significant media attention which, as several household name companies have discovered in recent years, has the potential to damage reputation. Last year's scheme named and shamed 191 employers who had failed to pay over £2.1 million to over 34,000 workers.

There is a hefty financial cost too. In addition to correcting underpayments, employers face penalties of up to 200% of the underpayment, capped at £20,000 per worker plus interest. HMRC can seek arrears dating back up to 6 years.

The message is clear. "*Employers that short-change workers won't get off lightly*".

HMRC's approach is straightforward. Any deduction or payment from the worker in respect of expenses incurred in connection with his employment will always reduce national minimum wage pay.

Unfortunately for employers however, applying this in practice is not always clear cut and even employers with the best intentions can fall foul of the rules.

The common areas of confusion where pay is reduced for NMW purposes include the following:

Uniforms – where an employer requires a worker to wear a uniform or to wear certain types or colours of clothing or footwear. The employer then deducts that amount from pay or requires the worker to make a payment to the employer or expects the employee to fund the prescribed clothing.

Salary sacrifice – this happens when a worker gives up the right to part of the remuneration due under his or her contract of employment. Usually the employer in return agrees to provide the worker with some form of non-cash benefit, for example child care vouchers or a bike under a bicycle to work scheme or to make a pension contribution.

Meals and transport - if the employer makes deductions from the worker's pay which is for the employer's own use and benefit – for example, a deduction for meals or transport provided by the employer including where an employee runs up a 'tab' and directs for it to be paid from their wages.

Living accommodation **–** an employer can offset a prescribed amount against the NMW requirement when it provides living accommodation but only where the employer provides actual living accommodation

These are common examples of practices which reduce pay rates and which employers often wrongly overlook when considering NMW compliance.

How can we help?

If you have any concerns about your pay policies and practices, please don't hesitate to get in touch. Our Employment and Tax teams regularly work with employers of all sizes on issues relating to minimum wage compliance.

We can advise you on your pay policies and practices and ensure that any lawful deductions do not inadvertently reduce wage levels below the legal minimum.

If the worst happens however, our team of experts can support your business through an HMRC investigation and are experienced in defending employers where there are allegations of non-compliance. We recommend that you seek legal advice before providing any information or speaking to an NMW officer.

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