



# National Minimum Wage

## Possible changes



A Government consultation on possible changes to the national minimum wage (NMW) closed on 1 March 2019. One change that has been agreed is the NMW rates from 1 April 2019. The new rates are:

<b>Apprentice</b>	£3.90 per hour
<b>Under 18</b>	£4.35 per hour
<b>21 – 24</b>	£7.70 per hour
<b>25 and over</b>	£8.21 per hour

The NMW legislation is complex, which has resulted in many employers unwittingly having failed to comply correctly.

Two issues which regularly cause concern are:

- conditions which must be satisfied for individuals to be categorised as “salaried workers”; and
- the use of salary sacrifice schemes.

The Government has acknowledged this and a consultation on these two issues, with a view to possible amendments to the regulations, closed on 1 March.

Under current rules to comply with NMW, an employer first has to identify which type of work its employees are carrying out. This will be one of salaried work, time work, unmeasured work or output work. Many employers pay their workers a salary and therefore assume their employees are salaried workers. However, under NMW regulations certain conditions need to be met for a worker to be treated as salaried. For example, they can only be paid either weekly or monthly. If they are paid every two weeks or four weeks they do not meet the NMW regulations to be treated as salaried workers. This means that their pay cannot be averaged over the course of a year leading to potential NMW breaches.

Some employers offer their workers “salary sacrifice” schemes whereby the worker and employer agree a lower rate of gross pay in exchange for a non-cash benefit such as childcare vouchers. Some employers also agree deductions from pay with their workers

in return for goods or services where the worker has agreed to the deduction, in writing or through a contract.

NMW rules restrict employers from agreeing a lower rate of gross pay than the minimum wage or making certain types of deductions from their workers’ pay that takes the workers’ pay below the minimum wage.

The consequence of this is that some workers paid at or near NMW rates could lose out on the cost advantages of these arrangements as they will not be eligible to join.

The consultation considers changes to ensure that it is made easier for employers to understand their obligations and that employees on NMW are not disadvantaged from participating in salary sacrifice type schemes.

However for now, failure to satisfy either of these two issues could cause a NMW breach.



## Top 10 NMW Mistakes

HMRC last year listed the top 10 mistakes employers make when paying the NMW. Interestingly, they do not make direct reference to the two issues overleaf, but number 6 could extend to salary sacrifice deductions.

- 1 Failure to apply the annual minimum wage rate increase (effective 1 April).
- 2 Missed birthdays as employees turn 18, 21 or 25 years old and move from one NMW rate to another.
- 3 Paying the apprentice rate to somebody who isn't an apprentice. Recognised apprentices must have an apprenticeship contract and undergo an element of structured training.
- 4 Continuing to pay the apprentice rate for too long. The apprentice rate only applies to apprentices who are under the age of 19, or if aged 19 or over within the first year of their apprenticeship.
- 5 Making wage deductions for items or expenses that are connected with the job. This could include, for example, safety clothing, uniforms, tools, etc.
- 6 Making wage deductions that are deemed to be for the employer's "own use or benefit".
- 7 Charging a worker more than the stated offset rate for living accommodation which is £52.85 per week from April 2019.
- 8 Not paying for all time worked, such as time spent travelling, training or downtime at the employer's disposal.
- 9 Not paying for additional time worked, such as time spent clearing security checks once a worker's shift has finished.
- 10 Including elements of pay that don't count towards the minimum wage such as tips and the premium element of pay associated with shift premiums.

Should you require assistance with any NMW related issue please contact our Employment Tax team.



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