

National Minimum Wage Naming Scheme

Round 19, June 2023: educational bulletin – unpaid working time

Introduction

The National Minimum Wage Naming Scheme exists to increase awareness of National Minimum Wage Legislation and to act as a deterrent to the minority of employers who may be tempted to underpay their workers.

This educational bulletin focuses on **unpaid working time**.

This bulletin also includes some more general statistics regarding breaches of National Minimum Wage legislation in this naming round.

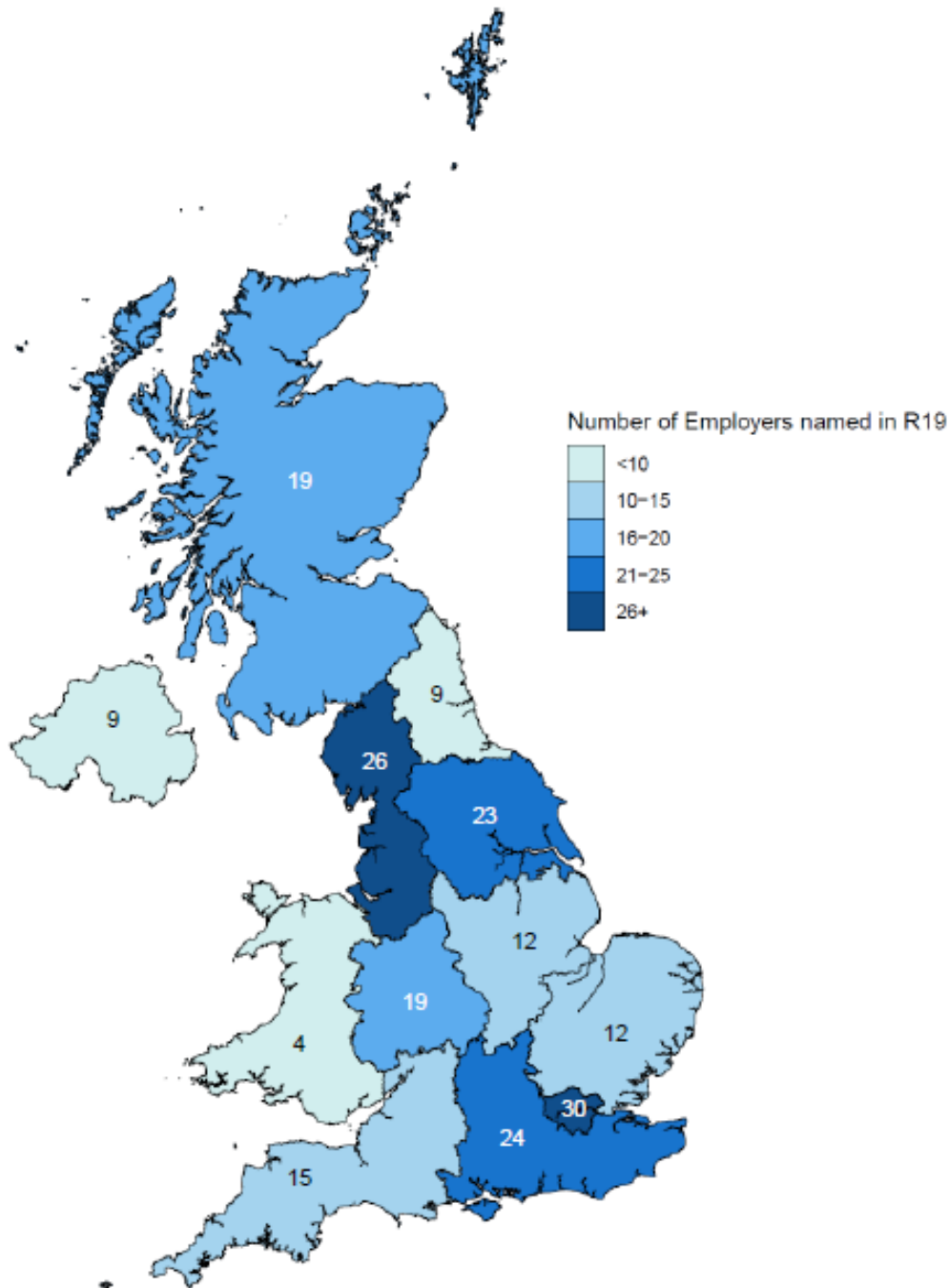
Full information on how to make sure you're paying your workers the minimum wage can be found in [Calculating the Minimum Wage guidance](#).

Employers named in Round 19

202 employers from across the UK were named as part of Round 19 of the Government's Naming Scheme



Department for
Business & Trade



Note: Geographical information is based on employer address postcodes (trading address). In some cases, this may not be where the minimum wage underpayment occurred.
Contains National Statistic Data @ Crown Copyright and Database Right 2023

Reasons for minimum wage underpayment in Round 19.

Table 1 shows the number of minimum wage breaches identified for employers named for minimum wage underpayment in Round 19. *Some employers had underpayments for more than one reason.*

- 39% of employers deducted pay from workers' wages (79 [=number of cases]),
- 39% of employers failed to pay workers for working time (78), and
- 21% of employers paid the incorrect apprenticeship rate (42).

Table 1. Reasons for minimum wage underpayment in Round 19

Type of underpayment	Further information	Number of employers named
Deductions or payments that take pay below the minimum wage	<p>Deductions may include:</p> <ul style="list-style-type: none"> • Food / meals • Parking permits and/or travel costs • Cost of, or lost, work equipment and / or Personal Protective Equipment • Stock or till shortage • Training costs • Christmas savings schemes (when administered incorrectly) • Uniform • Childcare costs • Salary sacrifice schemes e.g. cycle to work, pension and employer benefit schemes • Worker purchase of clothes to meet dress code 	79
Unpaid working time takes pay below the minimum wage	<p>Unpaid working time includes:</p> <ul style="list-style-type: none"> • Additional work before and after a worker's shift • Rounding clock-in time to the nearest hour • Unpaid travel time • Issues with final pay where employment has come to an end • Pay is delayed / underpaid due to cashflow / cessation in trading / or ad hoc payments • Paid for 'regular' hours or day rate, but a worker has worked for more time than this • A salaried hours worker has worked in excess of basic hours 	78

	<ul style="list-style-type: none"> • Time for undertaking mandatory training • Time worked during a sleep-in shift • Trial shifts • Overtime 	
Failure to pay the correct rate to apprentices	<p>This includes instances where a worker:</p> <ul style="list-style-type: none"> • Is an apprentice aged over 19, has completed the first year of their apprenticeship and is still paid the apprentice rate • Is incorrectly classified as an apprentice and paid the apprentice rate • Has finished their apprenticeship but has not had their pay increased to reflect the higher minimum wage rate to which they are entitled 	42
Failure to pay the uprated minimum wage	<p>This includes:</p> <ul style="list-style-type: none"> • Failure to increase a worker's pay when they become eligible for a new minimum wage rate following a birthday • Failure to uplift after the increase to the minimum wage rates on 1 April 	14
Failure to correctly apply the accommodation offset	<p>This includes:</p> <ul style="list-style-type: none"> • Accommodation rate above offset therefore reducing pay • Living accommodation not provided 	24
Incorrect work type	<p>Incorrect work type has impacted on treatment of elements of pay. For example, incorrectly treating a worker as a:</p> <ul style="list-style-type: none"> • Salaried hours worker (broadly speaking, paid an annual salary, under a contract for a basic number of hours each year) • Time hours worker (broadly, paid by the hour) • Output worker (broadly, paid by the piece - the number of things they make or the tasks they complete) • Unmeasured worker (paid in any other way) 	7

Worker status error	This includes instances where the worker is incorrectly treated as self-employed, or an unpaid intern that should be classified as worker	6
Other	Any other reason for arrears which does not fit another category such as an hourly rate paid below NMW	40

Notes: Some employers had underpayments for more than one reason. This table therefore totals to more than the 202 employers named in Round 19.

The table shows that deductions or payments that take pay below the minimum wage is the most common reason for underpayment in this round. This issue was covered in the Educational Bulletin accompanying Round 16 published on 31 December 2020, available [here](#).

Failure to pay the correct rate to apprentices was covered in the Educational Bulletin accompanying Round 17; it was published on 5 August 2021, available [here](#). Types of work and salaried hours work was covered in the Educational Bulletin covering Round 18, it was published on 8 December 2021, available [here](#). The second most common reason for underpayment in this round was unpaid working time.

Recognising and avoiding unpaid working time

Employers are responsible for recognising and recording all working time for their workers. It is important to ensure that *all* working time is considered for minimum wage purposes when paying staff. This can include times when the individual is required to be at work, or when they are required to be available at or near a place of work. Simply paying a worker's 'rota' or 'contracted' hours may not suffice and may lead to underpayment.

For a more extensive list of what counts as working time, for all types of work, see [Calculating the Minimum Wage guidance](#).

Unpaid working time reduces a worker's pay for the purposes of minimum wage, potentially reducing the average rate of pay to be below minimum wage rates. It is a common cause of underpayment.

Common causes of unpaid working time

Additional working time added onto a worker's shift involves time before the shift starts or after it ends. This type of unpaid working time may involve only small amounts of time but it has a cumulative effect if it occurs on a regular basis. It can lead to underpayment of minimum wage, especially for those workers who are paid at, or only slightly above, minimum wage rates.

- a) Team Meetings that are unpaid

Team meetings where attendance is required counts as working time for minimum wage purposes. If a worker has to attend outside their normal paid hours then this would be counted as working time.

b) Waiting Time/Downtime

Time when a worker is waiting for work, whether downtime due to systems or services being down or a worker waiting to start a job or meet someone at/near the workplace, counts as working time for minimum wage purposes and must be included in minimum wage calculations.

c) Time spent travelling

Time that a worker spends travelling in connection with their job is working time for minimum wage purposes. This includes the time spent travelling between assignments or clients.

However, time spent travelling from 'home to work' and 'work to home' does not count as travel time for minimum wage purposes.

d) Time spent training

Time spent by a worker undertaking training is considered working time for minimum wage purposes if the training has been approved by the employer. This can include basic training at the beginning of a worker's employment or ongoing training courses.

It doesn't matter whether the training takes place at the place of work, at home or elsewhere.

Similarly, it doesn't matter when the training takes place as long as it is undertaken at a time when the worker would otherwise be working. If it is unclear whether the worker would otherwise be working because their hours of work vary, this will be assumed to be time when the worker would otherwise be working.

Training time covers *all* activities associated with the training, included any associated travel time if this takes place during a time when the worker would otherwise be working.

Training time must be included in calculations for the pay reference period in which the training is carried out.

e) 'Sleep-in' shifts

In some sectors such as the care sector, workers perform sleep-in shifts. This means that workers:

- are contractually obliged to spend a shift at or near their workplace, usually at night but it could be during the day
- are expected to sleep for all or most of that shift
- are woken if required to undertake a specific work activity

Sleep-in workers are only working and eligible for minimum wage when they are awake for the purposes of working. Time when the worker is expected to sleep and is provided with suitable sleeping facilities is not considered working time for

minimum wage purposes. However, time when the worker is awake in order to perform a specific task does count as working time for minimum wage purposes and must be included in minimum wage calculations.

The position is different where workers are expected to perform activities for all or most of a shift, and are only permitted to sleep between tasks where possible (such as napping when not busy). In such cases it is likely that at least the minimum wage must be paid for the whole of the shift, including for any time spent asleep, on the basis that the worker is in effect working all of that time.

f) Other

Other examples of instances where additional time can be added onto a worker's shift include those listed below. Each of them count as working time for minimum wage purposes so should be included in calculations of hourly rates of pay:

- Time spent putting on/removing Personal Protective Clothing/Equipment
- Time spent passing through security checks on entry and exit
- Time spent at team handovers between shifts
- Time spent attending to opening and closing duties
- Time spent cashing up and stocktaking
- When employers 'round up' late log in times

Other minimum wage enforcement issues

What counts as pay for minimum wage purposes?

Minimum wage is calculated by determining the worker's total remuneration in a pay reference period and checking that the average hourly rate of pay for that period is at least the relevant minimum wage rate.

For further information on what counts as pay for minimum wage purposes and on the steps to ensure compliance, please consult [Calculating the Minimum Wage guidance](#).

Record-keeping

Employers' records must be sufficient to show that they are paying each worker at least the minimum wage for every pay reference period worked. Employers must be clear on what elements count as pay for Minimum Wage purposes and they must ensure that any deductions made do not take the worker's pay below the minimum wage rate. Please consult [Calculating the Minimum Wage: record-keeping](#).

If employers have any concerns about whether they are paying the minimum wage, they can contact the Acas Helpline on 0300 123 1100 or visit [their website](#) for free, confidential and impartial advice.

What to do if you have been underpaid the minimum wage

If anyone thinks they have been underpaid, they should complain to HMRC using the online form on gov.uk, or call the Acas helpline. Complaints can be made anonymously and HMRC won't reveal a worker's identity to the employer. HMRC consider every worker complaint they receive. This usually involves contacting the complaint worker to get further details. HMRC won't share your details with your employer if you don't want them to.

Throughout the year, workers can access the [Check Your Pay website](#) for clear advice about what their pay should be and how to report breaches. Workers can call the Acas helpline (0300 123 1100) for free, impartial and confidential advice about their rights and entitlements. Acas also offers a translation service. Acas officers will pass on cases to HMRC for further consideration where appropriate.

Further sources of information

For more information on National Minimum Enforcement see [National minimum wage law: enforcement](#), and for enforcement statistics from the 2021/22 financial year see the [Enforcement and Compliance report](#).