

BIS | Department for Business
Innovation & Skills

National Minimum Wage
Annual Report for 2009/10

IN ASSOCIATION WITH



Delivering Results

National Minimum Wage Compliance

Report for 2009/10 and Forward Look to 2010/11

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Working together to make a difference



NATIONAL MINIMUM WAGE – WHO DOES WHAT?

The Department for Business, Innovation and Skills (BIS) is responsible for national minimum wage (NMW) policy, including the policy on compliance and enforcement. Our work is informed by the independent Low Pay Commission, which reviews NMW rates and other aspects of NMW policy each year and makes recommendations to Government. HM Revenue and Customs (HMRC) enforce the NMW on behalf of BIS and work closely with us to ensure that both our policy and our strategy on compliance and enforcement is informed by their experience and intelligence obtained by them. HMRC also works collaboratively with other enforcement agencies, e.g. the Employment Agency Standards inspectorate, to maximise the impact of enforcement initiatives. BIS and HMRC also work with unions, business representatives and others to ensure that our strategy is informed by their knowledge of what is happening in the workplace.

Highlights for 2009/10

The year ended on a high note with the publication of the **National Minimum Wage Compliance Strategy** in March 2010. This focuses on a vision for how the compliance and enforcement landscape should look in 3-5 years' time. The strategy:

- recognises the need for HMRC and BIS priorities to continue to be based on intelligence and data;
- describes the tools and techniques that we have at our disposal and outlines and how we will work with others to maximise our impact;
- outlines the different strategies that we will use to reach those who want to comply and those who deliberately flout the law; and
- makes it clear that underpayment is not an option.

To view the strategy visit www.bis.gov.uk/nmw-compliance-strategy

We continue to improve links with other workplace rights enforcement bodies to ensure that our approach to enforcement is 'joined up'. This year saw the introductions of:

- a new legal information sharing gateway between HMRC and the Employment Agency Standards inspectorate (EAS) which came into effect in 6 April 2009; and
- a cross-agency agreement establishing procedures for handling multi-issue complaints referred to the five workplace rights enforcement bodies that are covered by the new Pay and Work Rights Helpline.
- HMRC are also working with Local Authorities to inform HMRC's risk assessment process and identify opportunities to work collaboratively with others in the community.

CASE STUDY – JOINED UP ENFORCEMENT

HMRC have worked closely with EAS and the Gangmasters Licensing Authority (GLA) on a number of cases in 2009/10. This has involved testing the effectiveness of different ways of working, including joint visits, parallel and sequential investigations. HMRC are currently working with EAS and the GLA on a case involving an employment agency using labour from Eastern Europe. The employment agency has been investigated before but workers have been reluctant to co-operate. Working collaboratively, HMRC, EAS and GLA have obtained evidence which suggests that the employer has failed to pay the NMW. This is a difficult enquiry that is only moving forward due to the ongoing co-operation of the three agencies.

Helped over
19,000
workers

£4.4m
in arrears

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Making a difference for Workers

CASE STUDY

HMRC investigated an employer using workers from central and Eastern Europe. Foreign workers can find it difficult to open bank accounts and get accommodation without references and the employer had deducted £50 from each of the workers' pay for a letter confirming that they worked for the employer. Most deductions from pay reduce the amount of pay that counts for NMW purposes and as a result of this practice around 40 workers were underpaid an average of £78 for arrears covering a period of two years (the total arrears identified by HMRC were just over £3k).

In April 2009 we introduced a tougher enforcement regime which entitles workers to be repaid arrears of the NMW at current rates¹. This compensates workers who have had to wait for their pay.

- In 2009/10 HMRC identified over £4.4 million in arrears (34% above target) for over 19,000 workers (44% above target). The average arrears per worker for the year were £228, which is 18% higher than the previous year (the average arrears per worker for 2008/9 were £193).
- Since the introduction of the new regime workers have received an additional £94,000 which represents the uplift to current rates that workers are now entitled to.

In September 2009 we introduced the new Pay and Work Rights Helpline (0800 917 2368) which enables workers, using a single telephone number² to report abuses of basic employment rights, including failure to pay the NMW. The helpline has been widely welcomed, for example the Citizens Advice, said "*we wholly welcome the introduction by BIS of the Pay and Work Rights Helpline which will be a lifeline for those people who are being exploited or are at risk of exploitation but currently don't know where to turn.*"

- NMW enquires account for more than 60% of the calls made to the Pay and Work Rights Helpline and over 2500 of these enquiries have been referred to HMRC for further action. There is now a new on-line complaint form which is available at: <https://payandworkrights.direct.gov.uk/complaints/>
- This year HMRC registered almost 2,900 complaints about non-payment of the NMW, a 13% increase on the number received in 2008/09. The majority of these (89%) came from workers.
- This year NMW specific online guidance on Directgov and Businesslink has drawn 1,591,830 and 98,428 visits respectively. On Businesslink 7,525 visitors have also successfully completed the NMW entitlement, rate and arrears checker.

BIS provide up-to-date, accurate on line guidance for workers and their representatives at: www.direct.gov.uk/nmw

¹ The 'uplift' to current rates applies where the current rate is higher than the rate that applied at the time of the underpayment – which has been the case since this change was introduced.

In 2009/10 480 employers received an automatic penalty

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Making a difference for employers

Around 50% of employers paid arrears and the penalty in 14 days

CASE STUDY – CHARGES IN EXCESS OF THE ACCOMMODATION OFFSET

A hotel offered accommodation to workers because there is very little rental property in the area that they worked which was affordable. HMRC discovered that the employer was making deductions of around £50 per week for the cost of accommodation. The charges made were in excess of the permissible accommodation offset for NMW purposes. In total 28 workers were affected by the charges for accommodation and they received around £6,500 in arrears.

The NMW provides important protection for law abiding employers who would otherwise be undercut by less scrupulous employers.

April 2009 saw the introduction of a new automatic penalty regime and a fairer method for calculating arrears of the NMW which compensates workers who have had to wait for their pay. These measures remove the competitive advantage that less scrupulous employers obtain by operating outside of the law.

- In 2009/10 480 employers received an automatic penalty. As the penalty only relates to arrears that post date 6 April 2009 we would expect this number to increase as the new enforcement regime moves into its second and subsequent years. 50% of employers paid the penalty within 14 days
- Employers who failed to pay the NMW had to pay £4.4m in arrears of the NMW, including an additional £94,000 which represents the uplift to current rates that workers are now entitled to.
- In 2010/11 BIS will introduce a scheme to name employers who flout NMW law.

Help for employers who want to comply. BIS provide on-line up-to-date guidance and an on-line NMW calculator for employers which enables you to check whether they have paid the NMW and calculate arrears at: www.businesslink.gov.uk/nmw

2009/10 saw the introduction of regulations which outlawed the use of tips to top up wages to the NMW. HMRC plan to carry out targeted enforcement in the hospitality and hotel cleaning sectors in the final quarters of 2010/11. This will provide an opportunity to check that employers are complying with the new rules.

HMRC are also planning to make wider use of leverage (i.e. working with others to maximise the impact of NMW enforcement). In 2010/11 this will focus on young

workers and in particular apprentices to ensure that employers are aware of, and complying with, the new rate for apprentices. This comes into effect on 1 October 2010³.

³ Prior to 1 October 2010, some apprentices were exempt from the NMW.

