



About National Living Wage and the National Minimum Wage checks

This factsheet tells you about the checks we carry out to make sure you're paying your workers at least the National Minimum Wage (NMW) or National Living Wage (NLW).

The NMW and the NLW are the minimum legal amounts that employers must pay their workers. You're responsible for making sure that your workers are paid at least the appropriate rate of NMW or NLW. You must also keep sufficient records to prove that you've done this.

Our role

We're responsible for making sure that employers pay their workers at least the NMW or the NLW. We do this on behalf of the Department for Business, Energy and Industrial Strategy (BEIS).

We carry out checks on employers and talk to workers to make sure all workers are paid what they're legally due. We choose which employers to check based on one of the following:

- our own research
- where we've received a complaint that an employer is paying one or more of their workers below the NMW or the NLW

Our visits and requests for information

We are allowed to ask for:

- any information we think will show whether workers are being paid at least the NMW or the NLW
- explanations of anything contained within records
- any additional information we need to determine whether the NMW or the NLW has been paid

We're also allowed to visit you to get the information we need and we may need to visit you more than once. We'll try to make an appointment at a time that's convenient for you. We don't have to tell an employer why we're checking their records or give them details of the information we've received. The law that covers what we do is the National Minimum Wage Act 1998

HM Revenue and Customs (HMRC) may observe, monitor, record and retain internet data which is available to anyone. This is known as 'open source' material and includes news reports, internet sites, Companies House and Land Registry records, blogs and social networking sites where no privacy settings have been applied.

Our personal information charter sets out the standards you can expect from us when we request or hold information about you. Go to www.gov.uk/government/organisations/hm-revenue-customs/about/personal-information-charter

What happens during a visit

We'll need to speak to you about the work patterns of your workers, and the arrangements you have in place for calculating their pay. We'll need to speak to the person responsible for calculating pay, if this is not you.

We'll also need to see records that show how much your workers are paid and may need to take copies of some records. It will save time if you have these ready when we visit. If we think there are ways that you should improve your record keeping, we'll tell you.

We may have to do more research or ask you, or your workers, for more information before we can decide whether you've paid them at least NMW rates.

At the end of our check

We'll let you know when we've completed our visits and check. We'll also write to you to confirm any advice given to you about changes to your record keeping.

If we've found that you've paid any of your workers below the NMW or NLW, we'll let you know if you owe them any arrears of pay.

Arrears of NMW due

We compare the amount the worker was actually paid against the amount they should have been paid if the correct NMW rate had been applied. The difference is the amount they've been underpaid.

If the NMW or NLW rate originally due is the same as the current rate, the amount of arrears will be the same as the amount underpaid.

The rate originally due may be lower than the current rate, because of an annual rate change or age-related rate change. If so, then the arrears due will be more than the amount originally underpaid.

For more information on how arrears are calculated, go to www.gov.uk/national-minimum-wage

Arrears of pay

If we find that you've paid any of your workers less than the NMW or the NLW, we'll send you a Notice of Underpayment. This will tell you:

- how much you owe each worker and when you must pay them
- whether you have to pay us a penalty and when you must make payment by

A Notice of Underpayment is a legal demand for payment. If you do not pay the amounts due to your workers, we can pursue payment through a civil court or an Employment Tribunal (Industrial Tribunal in Northern Ireland).

Penalties

Employers found to have paid less than the NMW rates will also have to pay us a penalty for any underpayments that relate to pay periods starting on or after 6 April 2009. For further information, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

If you disagree

If you disagree with the Notice of Underpayment you can appeal to an Employment Tribunal. You must do this within 4 weeks of the date of the Notice of Underpayment. We'll send details of how to appeal when we send you the notice.

If you don't cooperate with us

We encourage you to help us at all stages of our checks. If there's a genuine reason why you can't keep an appointment or give us what we ask for, please tell us as soon as possible. It's a criminal offence to intentionally prevent us from carrying out our checks or not give us the information we've asked for.

Criminal prosecutions

If we find that you've deliberately broken the law we may prosecute you. You can find out more about the criminal offences regarding NMW and NLW, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

Publishing details of employers who break National Minimum Wage law

If we find you've paid any of your workers less than the NMW you'll be referred to BEIS for consideration under the NMW Naming Scheme. This is because the payment of the NMW is very important and the public should be aware of the employers who fail to comply with NMW rules. You'll not be named until after the HMRC investigation has concluded.

As the employer, we'll remind you that you'll be named by BEIS in a case closure letter issued by HMRC after we've completed our checks and are satisfied that the arrears of minimum wage have been paid to workers.

The case closure letter will also set out the exceptional circumstances when BEIS will not name an employer.

You'll have 14 days from the date the case closure letter is issued to send representations to BEIS outlining whether you fall under any of these exceptional criteria:

- naming by BEIS carries a risk of personal harm to an individual or their family
- there are national security risks associated with naming in this instance
- other factors which suggests that it would not be in the public interest to name you or the company - please provide details

For more information on the BEIS NMW Naming Scheme, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law

Your adviser

If you want to appoint an adviser to act on your behalf, you'll need to send us form 64-8 'Authorising your agent'. You can get one of these from our website. Go to www.gov.uk/government/publications/tax-agents-and-advisers-authorising-your-agent-64-8

If you prefer, you can get one by phoning the officer that wrote to you, or by phoning our orderline on 0300 200 3610.

Your rights and obligations

For an explanation of what you can expect from HMRC and what HMRC expects from you, read Your Charter, go to www.gov.uk/hmrc/your-charter

To check current and past rates of the NLW or the NMW, go to www.gov.uk/national-minimum-wage-rates

Workers' rights

Workers are legally protected from being sacked or victimised because they've complained about not being paid the NMW or the NLW.

More information

If you want more information:

- phone us on the number on our covering letter
- go to www.gov.uk/national-minimum-wage

BEIS produces detailed guidance about the NMW:

- go to www.gov.uk and search for 'National Minimum Wage' or 'National Living Wage'
- phone 020 7215 5000

The ACAS Helpline provides free, confidential advice in over 100 languages. You can phone ACAS on 0300 123 1100.