



Guidance notes on the notice of underpayment

We enforce National Minimum Wage (NMW) under the National Minimum Wage Act and from 1 April 2016 this has incorporated National Living Wage. Where we refer to NMW this also covers the National Living Wage where appropriate.

Why we've given you this notice

Our officer has issued a notice to you because you owed arrears of NMW to your workers. You'll receive a notice even if you've repaid some or all of the amounts outstanding during the course of our check. The start of a check is the date we first contacted you.

How we've calculated the outstanding amounts in the notice

The outstanding amounts of NMW are worked out using the relevant day for each individual worker.

The relevant day is the day where a worker has been identified as being paid below the correct rate of NMW for one or more pay reference periods. Where there's more than one worker named on the notice, the relevant day may be different for each worker.

Arrears are worked out using current NMW rates, see www.gov.uk/national-minimum-wage-rates.

Workers will be due more arrears than they were originally underpaid if current rates are higher than the rates that applied at the time of the underpayment.

To find out more about:

- the calculation of arrears, go to www.gov.uk/government/publications/calculating-the-minimum-wage
- a calculator for employers, go to www.gov.uk/minimum-wage-calculator-employers

Why you've been charged a penalty

When we issue a notice to you, you're required to pay a financial penalty under section 19A of the Act unless the Secretary of State has specified circumstances in which a notice should not impose a penalty.

How the penalty is calculated

A penalty is calculated based on a percentage of the underpayments shown on the notice. Different percentages apply to certain pay reference periods, as follows:

- 1 Pay reference periods starting 7 March 2014 to 25 May 2015 inclusive – the penalty is 100% of the underpayment for all of the workers included on the notice, with a minimum charge of £100 per notice for underpayments of £100 or less and a maximum penalty of £20,000 per notice.
- 2 Pay reference periods starting on or after 26 May 2015 to 31 March 2016 inclusive – the penalty is 100% of the underpayment for each worker with a minimum charge of £100 per notice and a maximum charge of £20,000 per worker.
- 3 Pay reference periods starting on or after 1 April 2016 – the penalty is 200% of the underpayment for each worker with a minimum charge of £100 per notice and a maximum charge of £20,000 per worker.

How to appeal against a notice

You have 28 days from the date of service of the notice to lodge an appeal. The date of service will be taken as 2 working days from the date of issue of the notice, unless proven otherwise.

You can appeal against any of the following:

- our decision to serve the notice
- the outstanding amounts to be paid to a worker
- the penalty to be paid

You can also appeal where a replacement notice has been issued that relates to a worker not included in the original notice.

For general information about making a claim to an employment tribunal, go to www.gov.uk/employment-tribunals/make-a-claim.

For guidance, go to www.gov.uk/government/publications/making-a-claim-to-an-employment-tribunal-t420.

When appealing against a notice use the specific NMW appeal form described below.

Where to find an appeal form

For employers in:

- England, Wales and Scotland go to www.judiciary.uk/wp-content/uploads/2015/03/presidential-guidance-statutory-appeals-20170911.pdf and choose the form called 'Notice of appeal against NMW enforcement notice'
- Northern Ireland go to www.employmenttribunalsni.co.uk

You must lodge an appeal at an Employment Tribunal (or in Northern Ireland, an Industrial Tribunal) before the end of 28 days following the date of service of a notice.

If the appeal is successful a tribunal may change the amounts outstanding, the penalty you have to pay, or decide that no amounts are outstanding or that no penalty is due.

Suspension of the penalty

If you appeal against a notice we'll suspend collection of the penalty. The penalty will be reinstated if the appeal is withdrawn or dismissed.

More Information

For more information about:

- enforcement of the NMW, go to www.gov.uk/government/publications/enforcing-national-minimum-wage-law
- operating PAYE and National Insurance contributions on the payment of NMW arrears, go to www.gov.uk/government/publications/cwg2-further-guide-to-payee-and-national-insurance-contributions
- paying NMW penalties, go to www.gov.uk/guidance/pay-taxes-penalties-and-enquiry-settlements