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National minimum wage

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Basis for inclusion

Legal obligation

Background

Until the early 1990s, wage rates for many industries were set by industry-specific Wages Councils most of which have been abolished. The introduction of a National Minimum Wage (NMW) returns employers to the type of controls set out above but with one marked difference. Previously, Wages Councils operated within each industry and could reflect the terms of business of those industries. The NMW applies across the UK and has severe implications in industries which operate on low margins. It also ignores the lower cost of living in parts of the UK.

Implementation

The NMW is reviewed annually. The rate paid cannot be varied on any basis (e.g. area, region, business size, occupation) except age (as set out below). No doubt the rate will continue to rise but no commitment (e.g. to link it with the Retail Price Index or any other index) has been given. There is no requirement to pay NMW when the worker is taking part in industrial action – this is regarded as absence. Homeworkers must be paid at least the NMW.

Coverage

The full rate applies to all workers aged 25 or over. Young workers (i.e. those aged 18-21) and accredited trainees (for the first 6 months of their employment) must be paid a reduced rate. Rates for those aged under 25 can be set by the Secretary of State. Homeworkers and agency workers are also subject to NMW requirements. Those working for more than one employer have the right to be paid NMW in respect of each employment. Since October 2004, employers have been required to pay 16 and 17 year olds the current youth rate of NMW.

Hours covered

All hours on 'employer's business' must be covered – thus, although workers have no right to be paid for travel to and from their place of work, if they are asked to travel elsewhere – e.g. for a training course, or to visit a customer – these hours would need to be added to normal working hours and at least an average of the NMW rate applicable paid for all hours. This even covers hours when the worker is not actually working.

Case study

The ECJ ruled in the case of *Landeshaupstadt Kiel v Jaer* that time spent by a doctor asleep or resting but on call in a hospital was working time and thus, had to be paid for. This ruling follows a number of similar decisions in the UK. It means that not only must the hours count towards the 48 hour maximum (unless there is an individually signed 'opt out') but also the total earnings must at least equal the total generated by multiplying the National Minimum Wage by the total hours worked and/or on call. If this total is not met then any deficit must be paid. Failure to make good such deficit is a criminal offence with a maximum fine of £5,000.

Exceptions

Those excepted from this Act's scope include:

- a) those genuinely self-employed;
- b) children;
- c) office holders (this would include directors who are not also employees);
- d) members of the Armed Forces;
- e) voluntary workers;
- f) work experience trainees who are not employed;
- g) family members not routinely working or employed (i.e. it would cover those who work regularly); and
- h) custodial prisoners.

Record keeping

Employers must keep records which demonstrate that at least the NMW has been paid in respect of each hour worked. Since employers are also required to keep records of hours worked for the purposes of the WORKING TIME regulations, the possibility of linking the two could be considered. Contributions Agency enforcement officers have the right of access to records to check compliance.

Sanctions

All those covered (i.e. 'workers' including employees) may enforce their right to the NMW by access to an Employment Tribunal, and have the right not be subjected to sanction by the employer for so doing.

There are 6 criminal offences under the Act:

1. Willfully refusing or neglecting to pay a worker at least the NMW.
2. Failure to keep records.

3. Keeping of false records.
4. Producing false records.
5. Delaying or obstructing an enforcement officer.
6. Refusing to answer, provide information for, or produce a document for, an enforcement officer.

Each offence carries a £5,000 penalty. Whilst the fine can be levied against the employer, if the employer is a corporate body 'a director, manager, secretary or other similar officer of the body' (including partners in Scottish partnerships) could be held jointly liable for any offences committed under this Act where the offence is proved to have been due to their negligence, consent or connivance.

WARNING: Where HMRC find an employer underpaying the NMW, this is often by accident and providing it is rectified nothing more transpires. However, in the first ever prosecution under the legislation *Ms Aguda* was guilty of a 'clear and deliberate' intent to obstruct HMRC compliance officers from trying to access records of her employees. This is one of the 6 criminal offences under the legislation which can lead to a £5,000 (and a criminal record of course). *Ms Aguda* was fined £2,500 plus £500 costs.

The penalty for failing to pay the NMW is being increased to a multiple of the arrears to a maximum of £5,000 (per person). However, if the prosecution is brought in the Crown Court, an unlimited fine can be imposed and, in addition, the Court has power to disqualify directors. Although the new regime is not retrospective, where it is proven that the NMW has not been paid the 'arrears' will be calculated as the difference between the amount paid and the **current** rate (i.e. not the rate applicable at the time of the underpayment).

Types of work

The regulations recognise four types of work:

1. Time work

The worker works for a certain number of hours per working day but is not a salaried worker. He may be required to produce a certain output per hour or day but nevertheless earnings are determined by the number of hours worked. This should pose few problems in terms of calculation of the actual rate being paid – but see below for exclusions from and additions to the gross pay.

2. Output work

Earnings are geared to the number of items produced or sales made. Again, this should pose few problems provided the number of hours as well as the output (which generates the earnings), are recorded. Where there are no set hours the worker and the employer are required to form an agreement ‘Hours of Output Worked in a Pay Reference Period’ prior to the pay reference period. This must contain an estimate of the number of hours, will require the worker to keep a record of the number of hours worked and to give the employer a copy, and confirms the payment ‘piece rate’ or other output rate. The total of the hours for the period are called ‘ascertained hours’ and each must be paid at the NMW rate. If however, the worker works in excess of these hours and generates additional output in addition they will be entitled to be paid for the excess output at the output rate.

3. Unmeasured work

Here the commitment is to work as and when needed (i.e. when there is work to be done). If time is used travelling in order to carry out unmeasured work it counts as time for which the NMW must be paid. The hours that count are either the hours worked or, like the arrangements for Output work, the worker and the employer must determine the average number of hours per day that the employer expects the worker to work and to be paid for.

4. Salaried work

The worker is employed at a fixed annual salary which is their total earnings apart possibly from a performance bonus. Employers need to know the basic hours for the year. Each year for the purposes of this calculation commences on the anniversary of their start date.

Calculation of hourly rate

- a) The rate paid to an employee is calculated by reference to the number of hours in a 'pay reference period'. Such a period cannot be longer than a month, but can be any shorter period for which a worker is paid (e.g. a week, a fortnight, 4 weekly or since the start of employment). Obviously all hours worked in the period, including Travelling to externally-sited training etc., must be included.
- b) The pay to be taken into account is the gross pay less non-allowable items. Non-allowable items include pay for:
 - being on call;
 - additional responsibilities;
 - unpleasant or dangerous conditions;
 - for accrued items;
 - for absence;
 - overtime and/or shift premiums;
 - non payroll generated tips or gratuities; and
 - reimbursement of travel expenses and so on.

In addition the following payments cannot be taken into account:

- payments in kind (except living accommodation the value of which can be added to the pay); and
- vouchers, loans, advances, pensions, allowances, awards, redundancy and so on.

To be included is:

- gross pay;
- productivity bonuses, profit/performance-related pay; and
- incentive payments and so on.

If the pay with legitimate inclusions but after non-allowable deductions b) is divided by the number of hours a), a rate per hour is arrived at. Providing this is in excess of the NMW at the time nothing needs to be done. If however, the hourly rate arrived at is less than that, then for each hour it must be topped up to at least the NMW.

Records

As can be seen from the above summary, detailed records need to be compiled and kept to ensure that the actual hourly rate for each type of worker is known, so that additional payments can be made if necessary to bring the rate up to at least the NMW.

Note: The foregoing is simply an outline guide to the principles of what are extremely detailed regulations. Reference should be made either to the regulations or to 'A detailed guide to the NMW' and the NMW enquiry service on 0845 6000678.

Notice boards

Basis for inclusion

Commercial advisability

Background

Most organisations use notices and notice boards to convey much of the information that they feel their employees should have, in order to keep them informed. Unfortunately, very often there is no control over the issuing of notices and many notice boards become swamped, with the effectiveness of new material impaired by numerous old notices, many of which may be well past their effective date. The challenge is to keep notices fresh and uncluttered so that notice boards are read, rather than passed by. This may be easier with electronic notice boards operated via an intranet but research indicates that most people do not like reading on-screen text.

Procedure

Whether traditional or electronic notice boards are used, the following guidance may be helpful in attempting to keep the messages required to be displayed, fresh and pertinent.

Suggested checklist

1. To be effective, data for display must be written in the language and for the understanding of the recipient, and be presented in a manner that will attract and retain attention. All notices should be approved for posting by [specify name] who will check that the content meets the above requirements.

Since the item will be posted on the [organisation] notice board, the very fact that it is posted will imply that the [organisation] has approved the content. Someone at a senior level should therefore provide a check on this point.

2. All notices should bear origination and destruct dates. The destruct date being the date following which the notice should be withdrawn. To minimise notice boards becoming overburdened no notice will remain posted after its destruct date.
3. [Specify] will act as notice board administrator and will keep a register of all notices with origination and destruct dates, together with a master notice board which should show which notices are on display at any one time. (S)he is responsible for ensuring notices past their destruct date are removed.
4. All notice boards are numbered and numbered copies of each notice should be prepared to ensure that a copy of every notice is posted on every board.
5. Each week the administrator will post any required new notices and remove any notices which have passed their destruct date.
6. To aid employee recognition of subject matter, coloured paper will be used, red being used for safety matters, green for disciplinary items, yellow for benefit related topics, blue for social events and white for management initiated items.
7. Notices emanating from employees and/or their representatives will be displayed on the section of each board reserved for [non-organisational] matters. However, such notices will be expected to conform to the foregoing rules and must be controlled by this procedure. They will be required to bear a destruct date, etc. No notice will be posted which is poorly presented, is in poor taste or is in any way against the interests of the [organisation]. In this respect, the decision of [specify] will be final.
8. Managers and those responsible for conducting team briefings etc.(see QUALITY CIRCLES and WORKS COUNCILS) are expected to check that notices are seen and read as part of the management or cascade briefing system, and to this end will be supplied with a copy of each notice posted.

Permanent notices

Some notices are required to be displayed permanently by law. It may be preferable to post such notices on separate boards. The difficulty is that because they are permanent they tend not to be 'seen'. The following list of statutorily required notices should be displayed:

1. Certificate of employer's liability insurance (renewed annually). The Employer Liability (Compulsory Insurance) (Amendment) Regulations 2008 (SI 2008/1765) effective since 1st October 2008, repealed the previously required '40 year preservation' of these certificates. However, employers may prefer to ignore this relaxation, unless other evidence of each year's insurers is preserved. In addition, instead of being posted in each place of work, a certificate can be displayed electronically **provided all employees have reasonable access to it.**
2. Corporate name and address where documents may be served. This is a requirement for the benefit of third parties rather than employees.
3. Health and Safety policy (permanent).
4. Such notices as are required to be posted under the requirements of the Fire Certificate covering the premises (permanent).
5. Details of how first aid can be obtained/is administered.
6. Factories Act 1961 notice (permanent for factories).
7. Offices, shops and railway premises guide and thermometer (permanent for facilities covered by the guide only).
8. Wages council notices (where applicable).
9. (If a leaflet covering the item is not given to each employee) A notice under Health & Safety at Work Act 1974 - 'What you should know'.

WARNING: This list is an example and should be used as a base only. Individual industries may have additional notices which must be displayed and legislation tends to change the requirements on an ongoing basis.

Composition

Few writers seem to appreciate that when committing ideas, instructions or guidance to paper, they should always try to compose the item to meet the needs of the target audience. Basically, if the reader does not understand the item written, then it is the writer's fault since they have not presented the information in a format capable of being easily understood by the target audience. Thus, having drafted an item the composer of a notice should review it and possibly even check it for ease of comprehension with a person from the target audience.

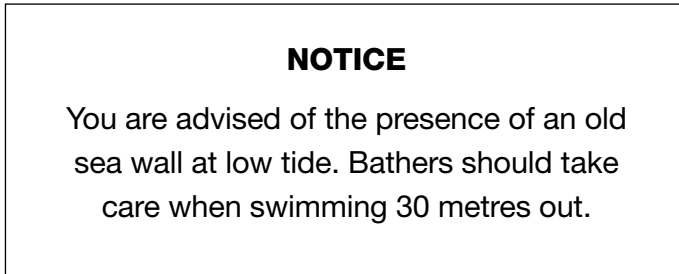
For my book 'How to be a great communicator' (Pitman 1995), the following guidance was provided on the presentation of written material derived from research within a number of organisations.

Written information should:

- be well spaced with good use of headlines, sub-headlines and visual impact (that is leaving plenty of white paper to avoid the page looking too cramped);
- use bite-sized chunks of text (say not more than 100 words in the average paragraph) so the content is easy to digest;
- be written in language that is easy to understand at first glance – since only if initial attention is retained may the item be read at all. (This indicates a need to use simple rather than complex sentences.);
- be presented using lines of type with on average no more than 65 characters (including letters and punctuation marks);
- written in ordinary everyday English avoiding jargon or if this is unavoidable explaining any jargon as a footnote;
- avoid presenting data in a way that makes the written page look dense. If it is, it will almost certainly repel the reader rather than attracting them, whereas the whole rationale of a notice is to attract attention – to more swiftly convey the message;
- aim to make it impossible for the average reader to misunderstand.

Creating fog

Strange as it may seem, some who are responsible for drafting notices seem to believe that the more words they use will make the message clearer. This is extremely unlikely. The following notice hangs on the railings above a local beach.



Why head a notice 'NOTICE' – everyone can see it is a notice. Further the thrust of this message is that there is a danger to bathers so wouldn't the word 'DANGER' or 'TAKE CARE' be a better heading? Further, presumably the old sea wall is actually there the whole time and not just at low tide! Finally, do we need the words 'You are advised' at all?

The whole might be more simply, pointedly and better expressed as: 'DANGER AT LOW TIDE. Take care when swimming 30 metres out, since an old sea wall may be near the surface or exposed'.

Unfortunately examples of this kind of befogging of simple messages are all around us and seemingly proliferate in an era where it seems that the better we have tools for passing on information, the worse true communication becomes.

Perhaps whenever trying to communicate whether in writing or verbally, the phrase 'One should not aim at being possible to understand, but at being impossible to misunderstand' should be remembered. Whilst this may seem an appropriate thought for our new Century, in fact they are the words of Roman rhetorician, Quintilian, who made the statement well over 2000 years ago!