

# National Minimum Wage (NMW)

Employer Services Team



# National Minimum Wage (NMW) rates

	21 and over		18 to 20	Under 18	Apprentice
<b>From April 2024</b>	£11.44		£8.60	£6.40	£6.40
	23 and over	21 to 22	18 to 20	Under 18	Apprentice
<b>April 2023 to March 2024</b>	£10.42	£10.18	£7.49	£5.28	£5.28
<b>April 2022 to March 2023</b>	£9.50	£9.18	£6.83	£4.81	£4.81

- NMW rates have gone up 9.7% in 2023 and 9.8% in 2024
- New Government suggesting changes to the Low Pay Commission's remit so that alongside median wages and economic conditions, the cost of living will be taken into account
- They have suggested an increase in line with the Real Living Wage levels and to remove the age band differences
- Likely to see a further increase to costs for employers
- Margins between pay increases and NMW levels will be squeezed and NMW compliance will be key

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# Introduction to NMW

HMRC enforcement began with the introduction of the NMW regulations in 1998	HMRC enforce regulations on behalf of BEIS (Department of Business, Energy and Industrial Strategy)	Following the introduction of the NLW in April 2016, there has been increased funding for HMRC's NMW compliance teams and therefore increased compliance
HMRC target specific sectors, such as the food and drink industry as they believe these sectors have a higher risk of NMW failures	A review will also be initiated by HMRC where a worker raises a complaint	Due to increased publicity in recent years there is an increased reporting by workers to ACAS (Advisory, Conciliation and Arbitration Service)
Where a worker complaint has merit, ACAS pass the case to HMRC who have to open an enquiry to further understand the complaint made	Once HMRC open an investigation they can become very technical and take up a huge amount of time and resource to bring to conclusion so it is best if this can be avoided	An enquiry can lead to: <ul style="list-style-type: none"><li>• Penalties up to 200%</li><li>• Max penalty of up to £20k per worker</li><li>• Payments backdated up to 5-6 years</li><li>• Naming and shaming in national press</li></ul>

# HMRC activity and approach

- **Significant** investment in NMW compliance resources
- Aggressive interpretation of NMW Regulations - often against spirit of law
- Many NMW audits:
  - Sector focus
  - NMW hotline
  - Press articles
  - Random selection
- Many innocent employers found with 'technical breaches'
- 'Naming' scheme and financial penalties very harsh

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# Common risk areas

- Category of worker
- Pay elements and deductions from pay
- Working hours
- Salary sacrifice

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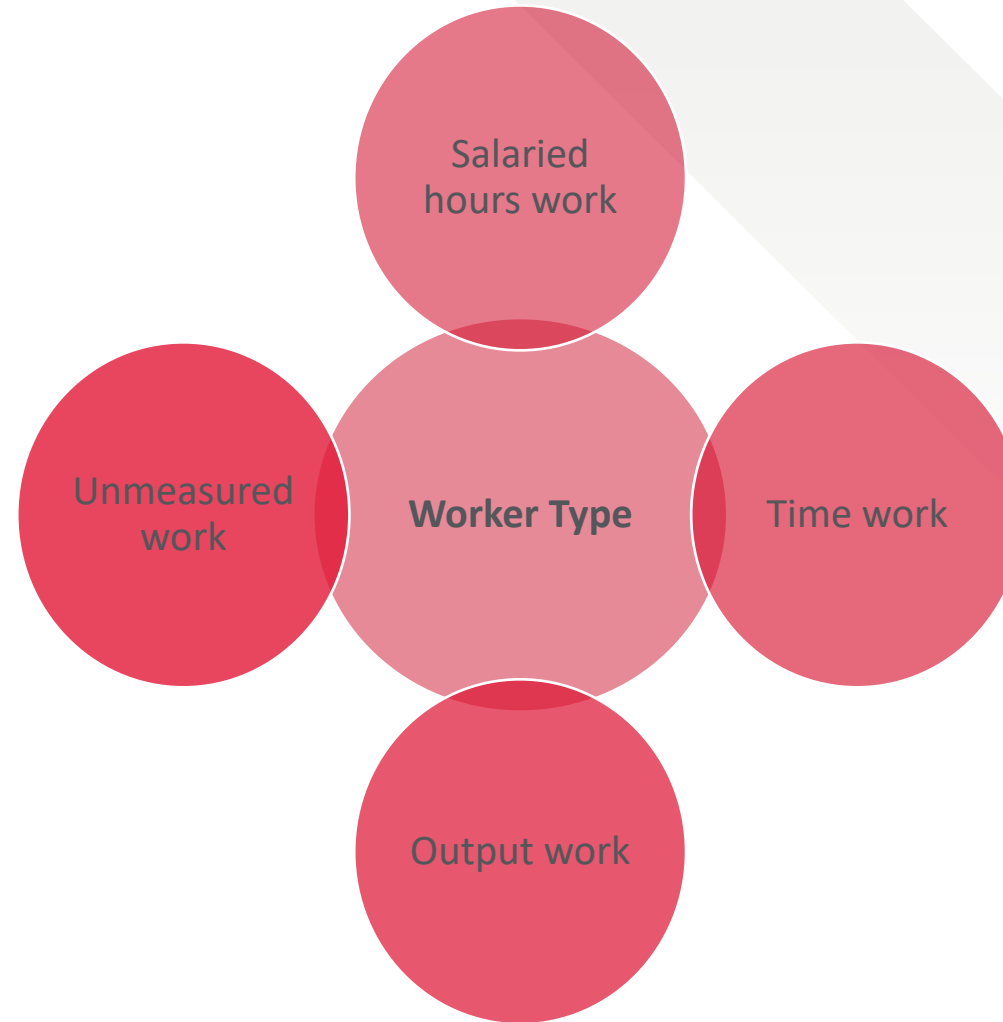
# Category of Worker

NMW is always worked out an hourly rate and applies to all types of relevant workers even if they are not paid by the hour

There are different ways of checking dependent on the type of worker so you need to understand what category they are in

- **Salaried hours work** – paid an annual salary but must have ascertainable hours
- **Time work** – work by reference to the time worked e.g. hourly paid
- **Output work** – paid per task or piece of work done
- **Unmeasured work** – paid in other ways

This is one of the first facts HMRC will seek to establish in a review.



# What Pay Elements Count

Not all pay elements count towards NMW/NLW and these will differ for each worker category

## Salaried Worker

- Normal basic salary
- Where paid for at full rates, all of the following is included – rest breaks, lunch breaks, holidays, sickness absence or maternity/paternity/ adoption
- Performance bonus

## Time Worker

- Basic Hourly Pay
- Performance bonus – included in the pay reference period where it is paid and, potentially, in the prior pay reference period
- Basic hours payments made in the next pay reference period

### Difference

- Pay in respect of any time that is not spent working i.e. rest breaks, lunch breaks, holidays, sickness absence or maternity/paternity/adoption **is not** included

## Unmeasured Worker

- Basic hourly pay
- Performance bonus – included in the calculation in the PRP where it is paid and, potentially, in the prior PRP
- Basic hours payments made in the next PRP
- Some shift premiums/allowances if they are consolidated and meet certain criteria
- Where consolidated all of the following is included – rest breaks, lunch breaks, holidays, sickness absence or maternity/paternity/ adoption

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# Pay Deductions

This is the issue with many NMW cases

- Certain deductions **do not** affect NMW calculation, e.g. repayment of loan or advance of wages, pension contributions, union subs, etc
- Some deductions **do** impact the NMW calculation, e.g. admin charges, fees, expenses
- Difficulties with deductions for the “employer’s own use or benefit”, e.g.:
  - Savings club
  - Purchase of inhouse goods paid via payroll
  - Games of chance, e.g. raffle, lottery, sweepstake
  - Locker keys
  - Work clothing or equipment (even if subsidised)
- Watch enforced clothing/equipment policies for employees to provide personally

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# Working hours – it's not so straight forward!

- Proper recording of time worked
- Overtime policy e.g. threshold before overtime kicks in
- Rest breaks – complex rules
- Requirement to arrive early / stay late
- Time to change / get to workstation
- Travelling appointments
- Flexi time/ time off in lieu

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# Salary sacrifice and NMW/NLW

- NMW checks for individual schemes
- Multiple schemes – need robust checks in place
- Leaver payments e.g. cycle to work
- Interaction with other HR policies e.g. overtime, time recording, etc

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# NMW - key messages

- Don't underestimate the cost implications
- Ensure HR policies and pay practices are up to date and aligned with NMW legislation
- Take ownership
- Opportunity to 'self correct' – big advantage
- If HMRC triggers an audit – seek professional advice!
- Don't forget any non-employees, agency workers etc

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## Contact



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# The Team

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