

NATIONAL MINIMUM WAGE

Compliance and Risk

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UNDERSTANDING THE ISSUES

National Minimum Wage ('NMW') legislation was implemented in 1998 and for several years enforcement was aimed largely at unscrupulous employers who deliberately or recklessly avoided paying the appropriate NMW rate to their workers. More recently, however, the legislation is increasingly catching out employers that inadvertently breach the complex Regulations and guidance.

Notices of underpayments and fines are increasing. In 2018/19 HMRC identified over £10 million in underpayments, almost double the amount identified in 2017/18 and in February 2024 employers were ordered to pay nearly £16 million in underpayments. HMRC have recruited more inspectors, who only deal with NMW compliance. These inspectors are no longer reactionary, responding to worker complaints, they are proactive, identifying certain sectors and industries where they will investigate a company's compliance with the legislation. The inspectors do not need a reason to commence an investigation.

More significant annual NMW rate increases plus the introduction of the National Living Wage has brought more workers and employers into scope and the Government is committed to raising the NMW rates further. The sometimes unusual workings of the legislation has caused many responsible employers with workers who are relatively well paid to be underpaid.

The enforcement measures available to HMRC include the service of notices of underpayment, civil penalties (up to 200% of the total underpayment, subject to a maximum of £20,000 per underpaid worker), "naming and shaming", recovery of underpayments through tribunals or civil courts, and criminal prosecution.

Remember it is for the employer to prove compliance with NMW, if you cannot, it will be presumed that you have not complied.

HOW WE CAN HELP

Given our experience and capability we are able to carry out an audit of your practices to review compliance with NMW legislation and identify any areas of risk, as well as giving practical guidance to ensure compliance in the future. Where areas of concern or underpayments are uncovered, we can give practical guidance to ensure that the appropriate corrective action is taken so as to ensure compliance. Our report will be protected by legal privilege.

We are also able to assist you with HMRC investigations, which our audit can run alongside.

AUDIT

Our Audit tends to follow the stages detailed below but our approach can be amended to suit the particular needs of your organisation or, if there are particular areas of complexity that require additional steps to be taken, to address them.

The usual stages are:

- **Meet with various Stakeholders**

The first stage in the audit process is to meet with the relevant stakeholders to identify the potential areas of risk. We examine and discuss the various job families that exist in the organisation, identify the types of working patterns that operate, consider the nature of any deductions that are made from wages and any payments workers are required to make in connection with their work and what records are kept demonstrating compliance with NMW. We will also identify relevant documents to review.

We will also unravel the mystery of the legislation so that the stakeholders can reflect and help to identify possible areas where compliance may be a concern. The session will be interactive to enable a discussion and consideration of any potential areas that may require further investigation following the meeting.

Before the meeting concludes we will agree the next steps and a timetable for any action points.

- **Review of relevant documents and information**

Following the meeting with the various stakeholders, we will review all relevant documents and the matters raised and discussed at the meeting. The documents are likely to include contracts of employment, relevant policies and procedures and example wage slips.

If considered appropriate, we will arrange to speak with a cross section of staff to understand the operation of working patterns and payments/deductions from their perspective. This can be critical part of the process so as to understand areas that may be raised to inspectors that the organisation may not have thought of as being an NMW issue.

- **Follow-up meeting**

A further meeting will be held with the relevant stakeholders to discuss and clarify matters arising from the initial meeting and having considered the documents and spoken with staff. This meeting helps the Audit to rule out potential matters that were considered a risk in respect of compliance and focus on the main issues that can be investigated further.

- **Report**

We will provide a Red, Amber and Green report explaining the potential areas of risk and categorising the level of risk each area presents.

The report will provide practical advice and guidance to explain how to eliminate/reduce the risks identified.

- **Presentation**

Should you consider it helpful, we will present the report to the organisation so to explain the risks identified and discuss the corrective action that should be taken.

HMRC INVESTIGATION

- If you receive notification we can assist in the process. We can run an Audit alongside the inspection should you consider that to be of use.
- We will liaise with the inspectors and attend meetings with you and the inspectors to provide valued input, including our interpretation of the Regulations, which as explained above are notoriously complex.
- We can liaise with the supervisors of the inspectors and/or HMRC's internal legal teams to discuss issues that may and often do arise, which require legal analysis and argument. This may include making submissions to HMRC with supporting evidence and/or case law to advance the organisation's position and/or to object to the proposed findings/underpayments of HMRC.
- If you remain unhappy with HMRC's findings we can consider the merits of pursuing a claim to the Employment Tribunal to dispute the Notice of Underpayment. Ultimately, if you decide to dispute the Notice of Underpayment we can prepare the case for a hearing and represent you before the Employment Tribunal.

MORE IMAGINATION MORE IMPACT

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