

# The National Minimum Wage and Living Wage

## 1. Overview

The minimum wage a worker should get (<https://www.gov.uk/national-minimum-wage-rates>) depends on their age and if they're an apprentice.

The National Minimum Wage is the minimum pay per hour almost all workers are entitled to. The National Living Wage is higher than the National Minimum Wage - workers get it if they're over 25. It

does not matter how small an employer is, they still must pay the correct minimum wage.

### Calculate the minimum wage

Use the minimum wage calculators to check if the correct minimum wage has been paid.

There are separate calculators for workers and employers.

Use the calculator for workers (<https://www.gov.uk/am-i-getting-minimum-wage>) to check if you're getting the correct minimum wage or if an employer owes you payment from the previous year.

Use the calculator for employers (<https://www.gov.uk/minimum-wage-calculator-employers>) to check if you're paying the correct minimum wage or if you owe a payment from the previous year.

There is also guidance on working out the minimum wage for different types of work (<https://www.gov.uk/minimum-wage-different-types-work>).

Call the ACAS helpline (<https://www.gov.uk/pay-and-work-rights>) or visit the ACAS Helpline Online (<http://www.acas.org.uk/helplineonline>) for advice about the National Minimum Wage or National Living Wage.

## 2. Who gets the minimum wage

Workers must be at least school leaving age (<https://www.gov.uk/know-when-you-can-leave-school>) to get the National Minimum Wage. They must be 25 or over to get the National Living Wage.

Contracts for payments below the minimum wage are not legally binding. The worker is still entitled to the National Minimum Wage or National Living Wage.

Workers (<https://www.gov.uk/employment-status/worker>) are also entitled to the correct minimum wage if they're:

- part-time
- casual labourers, for example someone hired for one day
- agency workers
- workers and homeworkers paid by the number of items they make
- apprentices
- trainees, workers on probation
- disabled workers
- agricultural workers
- foreign workers
- seafarers
- offshore workers

## **Apprentices**

Apprentices are entitled to the apprentice rate (<https://www.gov.uk/national-minimum-wage-rates>) if they're either:

- under 19
- 19 or over and in the first year of their apprenticeship

Apprentices over 19 who have completed the first year of their apprenticeship are entitled to the correct minimum wage for their age (<https://www.gov.uk/national-minimum-wage-rates>).

## **Not entitled to the minimum wage**

The following types of workers are not entitled to the National Minimum Wage or National Living Wage:

- self-employed people (<https://www.gov.uk/employment-status/selfemployed>) running their own business
- company directors (<https://www.gov.uk/employment-status/director>)
- volunteers (<https://www.gov.uk/volunteering/pay-and-expenses>) or voluntary workers
- workers on a government employment programme, such as the Work Programme
- members of the armed forces
- family members of the employer living in the employer's home
- non-family members living in the employer's home who share in the work and leisure activities, are treated as one of the family and are not charged for meals or accommodation, for example au pairs
- workers younger than school leaving age (usually 16)
- higher and further education students on work experience or a work placement up to one year
- people shadowing others at work
- workers on government pre-apprenticeships schemes
- people on the following European Union (EU) programmes: Leonardo da Vinci, Erasmus+,

Comenius

- people working on a Job Centre Plus Work trial for up to 6 weeks
- share fishermen
- prisoners
- people living and working in a religious community

Employers who offer internships (<https://www.gov.uk/employment-rights-for-interns>) (sometimes called 'work placements' or 'work experience') should check if the person is entitled to the minimum wage.

## Voluntary work

You're classed as doing voluntary work if you can only get certain limited benefits (for example reasonable travel or lunch expenses) and you're working for a:

- charity
- voluntary organisation or associated fundraising body
- statutory body

Contact the ACAS helpline (<https://www.gov.uk/pay-and-work-rights>) to find out if you should be getting the minimum wage.

## 3. Employers and the minimum wage

Employers must pay workers the correct minimum wage.

You can read guidance on the minimum wage rates (<https://www.gov.uk/national-minimum-wage-rates>) and who they apply to (<https://www.gov.uk/national-minimum-wage/who-gets-the-minimum-wage>).

### What's not included in minimum wage calculations

Some payments must not be included when the minimum wage is calculated.

These are:

- payments that should not be included for the employer's own use or benefit, for example if the employer has paid for travel to work
- things the worker bought for the job and is not refunded for, such as tools, uniform, safety equipment
- tips, service charges and cover charges
- extra pay for working unsocial hours on a shift

Find out what counts as working time (<https://www.gov.uk/minimum-wage-different-types-work>).

## What's included in minimum wage calculations

Some payments must be included when the minimum wage is calculated.

These are:

- Income Tax and National Insurance contributions
- wage advances or loans
- repayment of wage advances or loans
- repayment of overpaid wages
- things the worker paid for that are not needed for the job or paid for voluntarily, such as meals
- accommodation provided by an employer (<https://www.gov.uk/national-minimum-wage-accommodation>) above the offset rate (£7.55 a day or £52.85 a week)
- penalty charges for a worker's misconduct

### Example

John is 27 and works 40 hours a week. He earns £8.25 per hour or £330 a week.

He pays £10 a week to rent his uniform and the monies not refunded.

To calculate his minimum wage, John's employer must deduct the uniform rental from the pay.

This means John makes £320 per week (£330 minus £10) which is £8.00 per hour. This is below the minimum wage rate of £8.21.

John's employer will need to pay the arrears back to John.

Read the detailed guidance on calculating the minimum wage

(<https://www.gov.uk/government/publications/calculating-the-minimum-wage>) for more on what counts and does not count towards the minimum wage, eligibility, how to calculate the minimum wage and how it is enforced.

## Employer checks

**It's a criminal offence for employers to not pay someone the National Minimum Wage or National Living Wage, or to fake payment records.**

Employers who discover they've paid a worker below the correct minimum wage must pay any arrears immediately. Use the National Minimum Wage and National Living Wage calculator (<https://www.gov.uk/minimum-wage-calculator-employers>) to check a worker has been paid correctly.

HM Revenue and Customs (HMRC) officers have the right to carry out checks at any time and ask to see payment records. They can also investigate employers if a worker complains to them.

If HMRC finds that an employer has not been paying the correct rates, any arrears must be paid back immediately. There will also be a fine and offenders might be named by the government.

It's the employer's responsibility to keep records proving that they are paying the minimum wage - most employers use their payroll records as proof. All records must be kept for 3 years.

## **Pay reference periods**

Pay reference periods are usually set by how often someone is paid, for example one week, one month or 10 days. A pay reference period cannot be longer than 31 days.

A worker must be paid the minimum wage, on average, for the time worked in the pay reference period.

## **4. Worker disputes over minimum wage**

Workers who think their pay is below the correct minimum wage rate should talk to their employer first.

If this does not solve the problem, they can ask the employer in writing to see their payment records. The worker can take someone with them and make copies of the records.

If an employer owes the worker any arrears, they must pay these back.

Workers can call the confidential ACAS helpline (<https://www.gov.uk/pay-and-work-rights>) or look at the ACAS Helpline Online (<http://www.acas.org.uk/index.aspx?articleid=4489>) to help them solve a payment dispute.

Workers can also make a complaint to HM Revenue and Customs (HMRC) (<https://www.gov.uk/government/publications/pay-and-work-rights-complaints>) about their employer or employment agency or complain on behalf of someone else.

## **If the employer refuses payment**

If HMRC find that the employer has not paid, they will send them a notice for the arrears plus a fine for not paying the minimum wage.

HMRC can take them to court on behalf of the worker if the employer still refuses to pay.

## **Employment tribunal**

Workers can also go directly to the employment tribunal (<https://www.gov.uk/employment-tribunals/taking-a-case-to-an-employment-tribunal>) themselves.

Workers who have been dismissed because of a minimum wage dispute can also complain to the employment tribunal for unfair dismissal (<https://www.gov.uk/dismissal/unfair-and-constructive-dismissal>).