

Employment Law Clinic

Taking Care of the Legal Stuff



Brief Guide to Changes to the National Minimum Wage, October 2009

Introduction

From 1st October 2009 the National Minimum Wage will be increased. At the same time, another change will be made to the National Minimum Wage Act 1998, making it illegal for employers to use tips or gratuities collected by employers & distributed among employees as a portion of the minimum wage paid.

This guide is intended to assist employers in understanding the changes coming into effect.

Changes to the Rates of the Minimum Wage

From 1st October 2009, the rate for the minimum wage will increase from £5.73 an hour to **£5.80 per hour**. This rate will be payable to all employees aged 22 or over that qualify for the minimum wage.

For employees between the ages of 18 & 21, the minimum wage that employers will be obliged to pay shall be **£4.83 per hour**, up from £4.77.

Employees under the age of 18 will be entitled to **£3.57 per hour** (often known as the youth rate), an increase of £0.04 per hour from the current rate of £3.53.

What Counts Towards the Minimum Wage?

Until 1st October 2009, gratuities & tips managed & paid out by the employer could be counted towards paying the minimum wage, but with effect from 1st October, this practice will be illegal.

It will remain the employer's decision on what they do with any gratuities paid to the business, for instance where a customer rounds-up a cheque or credit card payment for a meal. But in those instances where these are then distributed among the staff by the employer, this will not count towards the minimum wage – employees will remain entitled to the appropriate minimum rate, typically £5.80 per hour, on top of any tips received. (Of course, the employer is under no obligation to share tips with the staff, and any payments made to the company can be kept by the company. However, getting good staff to work in this environment may not be easy, and customers may not feel happy either if they learn tips are being kept by the boss, and not going to the staff that served them.)

Any gratuities or tips paid directly to the employee from a customer will normally remain their own, and receipt of this will again not count towards payment of the minimum wage (although employees will be directly responsible for declaring this income to the tax authorities).

Employers will need to decide how they manage any tips they directly receive, as a common practice is to share these via a 'tronc' – a means of pooling & sharing any gratuities collated during a service or shift. Where employers are involved in the distribution of these tips, they may be responsible to deduct tax & pay any relevant National Insurance, despite the payments not counting towards the minimum wage.

Who Should be Paid the Minimum Wage?

Most workers are entitled to receive the minimum wage, and all employers should consider this as the starting point.

There are some exceptions though:

- Apprentices – apprentices aged 19 or older must be paid at least the minimum wage if they have served the first year of their apprenticeship. For apprentices 18 or younger, or those in the first year of their apprenticeship, there are different rules in place; unfortunately these are beyond the scope of this brief guide.
- “Piece” Workers – staff that are paid based on production levels must be paid either a “fair” rate for each “piece” they produce, or the Minimum Wage. There are special rules that govern the calculations for these workers, and employers should request more information where required.
- Agricultural Workers – some agricultural workers are entitled to an Agricultural Minimum Wage, and in all cases must be paid at least the National Minimum Wage (the Agricultural Minimum Wage is higher). Employers with agricultural staff should contact us for more details, as some workers may be entitled to the Agricultural Minimum Wage which is higher than the National Minimum Wage.
- Commission Workers – commission earned can count towards the minimum wage paid, but irrespective of whether commission has been earned, employees must be paid at least the relevant minimum wage rate.
- Homeworkers – staff working from home remain entitled to the minimum wage, although the rules on “piece” workers may apply in some instances.
- Trainees & staff on probation – regardless of whether employment has become permanent, or employees are still on a trial period, they remain entitled to the minimum wage.
- Employees working outside the UK – employees that are normally based in the UK remain entitled to the minimum wage; for employees normally based outside the UK, the minimum wage does not apply, although local laws may.

Accommodation Offset

Accommodation provided to an employee as part of their employment is the only benefit in kind for which adjustments (in the form of deductions) can be made to the minimum wage. It is irrelevant how the deductions for rent are made – whether the employee is paid the full minimum wage, and then charged for rent, or if a deduction is made before the employee receives their wages – as either way the maximum amounts that can be used to offset paying the minimum wage are £4.46 a day or £31.22 a week accommodation (these figures will increase to **£4.51 a day & £31.57 a week**, from 1st October 2009). These amounts also include any charge for utilities (gas, electric, etc.), laundry, and furniture.

If an employer makes higher deductions from an employee's wages, or pays the appropriate minimum wage & then charges an employee more than the maximum offset amount for accommodation, the employer will not be paying the employee the minimum wage.

These rules can become complicated, and as calculations will vary according to the individual circumstances of the case employers are advised to seek professional support if they are unsure about how much can be deducted for accommodation.

Key Points (all applying from Thursday, 1st October 2009)

- new higher rates for the National Minimum Wage;
- tips & gratuities distributed by the employer will not count towards the Minimum Wage, although they may attract tax & National Insurance;
- increases to the accommodation offset that employers can legitimately count as payments towards meeting the National Minimum Wage.

Reference Tables

Age Group of Worker	Minimum Wage, 2008-09	Minimum Wage, 1 October 09	Accommodation offset, 2008-09	Accommodation offset, 1 October 09
Aged 22+	£5.73	£5.80	£4.46 per day or £31.22 per week	£4.51 per day or £31.57 per week
Aged 18-21	£4.77	£4.83		
Under 18 (Youth Rate)	£3.53	£3.57		