



Institute  
of **Hospitality**

# Management Guide



## The National Living Wage

A Guide for the Hospitality, Leisure  
and Tourism Industry

## The National Living Wage – a guide for the hospitality, leisure and tourism industry

### Introduction

The National Minimum Wage (NMW) Act 1998 took effect on 1 April 1999. On 1 April 2016, an amendment to the act introduced an obligatory National Living Wage (NLW) for workers over 25, which was implemented at a significantly higher minimum wage rate of £7.20 (increasing to £7.50 from April 2017, £7.83 from April 2018 and £8.21 from April 2019), and is expected to rise to at least £9 per hour by 2020.

In the two years since its introduction the annual earnings of a full-time minimum wage worker increased by over £2,750. But, as an employer of many workers at or near minimum wage the hospitality and leisure industry has been and will continue to be deeply impacted by this legislation.

It's a criminal offence for employers to not pay someone the NMW or NLW, and HMRC are getting tougher. So, this guide sets out to explain how to keep up with the regulations and implement the necessary increments to pay increases and stay on the right side of the law.



### The rates

The NMW is the minimum pay per hour almost all workers, aged 16-24, are entitled to, but the NLW is higher, and workers are entitled to it if they're over 25.

The rates are reviewed yearly by the government and are advised by the independent body the Low Pay Commission (LPC).

There are five minimum wage rates, which, from 1 April 2019, were set at:

- £8.21 per hour for ages 25 and over
- £7.70 per hour for ages 21 to 24
- £6.15 per hour for ages 18 to 20
- £4.35 per hour for school leaving age to 17
- £3.90 per hour for apprentices

Current rates can be found on the Gov.UK website.

The NLW applies from the date of the rate increase (on or after the 1st April) or when an employee reaches the relevant age bracket. Not all payments are included when you calculate an employee's minimum wage, these include:

- Payments for the employer's own use or benefit - i.e. travel between work sites
- Payments for things needed for the job which aren't refunded - i.e. tools, uniform or equipment
- Tips, service charges and cover charges - even if paid through payroll
- Allowances and overtime premiums

Bonuses or incentive payments and commission payments may, however, count towards the NMW.

Check what payments do and do not count towards the minimum wage via [Acas.org.uk](https://www.acas.org.uk).



### NLW and UK Living Wage: understanding the difference

The National Living Wage (NLW) is a statutory rate which must be paid by all employers, no matter how small or where they are in the UK.

The NLW should not be confused with the UK Living Wage, however. This is a voluntary rate set by the Living Wage Foundation which calculates its rate based on “...what people need to get by.”

The real Living Wage rates are higher than the NLW across the UK, and higher still in London.



## Ensuring compliance

Failing to pay your employees in accordance with minimum wage regulations is against the law and can result in large penalties.

What's more, a 2019 report from the Low Pay Commission claimed the 2017/18 tax year saw record numbers of workers identified as underpaid, with record numbers of fines levied on non-compliant employers.

Indeed industry representative UKHospitality has voiced concern regarding the clarity of regulations and instances of businesses believing they are complying with the law, yet falling foul of common pitfalls - do not let your business be one of them!

Check if you're paying the correct National Minimum Wage (NMW) and Living Wage (NLW) using the Government's calculator for employers.

You can also call the ACAS helpline or visit the ACAS Helpline Online for advice about the National Minimum Wage or National Living Wage.

But here are some key areas the Institute believes employers should keep in mind to help ensure compliance:

- **Put procedures in place to update your payroll processes annually**  
Remember, hourly rates change every April.
- **Ensure your payroll is set up to identify workers aged 25 and over**  
Workers over 25 are eligible to receive the NLW rate, unless they are apprentices in the first year of their apprenticeship.
- **Check your specified hourly rates**  
Whilst the minimum wage is an average rate and you can have zero pay for some worked hours, HMRC will normally use the lowest paid rate to check compliance. That means all hourly rates need to be at the appropriate rate for the age of the worker.

- **Make sure all workers are properly categorised**

The NMW applies to all eligible workers even if they're not paid by the hour. This means it's vital to correctly categorise workers to ensure their equivalent hourly rate meets the minimum wage.

- **Time work**

This means work paid for by the hour.

Most workers will be time workers if they're not on an annual salary.

Remember, anyone doing piecework is still a time worker if expected to work for a set number of hours each day.

- **Salaried-hours workers**

This applies to workers paid under contract for a set basic number of hours each year. Salaried workers include those who work for part of the year but are paid year round, like teachers.

- **Output work**

Also called "piecework" or "commission", output work applies to work paid for according to the number of products, sales or deals a worker makes. Workers must be paid at least either the minimum wage for every hour worked or on the basis of a 'fair rate'. Employers must carry out a fair test to see what the average rate of work is to calculate a fair rate.

- **Unmeasured work**

This applies to work where tasks must be completed but by there are no specified hours or times when they must be done. Take, for example, domestic staff without set hours or an annual salary. Your options are either to reach an agreed 'daily average' of hours or else pay the NMW for every hour worked.



### Ensuring compliance (cont...)

- **Check salaried workers whose pay is close to NLW**

This is where breaches may easily occur, especially if they don't receive paid overtime.

- **Check output rates for output workers**

If output is similar for all workers, regardless of age, consider whether you may be better off using the standard basic hourly rate, rather than rated output work at 120%.

- **Check employees with any salary sacrifice arrangements in place**

A salary sacrifice arrangement offers a reduction in cash pay, usually in return for a non-cash benefit, like childcare vouchers or pension contributions. As these arrangements reduce the basic salary you could be at risk of inadvertent breaches.

- **Create payroll prompts for whenever a worker reaches 25**

Then you can easily make any necessary pay increases.

- **Check any pay deductions that may reduce pay to less than the NLW**

This could include uniform charges or deductions from pay for discounted staff purchases, for example.

- **Make sure budgeting and forecasting considers future costs and increases**

The NMW and NLW rise every year, so it's vital businesses factor these pay increases into their budgets and forecasts.

- **Remember employee tax codes change according to region**

While Scottish tax codes have been prefaced by an 'S' since 2016, from April 2019 Welsh tax codes have a 'C' prefix.



## The Penalties

Remember, it's a criminal offence to not pay your workers minimum wage. HMRC can investigate employers if a worker complains to them and can carry out checks at any time.

If you have not been paying the correct rates, any arrears have to be paid back immediately. At the time of writing, in 2019, failure to pay at least the minimum wage can also result in:

- A fine of up to £20,000 per worker.
- Being named and shamed publicly.
- A ban from being a company director for up to 15 years.

Discover more about employer checks on the Gov.UK website.

## Meeting Increased Costs

The 2019 annual report by the independent Low Pay Commission (LPC) showed that employers have tended to adapt to NMW and NLW increases by raising prices or accepting lower profits, rather than by reducing staff count or increasing productivity.

However, the way employers bridge these pay gaps can have pros and cons for the business.

### • Raising prices

Passing on increased costs to consumers is a common way employers can meet NMW rises. However, raising prices can affect competitiveness or be limited by the market.

### • Lowering profits

Some employers choose to accept lower profits to meet NMW and NLW increases. This is often because they are either unable to raise productivity levels or be cause raising prices or cutting other costs isn't viable.

### • Cutting non-wage labour costs

Making changes to manage increased NMW costs is a possibility, some employers choose to cut non-wage benefits, for example. While non-standard forms of employment, including zero-hours contracts and self-employment are also options. However employers risk being poorly perceived by workers.

### • Restructuring workforces and pay structures

For some employers meeting the NLW has meant offering fewer tiers of pay, as well as altering differentials between tiers.

### • Reducing recruitment

Reducing recruitment has not been as popular as some feared, with employment at record levels. Plus labour-intensive industries, like hospitality, are less able to use cutbacks in worker numbers as a money-saving exercise.





## Impacts + common pitfalls for hospitality employers

Although minimum wage increases have to be met by all employers, research suggests that employers who largely rely on a low-paid workforce, like those in the hospitality and leisure sectors, are the most pressurised under the NMW and NLW regulations.

Key issues faced by the hospitality and leisure sector includes effectively administering multiple locations, sometimes in the UK and abroad. While the diverse nature of hotel staffing requires multiple payroll cycles, team differentiation, and multi-shift organisation - making managing payroll much more complex.

Here are some common hospitality pitfalls when it comes to paying minimum wage:

- Calculating working time**  
 In general, travelling for business during normal working hours will count towards working time, so should be included in pay calculations. But, travelling time between home and work should not be included - assuming the worker is at the same location each day.
- Dress codes and uniforms**  
 If the cost of a uniform takes a worker below the applicable minimum wage rate, then charging for uniforms or making deductions from pay will be unlawful.
- Accommodation rates**  
 Accommodation provided to workers can be taken into consideration when making minimum wage calculations, unlike other company benefits. The offset rates are set each year in April.  
 Find the current accommodation rates on the Gov.UK website.
- Regular seasonal workers**  
 If you often employ the same temporary staff over busy holiday seasons remember to keep track of their age - their entitlements may have changed since they were last employed.
- Zero hours contracts**  
 Hiring staff on zero hour contracts can provide a flexible workforce to meet changing needs, without the pressure to provide guaranteed levels of work. But remember, zero hours workers are entitled to the minimum wage in the same way as regular workers remember to monitor use of zero hours contracts and consider whether agency workers or fixed-term contracts would be more appropriate.

## Temporary workers

An effective way to provide quality staff on demand temporary workers or agency staff are a popular choice for many hospitality employers. Like other workers, agency workers are entitled to the NMW or NLW.

Work out a temp worker's hourly pay by dividing total pay before tax and other deductions (gross pay) by the number of hours worked. NOTE: the European Court of Justice has ruled that employers must have a system in place to record every hour that employees work. And it applies to UK businesses, too.

No fixed hours? If a temp worker is paid on completion of a specific job, employers must pay the NMW per hour for all hours worked, or 120% of the NMW for the number of hours it takes an average worker to complete an agreed block of work.

## Not issuing a written contract

Some employers believe that by not providing a written contract they have greater flexibility. However, a worker's right to minimum wage is absolute and does not have to be included in the terms of agreement between you and your employees.

## Overtime pay

While there are no laws requiring overtime hours to be paid, you must take into account that once the hours worked and an employee's pay are taken into account that the hourly rate does not fall below the national minimum wage.

## Discrimination on age

National minimum wage rates vary depending on age, but under The Equality Act 2010 this is not unlawful. An employer would be at risk of age discrimination, however, if recruitment or redundancy decisions were based on age - for example, by rejecting applicants aged 25 and over to avoid paying the national living wage.

### Guidance and advice

The Institute of Hospitality provides expert advice and guidance to our members via our website, through webinars and e-resources, and more.

Ensuring your business complies with the National Minimum Wage and National Living Wage regulations is a complex task. With this in mind the Institute consulted HR specialists and hospitality sector experts Angel Recruitment, when compiling this guide.

Remember, reputable staffing agencies can:

- Provide expert payroll management and advice, as well as, helping employers to navigate other staff-related legislation and administration.
- Give advice tailored to the hospitality sector, so you can rest in the knowledge that the advice and information will meet your needs.

Angel Recruitment, an Institute of Hospitality partner, can be found online at:  
<https://www.angelhr.org>

