



National Minimum Wage compliance

July 2023

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National Minimum Wage compliance

In June 2023, the Government released their latest ‘naming and shaming’ list of employers who had been identified as not paying their workers National Minimum Wage (NMW).

The list shows employers who were found to be non-compliant with the Regulations in the period 2017-2019. As with previous lists, the employers contained in this round of naming and shaming include a number of large businesses and major high street brands.

Breaches are often due to technicalities rather than a deliberate intention to underpay workers, but the headlines that go with publication can damage employer reputation and disrupt their workforce.

This latest round of naming and shaming comes just 3 months after the largest increase to NMW in April 2023 since the legislation was introduced, demonstrating HMRC's focus remains firmly on compliance in this area.

Employers should be considering their processes and procedures around NMW to ensure compliance with the NMW legislation.

The government confirmed that the employers included in the latest round of naming and shaming have been based in the following regions:

Region	Number of employers named
London	30
North West	26
South East	24
Yorkshire and The Humber	23
Scotland	19
West Midlands	19
South West	15
East Midlands	12
East of England	12
Northern Ireland	9
North East	9
Wales	4

Data published in The Department of Business and Trade 'National Minimum Wage Naming Scheme Round 19, June 2023: educational bulletin'



202 employers named and shamed



£5m in underpayments with c£7m in underpayments



39% of underpayments caused by employers making deductions from pay.

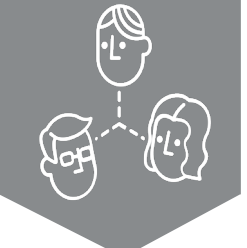


39% of employers failed to pay workers correctly for their working time.



21% of employers failed to pay the correct apprenticeship rate.

NMW Risk Areas




Worker categorisation

This determines the calculation methodology for NMW.

It is the first step to undertake when considering NMW compliance.


Worker categorisation impacts the NMW calculation period, what pay counts towards NMW and what time counts as working time.



Time & Attendance

How is working time captured?
What time is paid – rota time or actual “working time”? Are there any working practices (at any location) which could lead to additional working time?


Common risk areas include pre-shift briefings, not taking full break entitlement(s) or working past the end of shift.



Deductions from pay

Do any deductions from pay (from either gross or net) reduce pay for the purposes of NMW?


Common risk areas include savings and/or sports and social clubs, employee purchases and travel card loans.



Salary sacrifice

Salary sacrifice always reduces pay for the purposes of NMW and results in employees being paid at a lower hourly rate.

Are there sufficient controls in place to mitigate the risks in this area?



Dress code

Are employees required to purchase any items of clothing (such as black trousers/shoes) or additional items of a uniform to enable them to perform their duties of employment?

It should be noted that a dress code does not have to be formally documented, it could be employees perception on a location by location / job role by job role basis.

How RSM can help

Our specialist NMW team has a wealth of experience in supporting clients to identify NMW risks, mitigate these risks and correcting historic non-compliance.

We can help with the following:

- Contractual reviews to determine worker categorisations.
- Updating contracts to clarify categorisation or mitigate NMW risks.
- Policy and/or work practice reviews to support with the identification of NMW risk areas.
- Pay element review to determine what pay elements can be included towards NMW.
- Educational workshops to upskill key stakeholders
- HMRC audit support including:
 - Preparation for initial HMRC meeting
 - Support with HMRC correspondence
 - Technical support
 - Agree parameters for calculations
 - Review of Notice of Underpayment
 - Support with employee communications

Where required we can support on a legally privileged basis.



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