



Are you National Minimum Wage compliant?

As HMRC intensifies its crackdown on National Minimum Wage (NMW) noncompliance, it's vital to make sure you don't fall foul of NMW laws. Compliance can have more complexities to it than many assume, and the risks of getting it wrong are significant.

HMRC is focusing on SMEs

It seems that HMRC are targeting SMEs. For instance, they have recently targeted SMEs in regions including Belfast, Liverpool, East Anglia, Watford, and the North East. They have plans to expand to additional areas over time.

What are the areas of compliance to watch?

Clearly it is important to make sure that you are using the correct rates of NMW pay. However, compliance isn't just about paying the correct hourly rate. There are a few areas that you need to be aware of to make sure that you comply with the laws.

1. What category is the worker?

Under NMW laws, workers are categorised in four different ways - salaried, time-based, output-based, or unmeasured. The category a worker belongs to can alter the method for calculating NMW.

2. How much time does the worker work?

If you have salaried staff, then you need to monitor the excess hours they work. A salaried worker is entitled to receive NMW for the total hours they work over a year, called their 'calculated year'. Excess hours could include turning up early, staying late, working through some of their lunch break, logging on outside of their normal office hours, and business travel. Payments to staff may need to be uplifted to avoid falling foul of the regulations.

3. **Does a non-employee count as a worker for NMW purposes?**

In some situations, someone who would not be considered an employee under PAYE may count as a worker under the NMW laws. For instance, paying volunteers beyond expenses, or offering non-cash benefits, could inadvertently classify them as workers under NMW rules.

4. **Could an after-tax deduction bring a worker below NMW?**

Deductions from wages, such as those made for benefits or savings schemes, can create unintended problems. A recent tribunal case highlighted that a scheme which was well-intentioned still resulted in noncompliance because it reduced pay below the NMW threshold.

5. **Are your records complete and accurate?**

In the event of a dispute where an employee says they have provided time records, but you have not kept a record, HMRC will side with the staff and calculate any arrears based on the information provided by the worker.

The consequences of noncompliance

HMRC's enforcement process includes a three-stage approach, that starts softly and becomes heavier if the business fails to put things right. Continued noncompliance can result in penalties of up to 200% of arrears and public naming and shaming on the government website. Such exposure can damage a business's reputation, affecting recruitment, supplier relationships, and overall growth.

Proactive steps for compliance

To mitigate risks, you should conduct periodic and thorough reviews to check that you are complying. This includes assessing potential areas of noncompliance, updating your policies, and ensuring that employment contracts are aligned with NMW regulations. Communication with staff and line managers is also critical to ensure that any issues are flagged promptly.

Our payroll team are skilled at applying the NMW rules, so if you have questions on any particular situation, please feel free to contact us and we would be happy to help you.