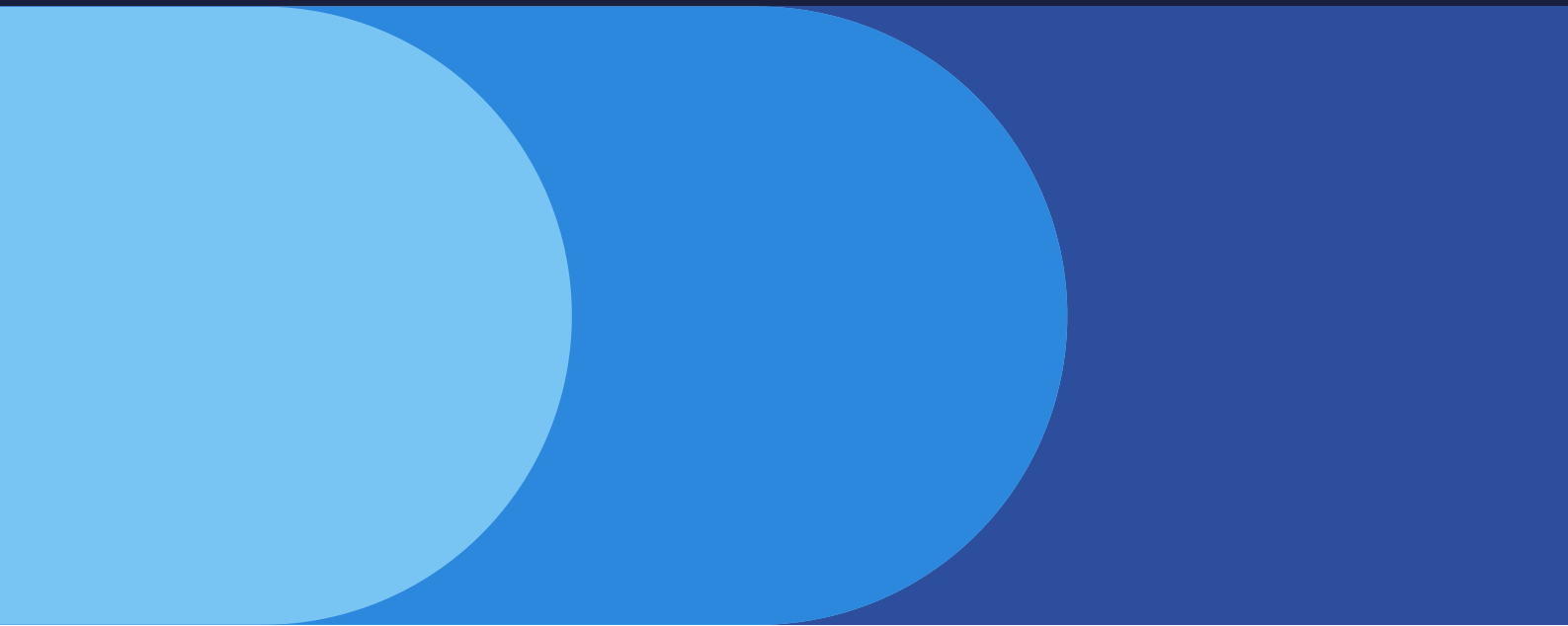


A guide to calculating National Minimum Wage

August 2024



About us

NHS Employers is the employers' organisation for the NHS in England. We support workforce leaders and represent employers to develop a sustainable workforce and be the best employers they can be. We also manage the relationships with NHS trade unions on behalf of the Secretary of State for Health and Social Care.

The National Living Wage

The National Living Wage (NLW) in the UK is the minimum wage payable to workers aged 21 and over.

The minimum wage a worker should get depends on their age and if they're an apprentice. Workers are entitled to the NLW if they're 21 and over.

The National Minimum Wage (NMW) is the minimum pay per hour to which almost all workers are entitled.

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

Wage band	Current rate (from 1 April 2024)
Age 21 and over (National Living Wage)	£11.44
Age 18 to 20	£8.60
Under 18	£6.40
Apprentice	£6.40

The Low Pay Commission (LPC) is an independent body that advises the government about the NLW and the NMW. In 2024,

the government accepted the LPC's recommendations to increase the NMW rates by the following:

The National Living Wage and other minimum wage rates

	2024 rate	Annual increase (pence)	Annual increase (per cent)
National Living Wage (21 and over)	£11.44	£1.02	9.8
18-20 Year Old Rate	£8.60	£1.11	14.8
16-17 Year Old Rate	£6.40	£1.12	21.2
Apprentice Rate	£6.40	£1.12	21.2
Accommodation offset	£9.99	£0.89	9.8

Source: [Low Pay Commission consultation 2024 - GOV.UK](https://www.gov.uk/government/consultations/low-pay-commission-consultation-2024)
(www.gov.uk)

The NHS and NLW

Since the NLW was established, the NHS has continued to remain compliant with the NLW and the table below demonstrates the yearly position of the NLW rate set by government and the hourly rate of pay at the bottom of the agenda for change structure (band 2).

Current position:

Year	National Living Wage hourly rate	Band 1 (closed) and band 2 entry level hourly rate
2020	£8.72	£9.21
2021	£8.91	£9.49
2022	£9.50	£10.37
2023	£10.42	£11.45
2024	£11.44	£12.08

How to calculate National Minimum Wage - a guide for employers

The NMW is calculated using an hourly rate and applies to all eligible workers even if they are not paid by the hour. For employers, this means that regardless of how someone is paid, employers need to work out their equivalent hourly rate to ensure they are being paid at the legal minimum wage.

There are a number of steps employers need to take to ensure they are calculating NMW pay correctly. We have developed an infographic which identifies the steps you need to follow. Further information for each step is highlighted below.

We have also published a set of [frequently asked questions \(FAQs\)](#) which were covered in a recent webinar we held on NMW and its interaction with salary sacrifice arrangements. The FAQs are split into themes and are reflective of the most popular questions asked by employers.

Five steps to check you are paying the correct National Minimum Wage (NMW)

- 1** Identify the **minimum wage rate** that applies to the worker.
- 2** Identify the particular **pay reference period** for which the worker is paid.
- 3** Ensure you are paying the individual in the correct way for the **type of work** that they do. The four different 'types' of work are covered on our web page.
- 4** Consider the elements of pay that are **included and excluded** for NMW calculation purposes.
- 5** Check all the **different payments and deductions and salary sacrifice schemes** that employees have in place that will

Pay reference period

The pay reference period can cover any period of time up to one calendar month, but never more than that. For example, for someone paid weekly the pay reference period is one week, and for someone paid every two weeks the pay reference period is two weeks.

A worker must be paid at least the minimum wage for the time worked in each pay reference period.

Work type

A worker is an individual who is working or ordinarily working in the UK under a contract, and who is over compulsory school age. Employers need to consider the following key areas that could help establish whether an individual is a worker or not:

- they have written, oral or implied contract
- they personally have to attend work (or work from home) with disciplinary sanctions being in place if they do not
- they get something of value in return for this work, like money, benefits in kind or a promise of future work/payment
- they are not self-employed.

Most workers are entitled to the minimum wage, but there are some exemptions.

There are four different work types that make up the basis of NMW calculations. It is important for employers to first establish which worker type each staff member is, then to work out their

equivalent hourly rate to ensure they are being paid at least the NWW.

Work types:

Salaried hours work

[Read more about what salaried hours work is on the GOV.UK website.](#)

There are four key condition that need to be met for a salaried hours worker:

1. Worker is paid an annual salary.
2. Worker is under a contract for a basic number of hours each year.
3. Worker should be entitled to no other payment except from salary, performance bonus, or salary premiums (for example, overtime payments).
4. Worker needs to be paid in equal instalments across the year.

Where workers carry out additional hours on top of their basic annual hours and they aren't paid as overtime or offset by a time off in lieu (TOIL) policy, the employer, for the unpaid extra hours, maybe at risk of an excess hour's breach.

Time work - paid by the hour

[Read more about time work on the GOV.UK website.](#)

- Paid that for each hour that they work in a pay reference period.
- A contract of employment will give an hourly rate.

- Hours can vary from pay reference period, as long as the worker is paid NMW for all hours worked.
- NMW must be paid in each pay reference period independently. Employers are not able to offset pay from one period to another to make up NMW in another pay reference period.

Output work

[Read more about output work on the GOV.UK website.](#)

Paid for the number of things a worker makes or the tasks they complete (piece work or commission work may sometimes be output work for the NMW purposes).

Unmeasured work

[Read more about unmeasured work on the GOV.UK website.](#)

- This worker type meets some of the conditions of time or output work, but not all the conditions and so does not fall into the other type of work categories.
- Unmeasured workers must be paid for the hours they have worked in a pay reference period. Like timed workers, there is no ability to average out the hours across the year.

Working time

For NMW purposes, anytime an employer requires a worker to be somewhere or to be doing something, it is usually classed as working time.

This includes any periods of time before or after a shift for example:

- Getting dressed into a uniform, PPE or equipment at the place of work.
- Completing paperwork, admin tasks or training outside of normal working hours.
- Handover meetings/team meetings which fall outside of a worker's general shift pattern.
- Travel time - employees working in the community or whose role requires them to travel should be counted as working time for NMW purposes, excluding home to work commutes.

The pay elements that count for NMW

What does count towards NMW pay?

- The pay or salary that the worker receives for the hours worked.
- Performance related bonus - for example annual bonus or quarterly bonus.
- Commission - if a worker receives commission, they cannot be salaried for minimum wage purposes, but the commission payments still count towards the calculation.

There are some elements of pay which do not count for minimum wage purposes.

Wrongly including an element of pay that doesn't count, for example an extra premium overtime, can result in it appearing that the minimum wage is being paid when in fact it is not.

What doesn't count towards NMW pay?

The following payments, or elements of a worker's pay, made by an employer do not count towards minimum wage pay:

- tips, gratuities, service charges and cover charges
- overtime and shift premia
- allowances for example travel allowance, food allowances, additional duties allowances (unless they are fully consolidated into the workers salary)
- payments by an employer to reimburse a worker's expenses
- benefits in kind
- loans
- advances of wages
- pension payments
- lump sums on retirement
- redundancy payments
- rewards under staff suggestions schemes
- shares and share options.

In the NHS it is common practice that employees are paid at a higher rate than their standard rate for working unsocial hours at evenings, weekends, bank holidays. Other examples include shift overtime where staff work longer than a certain number of contracted hours. The high cost area supplement (HCAS) are additional payments staff receive for working in London and the surrounding areas. Based on the NMW legislation the above are

considered salary premium, therefore would not be included in the calculation of pay for NMW purposes.

How payments and deductions impact pay for NMW

Payments and deductions in connection with work will always reduce NMW pay. NMW legislation does not differentiate between gross/net deductions. Some specific examples are highlighted below:

- Uniforms/dress code deductions or payments - for example if the worker is required to buy some black shoes as part of their employment specific to the role this will reduce their pay for NMW purposes.
- Car/transport deductions or payments where having the car is a requirement of the role - e.g. Fleet Solutions schemes.
- Deposits/deductions for fobs, passes, keys if there is a requirement for staff to have these.
- Admin charges - for example, an admin charge levied by the employer on the back of a facilitated payment from the worker to a third party.

Own use and benefit deductions

Deductions for employers 'own use and benefit' will always reduce NMW pay.

The term own use and benefit refers to:

if there is a deduction where the employer holds or uses the money as they wish, or the deduction is used to pay an employers liability.

This will be deemed for the employers own use and benefit, and will reduce the workers NMW pay. It does not matter if the worker agrees to or receives preferential rates in this circumstance.

In the NHS some common own use and benefit deduction examples are listed below:

- Deductions for car parking fees where NHS trusts own the car park.
- Deductions for cars provided to workers where the arrangement/liability lies between NHS trust and car provider (not salary sacrifice).
- Deductions for additional holiday purchases where the payment is taken throughout the year as a new deduction (outside of salary sacrifice).
- Deductions for electronic goods that are owned by NHS trusts. If the liability lies with the NHS trust and then they give them out to staff who then have a net deduction come from their pay.

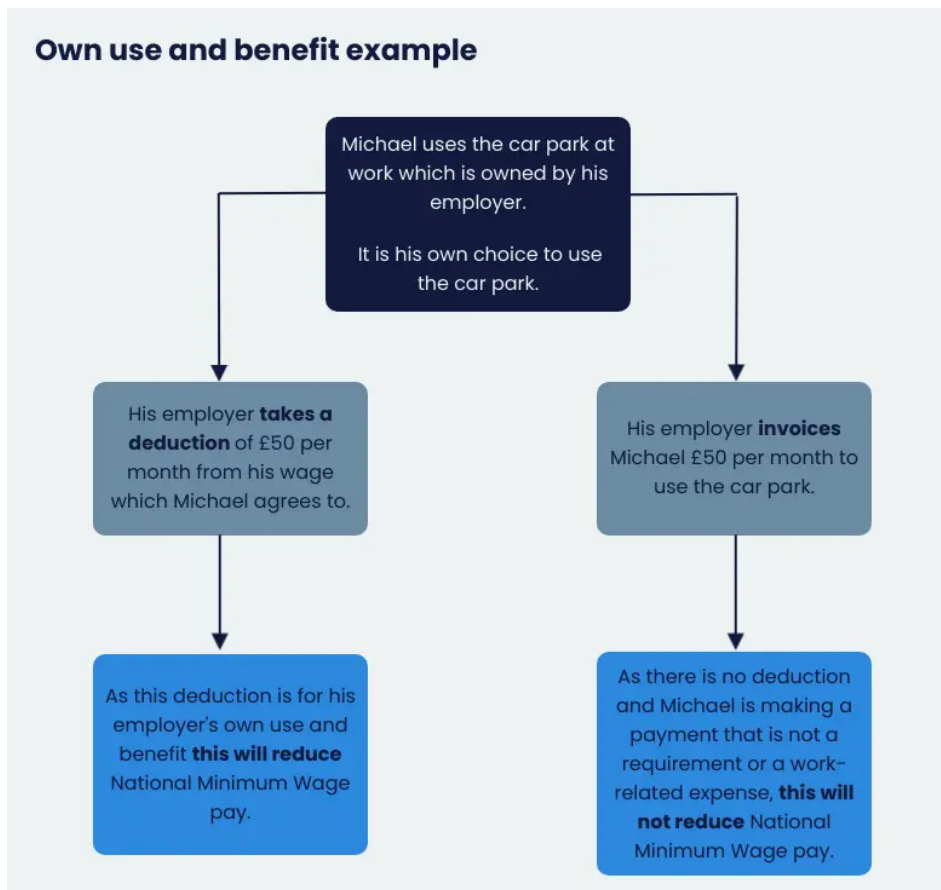
While deductions for own use and benefit will reduce NMW pay, a payment from worker to employer will not reduce NMW pay.

This is because the NMW legislation says that a deduction from pay for own use and benefit will reduce a workers NMW pay, but a payment from a worker to their employer in the same circumstance will not reduce it.

Example: car parking fees

As long as there is a requirement for the worker to take up the service, (they can choose whether they want to take up the car parking or not), then a payment (for example an invoice or direct debit) for car parking fees will not reduce NMW pay where a deduction from salary would.

Below is an example of the difference between a deduction for 'own use and benefit' and a payment work in practice for the same scenario.



Salary sacrifice

Salary sacrifice arrangements are where an employee agrees to reduce their pay in return for a new/enhanced non-cash benefit, which benefits from a full or partial exemption from tax or NICs (National Insurance contributions) or both.

Salary sacrifice is not recognised in the NMW legislation, therefore a reduction in pay is a contractual agreement which means that the new, lower amount of pay is what is considered for NMW purposes.

Salary sacrifice is a pay reduction therefore, will always reduce NMW pay.

Steps employers can take to ensure they remain compliant

For more information about salary sacrifice schemes please see our [dedicated web page](#).

Regularly review and monitor the schemes you offer

- Employers operating salary sacrifice schemes should review them to ensure compliance with the minimum income requirements.
- It is good practice for employers to continue to monitor their salary sacrifice arrangements on an ongoing basis, in particular:
- when an employee joins a salary sacrifice arrangement for the first time when a new salary sacrifice scheme is introduced

- each April when the NLW rates are reviewed
- each October when the NMW rates are reviewed
- each year when a pay award is announced.

The current NLW and NMW rates are available on the GOV.UK website.

Understand the terms of each contract

Liaise with the salary sacrifice providers to understand the wider terms of each contract. For example, find out what happens to the arrangement when an individual leaves the organisation or has a long-term period of absence.

Check you are calculating NMW rate of pay correctly

- Employers need to check whether they are correctly calculating the NMW rate of each pay, including what payments and deductions impact the calculation and any working practices that may cause remuneration and hours to vary. This is to ensure they are legally compliant with HMRC rules around the calculation of NMW. We have developed a dedicated web page and checklist on the steps employers can take to ensure they are correctly calculating NMW.
- Identify any additional local or manual interventions that may be required to ensure pay for all affected staff is amended.

Accommodation deductions

Where an employer provides accommodation to a worker, there is a government set 'accommodation offset' added to the workers NMW pay. The daily rate is reviewed every year and it is currently £9.99. If an employer charges more than the offset amount for accommodation, it will reduce NMW pay by the difference between the two.

It is important for employers to note that it does not matter whether there is a gross or net deduction, or whether the employer simply charges the worker by any other means. If the accommodation is provided by the employer any costs related to the provision of that accommodation, which are above the accommodation offset rate, will reduce the workers NMW pay in the period where the charge occurs.

Example: a worker is provided with living accommodation by their employer.

The employer charges the worker £500 per month for the accommodation.

The offset is currently £299.70 in a 30-day month.

This means the workers NMW pay will be reduced by £200.30 (the difference).

Certain deductions are allowable therefore the following are ignored for NMW purposes:

- income tax and NIC (National Insurance contributions)
- contractual deductions relating to conduct
- advance of wages - subject to conditions
- recovery of overpayment of wages (accidental)
- pension
- payments not deemed in connection with employment or own use and benefit
- voluntary payments by the worker for the purpose of good and services from the employer
- accommodation (if less than offset rate)
- trade union subscriptions

(This list is not exhaustive but covers the most common scenarios)

National Minimum Wage FAQs

Worker type

How can we easily identify once the worker type is agreed which pay elements fall into the high-level categories?

Once you have confirmed work type, the next step in a NMW calculation is confirming which pay elements do and don't count towards NMW pay. HMRC's online [Calculating the Minimum Wage guidance](#), outlines the more common pay elements and their effect on each work type.

Are 'unmeasured workers' casual/zero hour/bank agreements?

Casual/zero hours/bank workers will likely fall into either the 'time' work or 'unmeasured' worker category. They are unlikely to meet 'salaried' work criteria as hours and pay will fluctuate from one pay period to another.

Working time

If an apprentice drives an hour to college on their study day, is that hour of travel time an 'excess hour' that they should be paid for?

Normal home to work travel is not considered as working time for NMW purposes. This is the case where it is travel to their normal place of work, their first task or first assignment of the day. The

drive from home to college and from college to home would not be considered as working time for NMW purposes.

In terms of excess hours, does this refer to those hours worked but not paid? Most staff in the NHS are paid additional hours and paid above NMW for these.

Yes. Excess hours will only accrue for salaried workers where additional hours are worked but not paid for. Where overtime/additional hours are worked and paid in the pay reference period (PRP) where they are carried out (or in the immediately following PRP) they do not count towards an excess hours calculation.

In terms of excess hours, if the employee accrues TOIL for the hours they work in excess, to take off at a future point, does this reduce the hours worked in future periods?

This is correct. Where an effective TOIL policy is in place - the intended outcome would be that the worker does not exceed their basic annual hours throughout the course of their calculation year - which means no excess hours are worked. Good practice here includes a robust keeping of time and attendance records to track accrued hours throughout the year.

If an individual is required to travel and stay overnight for work, would their travel time count towards NMW pay? Would the time they stay away from home, but not physically working also count?

Where a worker is away from home for the purposes of work - you should consider what time is actually spent 'working' by the

individual. Travel from home to a place of work, and from the place of work back home is not considered as working time.

Where they are carrying out tasks or required to be at or near a place of work, this will constitute 'working time'. Where they are not 'working', would not ordinarily be working and are not expected to work (i.e. having dinner or in a hotel room watching TV) this would not constitute working time. If a worker travels from a place of work to another assignment/appointment - this is likely to be deemed as working time.

Salary sacrifice arrangements

If a salary sacrifice arrangement was put in place and there was no initial breach does it need adjusting when something changes (for example when the NMW rate increased and a lack of pay award for NHS agenda for change staff in April 2024)?

NMW compliance is calculated on a pay reference period by pay reference period basis - meaning an underpayment in even a single pay period will constitute a breach. Because of this, NMW compliance should be regularly checked and updated to ensure ongoing compliance. An underpayment post April 2024, would still be constituted as a breach regardless of the situation/terms of the arrangement pre-April 2024.

What if travel is part of a job but a car isn't specified in the job description, and an employee opts to buy a car through a sacrifice scheme (hire purchase or lease) does this come of their calculation?

Where a salary sacrifice arrangement is in place - it will always reduce NMW pay. A salary sacrifice is a contractually agreed reduction of the workers' salary in return for the benefit/service.

For a salary sacrifice arrangement can you convert part of that deduction to a net deduction or should the salary sacrifice agreement cease and all be converted to a net deduction?

Where a salary sacrifice arrangement is reduced and an amount is taken instead in the way of a net deduction - the effect on NMW pay will be dependent on the make up of the agreement around that car lease.

If the arrangement is between the worker and the car lease provider - where the liability lies with the worker and the employer simply passes the payment from worker to car lease provider - it will not reduce NMW pay.

Where the liability and agreement for car leases sit with the NHS trust which then provides the cars to workers, any deductions are likely to be regarded as for the 'own use and benefit' of the NHS trust and will reduce NMW pay.

For any salary sacrifice arrangements which are converted to net deduction, but are paid over to a third party, should we be classing the whole amount as a benefit in kind at this point?

Where the employer continues to provide the benefit which the employee previously salary sacrificed in their gross pay - but is now being paid from their net pay - the provision of the benefit in kind will still need to be reported. However, the amount deducted will be regarded as 'made good' by the employee.

What happens if someone falls into half pay sickness or goes on maternity leave and has a salary sacrifice arrangement in place?

Where a worker is absent from work and they are being paid less than their normal rate of pay (or not being paid at all) - the time associated with the absence, and the pay relating to this, are removed from NMW calculations.

Where no work is carried out in a pay period - there will be no NMW entitlement. However, where some work is carried out - you should ensure that at least NMW is paid for the hours actually worked. A full salary sacrifice deduction which may not cause a breach for a full month of pay might cause issues where only one or two weeks have been worked.

Deductions and payments

Some staff need to travel as part of their role. If they meet a mileage threshold they are eligible for a lease car (employer subsidised). Lease payments are deducted as a net deduction and taking a lease car is optional. Will this reduce NMW pay?

Whilst the leasing of a car through the NHS trust leasing scheme is not a clear requirement of the role, HRMC may challenge any costs or expenses associated with travelling as part of the role where the workers contract clearly states that 'appropriate means to travel as part of their work' is required.

However, even in a scenario where the employer provided car is not a specific requirement of the role, a net deduction will still reduce NMW pay where the payment is for the 'own use and

benefit' of the employer. This is likely to be the case where the leasing arrangement/liability comes between the NHS trust and the car provider. Where the leasing arrangement and liability lies between the worker and the third-party car provider (for example NHS Fleet Solutions) and the employer is acting as a conduit passing payment from worker to third party - it will not reduce NMW pay.

If employees buy additional leave, does this reduce NMW pay?

Where a deduction is made for the purchase of additional leave (or indeed, a pay reduction is made through a salary sacrifice arrangement) it will reduce NMW pay in the pay reference period where the deduction is taken.

Is the NHS pension classed as a deduction that is considered against the NMW?

If the contribution is taken by way of salary sacrifice – then it will reduce NMW pay. A salary sacrifice arrangement will always reduce pay. If the pension is taken by way of a deduction from pay (gross or net) which is not a salary sacrifice arrangement, then it will not reduce NMW pay.

The NHS pension is not classed as a salary sacrifice, therefore does not reduce NMW pay.

What about season tickets for buses – for example a voluntary scheme where staff can have an annual pass and have it recouped via pay?

Where a worker chooses to sign up for a travel season ticket with a third-party travel provider - the liability lies between the worker and the third party. Where the worker is unable to pay the full amount of the season ticket up front, it can be common for the

employer to loan the amount to the worker for the full payment and recover it across the course of the year.

Genuine loans and pay advances will not reduce NMW pay - however, they should be clearly evidenced by a written arrangement signed by all parties.

Other

What happens if a trust outsources payroll to another organisation eg, another trust or other third-party trust. Who is liable if there's a breach?

Ultimately, the employer is responsible for ensuring that all workers are paid at least NMW for all hours worked.

If you would like to contact us or have any questions, please email the [reward team](#).

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