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Workers Guide to Minimum Wage

The National Minimum Wage (MW) is the minimum pay per hour workers who have a contract with their employer (either verbal or in writing) are entitled to by law.

Who is entitled to the Minimum Wage?

Most types of workers **aged 16 years and over** are entitled to the MW:

- Whether working full or part-time
- Temporary workers, casual workers and those on short-term contracts
- Apprentices, Trainees and students who undertake work
- Those working under probation
- Family members who have entered a contractual relationship with their relative as an employer
- Commission workers
- Agency workers (paid by employer)
- Home workers (unless running their own business)
- Employees of Ministry of Defence (MoD) contractors
- Volunteers with the Falkland Islands Defence Force (FIDF)
- Disabled workers (excluding those on Falkland Islands Government supported schemes)
- Workers from outside Falkland Islands (FI) and those who usually work within the FI but are temporarily working outside of FI
- Offshore workers (within FI territorial waters regardless of employer's location)
- Seafarers employed within FI territorial waters (excluding fishermen).

Who is **not** entitled to the Minimum Wage?

- People under 16 years of age
- Self-employed
- Work-experience students working as part of their course up to 1 year
- Trainees on Government funded courses (excluding Apprenticeships)
- Serving members of the British Armed Forces
- Fishermen
- Prisoners and those serving Community Service
- Family and friends where jobs are informal arrangements without a contract
- Unpaid volunteer workers

From 01 January 2022 the new minimum wage rate is £7.26 per hour.

Your employer cannot ask you to work for less than the minimum wage and you cannot sign away your right to receive the minimum wage

Effective from the 1st January 2016 workers aged 16 to 17 year old benefit from the same rate as workers aged 18 and older.

Will the Minimum Wage rates change?

The Minimum Wage Legislation will be reviewed at least every 12 months, and changes **may** be made to the minimum wage.

Any changes to the rates will be published in the Gazette. Employers will have 3 months to comply.

Employers Guide to Minimum Wage

What counts as Minimum Wage pay?

Start with what you actually receive, i.e. your net pay. Ignore any tips or salary advances but include bonuses, commissions or performance pay. Add on the statutory deductions from your wage, MST, POAT, RPC and any payments from your wage to cover the service charge, plus any deductions for misconduct or poor work, or for pensions or savings schemes.

Any benefits can be ignored.

An **allowance** is made for employers providing board and accommodation (if it is charged to the worker), up to 50% of the charge/deduction of board and accommodation to a **maximum of £90.60 a week** (an employer can deduct more than this maximum from a worker's pay, but this excess amount will not count towards MW pay).

What does not count as minimum wage pay?

Tips, an advance of wages, loans, special allowances (such as on-call payments or working unsociable hours), expenses and benefits in kind are excluded.

What should my employer be doing?

It is your employer's duty to pay you the minimum wage.

Keep records (in paper or electronic form) including contracts and other agreements; payslips; payments made including overtime and shifts, absence (including sick leave), and any deduction for accommodation etc. You must provide your employer information on the hours you work to keep records up to date.

The records held by your employer will be used to confirm that you are being paid at least the minimum wage.

Example 1

A worker (aged 45) is paid £9.00 an hour for a 152 hour month (£1,368). The employer also provides accommodation for which he charges the worker £1,000 a month. Statutory deductions for POAT, MST and RPC total £96 a month.

Net pay is therefore £272.

When calculating minimum wage, 50% of the accommodation costs are added onto net pay, up to a maximum of £90.60 per week. In this example this is £392.60 ($£90.60 \times 52 / 12$)

Total pay for minimum wage calculations is therefore $£272 + £96 + £392.60 = £760.60$

Hours worked per month are 152, meaning the hourly wage is only £5.00, below the MW.

The employer must take action to adjust the wage.

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Example 2

A worker normally receives £1,000 a month. In December she receives a £300 loan from her employer. Her employer subsequently deducts £300 in January to repay the loan. In calculating the MW the loan is treated as follows:

| | December | January |
|---|----------------------|--------------------------------------|
| Money received | £1000 + £300 loan | £1000 - £300 repayment of loan |
| Total | £1,300 | £700 |
| Amount that counts towards MW pay | £1,000 | £1,000 |

The deduction is ignored in January as it was already paid in December. The worker continues to receive MW pay throughout the whole period.

How do I access my records?

Speak to your employer in the first instance and ask to see your records at a time and place that is convenient for you both. You can view the records by yourself or take someone with you.

If your employer refuses you access, you can issue them with a 'production notice' requesting this, which your employer must respond to within 7 days. An employer must give you reasonable written notice of a place and time to view your records within 14 days of when they received the production notice (or later by mutual agreement), or they can give you a 'refusal notice' explaining why they consider the request to be unreasonable.

What can I do if I think I am not being paid the minimum wage or my employer won't allow me access to my records

Try to resolve the issue with your employer in the first instance. The burden of proof is on them prove they have paid the minimum wage.

If you are refused access to your records, are not being paid the minimum wage, or suffer a detriment (including dismissal) relating to the minimum wage then you may be able to take action against your employer.

A claim can be taken to the Civil Summary Court for breach of the minimum wage legislation, or unfair dismissal and victimisation if you feel you have been mistreated because you are not receiving the minimum wage, or you have suffered as a result of attempting to establish if you are receiving the minimum wage.

This guide has been written in general terms, it does not have any legal force or bind the FI Government Taxation Office in any way. It should be read in conjunction with the Minimum Wage Ordinance 2013 and associated legislation and regulations.