

National minimum wage traps in 2025

From 1 April 2025, the National Minimum Wage (NMW) and National Living Wage (NLW) will increase by nearly 7%.

HMRC are activity focused on enforcing NMW, HMRC NMW reviews can be onerous to handle and logistically complex to respond to. HMRC often issue multiple detailed information requests covering several years. Recent HMRC activity includes geographic and sector based targeted enforcement alongside the commitment to investigate any worker complaints received through the ACAS helpline, this coupled with the naming and shaming and 200% penalties means it should be high on many employers risks register. There are multiple factors that can affect NMW, including type of work being performed, uncaptured working time and deductions made from employees' pay. We have set out in this article some of the most recent risk areas we have seen HMRC actively challenge and those which employers should be aware of.

Salaried excess hours

There are four types of work for the purposes of NMW (Salaried, Time, Output and Unmeasured). Many people will have the opinion that those who are paid a salary, come under the salaried work category for NMW purposes. But they may not based on the strict conditions that apply and this can result in the incorrect calculation methodology being applied.

One of the potential benefits of an employee being categorised as a salaried worker for NMW purposes is that an employer can look over annual period to assess NMW compliance – taking the annual hours worked and pay received for this work to arrive at an hourly rate. However, the calculation is not quite this simple and can sometimes produce unexpected results.

To show a real-life example, a worker being paid an annual salary of £45,000 who is contracted to 40 hours of work per week, working a single hour of unpaid overtime each day would mean that they would exceed their annual hours in month 11 and would breach NMW by month 12 if no additional payment is made in month 12.

Where employers consider they have salaried workers (or in fact any other worker type) in their workforce, they should be aware of the maximum number of hours that can be worked without causing an NMW breach.

Graduate schemes

A simple search of 'graduate' on a popular jobs website can show salaries starting from £21k. Whilst the graduate labour market statistics ([GOV.UK](https://gov.uk)) shows the annual real median salary of £26.5k has remained relatively constant since 2014.

However, NMW rates have seen significant increases over the same period, the main NMW rate in 2014 was £6.50, compared to £12.21 from April 2025 representing an 88% increase.

Where the graduate fails to meet the criteria as a salaried worker, they would almost certainly be completing unmeasured work. This causes the calculation of NMW to change significantly, where each pay period is assessed individually meaning these employees would have to be paid NMW for the actual hours worked in that period or the following one or a NMW breach has occurred. Clear recording of hours is important as is an understanding of what counts for NMW purposes.

For example, if a graduate is aged 21 and categorised as an unmeasured worker contracted to 40 hours per week with a salary of £25,000, with an hour of travel time to get to a training provider per week, which has not been accounted for, this would mean that in any months with 23 working days, their pay would fall below NMW due to this extra time not being paid.

Uncaptured working time

While it may appear straightforward that employees should be compensated for their working hours, HMRC statistics shows that unpaid working time is one of the most common reasons causing workers to breach NMW. If employees are (whether officially or unofficially) at work or 'on duty,' that time should potentially also be considered as working hours.

Accurate time recording is essential to NMW compliance and is the best way for an employer to be comfortable that all employees have been paid NMW for the actual hours they have worked. This recording will include all time associated with working, for example:

- travelling time
- changing time
- training time
- time for security checks
- working through breaks

If an employer had a factory worker who works 42.5 hours per week and is paid £12.50 an hour and the employer required them to arrive 15 minutes early to change into personal protective equipment before their shift starts and it took another 15 minutes to change out after their shift ends. Where this time is not added into their shift and is unpaid, this amounts to 30 minutes per shift unpaid and this would cause the worker to be paid at a rate less than £12.21.

Salary Sacrifice

Salary sacrifice arrangements such as pension, electric vehicles and cycle to work schemes reduce pay for NMW purposes. These can often be significant reductions in pay and any NMW calculations should be based on post-sacrifice pay. It is important for employers to also be considering all salary sacrifice arrangements that an employee participates in as well as any other potential risk areas which may impact on NMW.

As with the first example, a worker being paid an annual salary of £45,000 who is contracted to 40 hours of work per week who participates in a salary sacrifice pension (sacrificing 5%), working a total of 13 hours of unpaid overtime per month would mean they would breach NMW by month 12 if no top up payment is made.

What should employers do?

Employers should regularly review their processes and procedures and make changes swiftly if any breaches are found. Employers should also be considering employees who are paid an annual salary and not just those who are paid at or near NMW as part of this exercise.

RSM work closely with employers from all sectors reviewing their NMW position, introducing updated processes to strengthen compliance and also support employers with HMRC NMW reviews. If you have any questions or concerns about National Minimum Wage, please contact Dale Charnock (dale.arnock@rsmuk.com) or your usual RSM contact.