



THE NATIONAL LIVING WAGE: Q&A

What is the National Living Wage (NLW)?

The NLW is essentially an additional wage band on top of the existing National Minimum Wage (**NMW**) regime. From 1 October 2015, the NMW rate is £6.70 per hour for those aged 21 and over. The NLW will form a higher band for those aged 25 and over.

How much is the NLW?

The NLW rate will be £7.20 per hour for workers aged 25 and over. It is due to rise to £9.00 per hour by 2020. The NLW will be introduced at a flat rate and will not be weighted in relation to where the recipient lives.

How is it different from the "Living Wage"?

The "Living Wage" is a **voluntary** scheme piloted by the Living Wage Foundation (a campaigning organisation). It aims to reflect what the Foundation considers workers need to be paid in order to maintain a normal standard of living. Employers, such as Barclays, British Gas, and Oliver Bonas currently pay the Living Wage. The Living Wage is currently £8.25 per hour outside of London and £9.40 per hour in London.

The NLW is a **compulsory** scheme for all employers. It is not an implementation of the Living Wage. It is £1.05 per hour less than the Living Wage outside London and £2.20 per hour less than the Living Wage inside London.

How and when will the NLW take effect?

[The National Minimum Wage \(Amendment\) Regulations 2016](#) will bring the National Living Wage into force on 1 April 2016. These regulations will amend the National Minimum Wage Act 1998 and the National Minimum Wage Regulations 2015.

Who will receive the NLW?

The NLW will be applicable to all individuals who are currently eligible for the NMW, and are (or will be) aged 25 or over by the time of implementation.

Therefore, the following individuals will be eligible for the NLW:

- ▶ employees;
- ▶ most workers (which means an individual working under a contract to personally do or perform work or services for another, provided that the other is not a customer or client of a profession or business undertaking carried on by the individual); and
- ▶ agency workers.

Self-employed individuals, those on work experience and placements, and certain apprentices (if they are not engaged under a contract of apprenticeship or apprenticeship agreement, or under specific Governmental apprentice schemes) will not be eligible.

Will all employers have to pay the NLW?

All employers will have to comply with the requirement to pay the NLW. Primarily, the change will affect employers who currently pay the NMW and who have a workforce (on that wage) that is aged 25 or over, or will be, by 1 April 2016. The Office for Budget Responsibility estimates that around six million people overall will be affected by the change. In particular, the retail and hospitality sectors will be affected.

What are the penalties for non-compliance?

Currently, under the NMW regime, offending employers are required to:

- ▶ pay a fine reflecting the underpayment itself; and,

- ▶ pay a 100% penalty on top, up to a maximum of £20,000 per worker.

The Department of Business, Industry and Skills (**BIS**) also "names and shames" offending employers.

Under the NLW regime offending employers will be required to:

- ▶ pay a fine reflecting the underpayment itself; and,
- ▶ pay a 200% penalty on top, up to a maximum of £20,000 per worker (this increased penalty rate will also apply to underpayments of the NMW from 1 April 2016).

BIS will also continue to name and shame offending employers. In addition, it has been announced that a specialised unit of HMRC will be established to track down offending employers and this unit will have the power to disqualify offending company directors for up to 15 years.

Can employers avoid paying the NLW by favouring workers under the age of 25?

One way to avoid paying the NLW would be to deliberately favour workers under the age of 25 (e.g. by hiring younger workers, changing shift patterns to avoid older workers and/or dismissing workers once they approach the qualifying age of 25). However, this strategy has obvious risks. Firstly, dismissing workers, or depriving them of work, because they are approaching 25 may constitute direct age discrimination. Although direct age discrimination can be justified, costs alone will not be a valid reason. Broadly, to be valid, any justification would have to have a social basis behind it, such as health and safety, or a genuine commercial requirement, such as protecting customer relationships. Secondly, any employee dismissed prior to reaching 25, who also has two years' continuous service, could bring an unfair dismissal claim against the employer, at the same time as a discrimination claim.

What steps can businesses take to prepare for the NLW?

The following steps may help businesses to mitigate the impact of the NLW:

- ▶ Reduce or freeze the wages of those between the age of 21 and 25 who are not yet at the £7.20 per hour threshold.
- ▶ Reduce the value of pay rises and/or other benefits by an equivalent amount.
- ▶ Reduce working hours and/or move staff onto zero-hours contracts where there is no obligation on the employer to provide a certain number of hours per week.
- ▶ Increase the use of genuinely self-employed individuals who offer their services at a rate below the NLW.
- ▶ Reduce employee headcount.
- ▶ Increase prices to consumers.

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