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## Essential Employer Update 2025

# Guiding you through the latest issues in payroll, tax and employment law.

## Minimum wage: new rates

New rates apply from 1 April 2025 for both the National Living Wage (NLW) and the National Minimum Wage (NMW). For convenience, we use the term 'minimum wage' to cover both the NLW and NMW. The minimum wage is the lowest hourly rate of pay that most workers must be paid by law.

### Rates from 1 April 2025

National Living Wage (21 and over)	£12.21 per hour
NMW: 18 to 20 year old rate	£10.00
16 to 17 year old rate	£7.55
Apprentice rate	£7.55
Accommodation offset	£10.66

Employers will be aware that this is a considerable increase for workers in the 18 to 20 year old category, narrowing the gap between the top rate of NMW and the rate for adult workers over 21. The government is committed to extending the NLW to 18 year olds in future years. A consultation on the timescale is due in 2025.

## Minimum wage: employer risk

HMRC cites salary sacrifice schemes and issues around paying salaried hours workers as particular problem areas.

### Salary sacrifice

A salary sacrifice scheme involves an employee giving up – 'sacrificing' – contractual entitlement to part of their salary in return for some form of benefit, such as cycle to work schemes or pension provision. For minimum wage compliance purposes, the figure to look at is the figure after the sacrifice. This is the pay determining whether there is an underpayment.

### Example: salary sacrifice creates minimum wage underpayment

Asma is 30 years old, and entitled to the NLW. She earns £25,000 per year and agrees to sacrifice £2,400 per year to a workplace pension. This means she is now entitled to be paid £22,600 per year.

She performs salaried hours work for NMW purposes, and is paid her salary for working 2,080 basic hours. This is paid monthly in equal instalments of £1,883.33 for 173.33 (notional) hours.

The new applicable NLW rate from 1 April 2025 is £12.21 per hour. This means the salary sacrifice creates minimum wage underpayment: Asma is only receiving £10.86 per hour: ( $£22,600 / 2,080$  hours per year or  $£1,883.33 / 173.33$  hours monthly = £10.86 per hour).

This shows how important it is to review the position regularly: from 1 April 2023 to March 2024, when the applicable NLW hourly rate was £10.42, Asma's salary sacrifice would have been minimum wage compliant, presenting no employer risk. (Based on example from the Department for Business and Trade.)

## Salaried hours workers and excess hours

There are four different categories of work for minimum wage purposes, with different rules and calculations for each: time work, salaried hours work, output work and unmeasured work. Minimum wage compliance begins with establishing the type of work correctly. This is the starting point for the calculation of hours worked.



Pay for salaried hours workers may seem high enough for such workers not to appear on an employer's risk list. But HMRC compliance activity regularly highlights minimum wage underpayment where salaried hours workers work excess hours. Compliance for these workers is based on their calculation year, and they must receive at least the minimum wage for each excess hour. The more additional time they put in, the bigger the potential risk of falling below the hourly rate: and the risk can even extend to workers paid in the region of £50,000 per year.

### **Example: extra hours create minimum wage underpayment**

Roy is contracted to work for 40 hours per week for an annual salary of £50,000, but usually works an extra half hour in the morning, and an extra half hour in the evening. Initially, individual pay periods in which he works extra hours may not fall foul of the rules. But by month 11, Roy has worked more than his basic hours for the year and a top-up payment may be needed before the end of the year for the employer to remain compliant. The problem will be compounded if Roy has a salary sacrifice or other arrangement reducing pay.

### **Review now**

Care is always needed with minimum wage. Calculations are complex, and where workers are underpaid, employers not only have to make good the arrears, they can also face penalties of up to 200% of amounts owed to workers and be publicly named.

Note that arrears to workers are paid at the minimum wage rate in force at the time of settlement, and employer NICs at the rate current when the worker is paid.

Given the rise in employers' National Insurance contributions (NICs) to 15% from 6 April 2025, it is a good time to review minimum wage compliance, including how working time for salaried hours workers is recorded, and we would be pleased to be of help.

## **Staying on top of the National Insurance changes**

Autumn Budget 2024 announced major changes to the National Insurance rules for employers with effect from 6 April 2025. Overall, these are likely to add significantly to employment costs.

- The secondary threshold, at which employers start to pay employer Class 1 NICs, falls from £9,100 to £5,000 per year (from £175 to £96 per week) from 6 April 2025. This will be fixed until 5 April 2028, and then rise in line with the Consumer Prices Index.
- The rate of secondary Class 1 NICs rises from 13.8% to 15%. Class 1A and Class 1B contributions also increase to 15%. Offering benefits in kind, such as company cars or private medical insurance, therefore becomes more expensive.



### **Tip: Manage benefit in kind costs**

Controlling employer NICs by offering tax efficient benefits will be particularly important. Using salary sacrifice arrangements to make pension contributions, or for electric vehicles can help minimise remuneration costs.

## **The Employment Allowance**

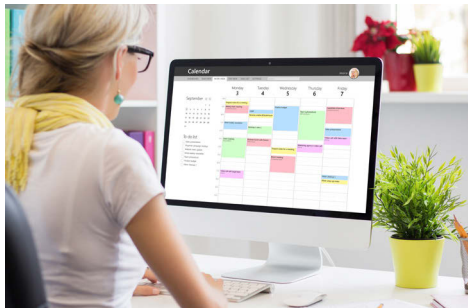
The maximum Employment Allowance (EA), which can be used to reduce the employer National Insurance liability, increases from £5,000 to £10,500. The Budget also widened the scope of the EA to employers with a NICs liability in the previous year of £100,000 or more.

For those eligible to claim the EA, this will certainly help offset some of the impact of the National Insurance changes. As always with tax, there is small print to watch:

- Single director limited companies where the director is the only employee paid above the secondary threshold cannot claim EA. If, however, at least one other employee/director has earnings over the secondary threshold, such a company would be eligible to claim.
- EA cannot be claimed for domestic workers like nannies, au pairs or gardeners, but can be claimed for care or support workers.

## Delay to new data requirements on employee hours

New requirements to provide HMRC with information about the number of hours worked by employees were due to take effect from April 2025. This development has now been delayed. Employers will not now be required to provide more detailed information until April 2026 at the earliest.



The change, when implemented, requires employers to submit information via RTI PAYE specifying the number of hours paid for each employee within that pay period, where the employer holds that information. This new figure for employee hours will depend on whether the employee is paid an hourly rate of pay, or via a contract which specifies a number of hours or a combination of the two. Where the information is not held, employers will be required to give the reason from a list provided. The aim is to enable HMRC more easily to identify under-reported earnings.

The delay provides a welcome breathing space for employers and software providers to gear up for the change. Please do talk to us for more information in this area.

## The Employment Rights Bill: employer need-to-know

The Employment Rights Bill has been labelled the 'biggest upgrade in employment rights for a generation'. But although it has hit the headlines, we are still short on some of the final details. With various consultations to come this year, many provisions are unlikely to take effect before 2026. Change to procedures around unfair dismissal, for example, will not be brought in before autumn 2026 at the earliest.



The Bill contains a package of measures, including:

- **Day one employment rights**, giving the right to bereavement leave, paternity leave and unpaid parental leave. The big change here is that there will be no need for someone to work for a minimum period of time in order to qualify.
- **Flexible working:** Although flexible working is to be the default, the proposed changes here are not as far-reaching as had been expected. Businesses will still have grounds on which they will be able to turn down a request for flexible working, but any such refusal will have to be 'reasonable'.
- **New enforcement body:** A new body, to be called the Fair Work Agency, will be set up to bring together existing state enforcement functions, such as minimum wage; Statutory Sick Pay (SSP); the employment tribunal penalty scheme; labour exploitation, and

modern slavery. In the course of time, it will also take on new roles, such as enforcing holiday pay policy.

The government's intention is that the Fair Work Agency will be a 'strong, recognisable single brand so workers know where to go for help'.

- **Change to SSP:** This will involve the removal of the lower earnings limit, meaning that SSP becomes available to all employees whatever their weekly earnings. Waiting days will also be removed, so that SSP is available from the first day of sickness absence.
- **Rules on unfair dismissal change:** The two-year qualifying period for protection from unfair dismissal is to be removed, making such protection a day one right. There will also be a new statutory probationary period, allowing employers to assess the suitability of new hires. During this probationary period, there will be a 'lighter-touch' process for dismissal. The government suggests a nine-month probationary period, but the detail is still to be finalised.
- **Provisions ending zero-hours contracts** and requiring employers to offer qualifying workers guaranteed hours if they work regular hours over a defined 'reference' period. The reference period is expected to be 12 weeks. Such workers will be able to reject an offer of guaranteed hours, remaining on their existing contract, if they prefer.

Note that the Bill does not apply to Northern Ireland, which has consulted on its own reforms.

### Action to consider

Employers will want to use the time before 2026 to prepare, reviewing and updating policies and procedures in areas such as SSP. Looking to the longer term, the introduction of the long-awaited single enforcement body, is likely to have considerable impact. The enforcement of rights to holiday pay, for example, will be

a radical new departure, and employers will want to make sure that they are confident in applying the rules.

## New employer duty to prevent sexual harassment

Since 26 October 2024, all employers, of whatever size, and in whatever sector, have a new duty to take reasonable steps to prevent sexual harassment of employees. This applies not just to harassment from other members of the workforce, but also from third parties such as customers and clients.

There is no one set of actions that employers must take: employers will need to consider what is reasonable depending on the circumstances in their business. But it is necessary for employers to be proactive: the emphasis is on anticipating when sexual harassment might occur. The new law has bite, and employment tribunals will be able to order an uplift of up to 25% to compensation awards where employers have failed to comply.



Employers will need appropriate plans and policies in place. Guidance has been published by Acas, which will be of assistance.

### We can help

Do please get in touch for advice on any employment related area. We are always happy to help.