



National and Living Minimum Wage: avoid being named and shamed – it's not a low pay or software problem

The following questions were raised by delegates who attended the ICAEW Tax Faculty webinar, **National minimum wage: avoid being named and shamed – it's not a low pay or software problem**, broadcast on 29 November 2021.

Answers (*in italics*) have been provided by ICAEW Tax Faculty staff and active members based on information available at that time. The term national minimum wage (NMW) used below, refers also to national living wage.

1. Does national minimum wage also apply to owner-managed companies where the only employee is the director?
NMW does not apply to company directors unless they have contracts that make them workers (as defined in s54(3), National Minimum Wage Act 1998). This is because payments made to a director usually arise not from a contract but by way of remuneration as the holder of an office in accordance with a company's articles of association. In such a case the director is an office holder and is not a worker for the purposes of the NMW.
*An individual who holds the office of director of a company may also be employed by the same company under a contract. Such a person will be entitled to the NMW, like any other worker, for the work done under the contract. (HMRC's **NMW manual NMWM05140**)*
2. Where an employee has not been paid for travel during their working day between patient home visits, but their rate of pay is well above NMW in general.....if the hours worked during a pay reference period (PRP) are fully paid at the NMW rate due, does the non-payment of the travel time still matter?
*You need to do the maths to find out the answer to this question. When calculating whether an employee has been paid at NMW, it is necessary to take into account the time spent by that employee in travelling between different workplaces even if the employee is not paid for this time. However, time spent by the employee in travelling at the start of the working day to the first workplace and at the end of the working day in travelling home from the final workplace are commuting so do not count for NMW purposes. (**NMW manual NMWM08300**)*
3. We have an employee who pays rent as they live above the bar they work in. The rent is deducted from net pay, are we saying that this needs to be included within minimum wage calculation?
*Deductions from pay for rent do need to be taken into account for NMW. If rent deducted from pay is above what is known as the accommodation offset rate, the excess reduces pay for NMW purposes. If the accommodation charge is at or below the offset rate, it does not have an effect on the worker's pay for NMW. If the accommodation is free, the offset rate is added to the worker's pay. The current (from 1 April 2021 – uprated annually) accommodation offset rate is £8.36 per day / £58.52 per week). (HMRC's guidance: **Accommodation**)*

4. Could the situation of paying rent to an employer be an issue for property letting agents?
This depends on the circumstances. If the accommodation comes with the job or belongs to the worker's employer, rent paid through payroll by the worker will need to be taken into account when calculating NMW. (HMRC's guidance: [Accommodation charges](#))

5. What are the time limits please?
Records must be kept for a period of six years beginning with the day on which the pay reference period immediately following that to which the records relate ends. (Reg 59, NMW Regulations 2015, SI 2015/621 as amended); for examples see NMW manual [NMWM12040](#))