

BIS | Department for Business
Innovation & Skills

National Minimum Wage
Annual Report for 2010/11

IN ASSOCIATION WITH



Delivering Results

National Minimum Wage Compliance

Report for 2010/11

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Working together to make a difference

BIS own the policy for the NMW

HMRC enforce it

NATIONAL MINIMUM WAGE (NMW) – WHO DOES WHAT?

The Department for Business, Innovation and Skills (BIS) is responsible for NMW compliance. HM Revenue & Customs (HMRC) enforce the NMW on BIS' behalf. Both departments work closely together to ensure that BIS' policy and HMRC's delivery strategy are informed by their respective experience of the NMW and intelligence obtained by them. This intelligence includes the reports of the Low Pay Commission (LPC). BIS also works with the LPC Secretariat to ensure that emerging policies on compliance and enforcement take into account Commissioners' thinking and any trends which have come to the attention of the LPC. BIS and HMRC also work with unions, business representatives and others to ensure that the NMW Compliance Strategy and its implementation is informed by their knowledge of what is happening in the workplace.

Highlights for 2010/11

Following its publication in March 2010, BIS and HMRC have been working on implementing the National Minimum Wage Compliance Strategy (the NMW Strategy). This has largely involved moving towards a more risk based approach to compliance and enforcement, with HMRC collecting and using data from a variety of sources to identify workers 'at risk' of being underpaid and employers 'at risk' of being non-compliant. HMRC are also developing and adopting new ways of working to enable them to support the approach to compliance set out in the NMW Strategy, namely: prioritising according to risk; identifying opportunities to free up resources to focus on the most 'at risk' employers and workers; and using a range of leverage tools and techniques to reach different customers. To view the NMW Strategy visit www.bis.gov.uk/nmw-compliance-strategy.

HMRC's NMW team are building an increasing number of links with specialised units within HMRC, e.g. the Hidden Economy Team, the Labour Provider Team (LPT) and Large Business Service Team. These links have improved information sharing and the sharing of best practice and intelligence across HMRC which enhances HMRC's ability to identify 'at risk' cases.

HMRC's Dynamic Response Team (DRT) worked closely with LPT on this year's targeted enforcement initiative on hotel cleaning which made use of LPT's experience and intelligence on labour providers to identify and tackle the issues caused by labour providers operating in the hotel sector. It included a due diligence exercise which involved disseminating guidance to hotel chains who make use of sub-contract labour. DRT also enlisted support from the British Hospitality Association who publicised the targeted enforcement campaign through their members' newsletter. This enabled HMRC to reach a large number of hotels to reinforce the message that hotels have a role to play in ensuring that the labour providers that they deal with pay the NMW.

HMRC investigated two large employment agencies providing cleaning services to more than 200 hotels. Investigations are ongoing but arrears in excess of £23k for over 300 workers have already been identified.

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Making a difference for workers

Helped
almost
23,000
workers

£3.8m
in arrears

CASE STUDY

A security company which employed a significant number of migrant workers was paying workers at or close to the NMW but was making deductions from wages, e.g. for uniforms, which reduced the workers pay for NMW purposes. HMRC's intervention resulted in arrears of wages spanning almost 4 years and totalling almost £48,000 being repaid to 850 workers.

Since its introduction in 1999 more than **£42 million in NMW arrears** for around **163,000 workers** has been identified. In 2010/11, HMRC issued **1,126 notices of underpayment** and identified just **over £3.8m in arrears** owed to almost **23,000 workers** (an increase of 4,000 on the previous year). Workers are now entitled to be repaid arrears of the NMW based on current NMW rates (rather than the NMW rate that applied at the time of underpayment) and the additional arrears of pay recovered for workers as a result of the 'uplift' in 2010/11 totalled **£296,000**. The 'uplift' to current rates compensates workers who have had to wait for pay which they are legally entitled to.

In January 2011 BIS issued a consultation document, National Minimum Wage: employed students and the accommodation offset, seeking views on whether Higher Education and Further Education institutions which both employ and accommodate students should be exempt from the accommodation offset rules. Responses were overwhelmingly in favour of exempting students from the NMW accommodation offset rules where the accommodation is provided in connection with the worker's full time studies, rather than their employment. The Government amended the law on 1 October 2011 to bring in this exemption. The change to the law is not retrospective.

Following a joint BIS/HMT/HMRC consultation last year, BIS decided to change the NMW rules so that payments of travel expenses for travel from home to a temporary workplace do not count as pay for NMW purposes overall. This followed concerns that schemes using such payments were exploiting low paid workers, potentially affecting workers' rights to certain benefits, providing an unfair competitive advantage and causing unfairness to other low paid workers and the taxpayer. A user of these schemes requested a Judicial Review of the BIS decision but, in a judgment at the end of December 2010, the judge concluded that the Government had "solid and convincing reasons" for its decision to change the law. Regulations introducing this change came into force on 1 January 2011.

BIS provide up-to-date, accurate on line guidance for workers and their representatives at:
www.direct.gov.uk/nmw

In Leicester and Exeter, DRT officers working alongside the Employment Agency Standards inspectorate (EAS) conducted a series of **unannounced visits** to employment agencies/employment businesses over 4 days. 52 agencies were jointly investigated and a significant number of employers were found to have underpaid NMW and breached agency standards legislation. One particular investigation has identified arrears of wages exceeding £80,000 payable to 1,400 workers.

CASE STUDY – DEDUCTIONS FOR IN-HOUSE TRAINING

A digital and technology service provider set a charge in workers' contracts for providing in-house training. This type of deduction made in connection with the workers' employment reduces the workers' pay for NMW purposes. Arrears were identified over a three year period and the employer repaid just over £125,000 to over 1,000 workers.

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Making a difference for employers

In 2010/11 480 employers received an automatic penalty

Around 50% of employers paid worker's arrears and the penalty in 14 days

HMRC's NMW team has established a working protocol with HMRC Customer Relationship Managers who work closely with large and complex UK businesses on various tax compliance issues. The protocol has raised awareness of NMW amongst wider HMRC staff and has helped to ensure the expedient resolution of NMW complaints and enquiries on large and complex cases. NMW compliance staff participated in a presentation to a large UK High Street Retailer's supply chain to raise awareness of NMW legislation in the retail sector. HMRC's NMW team has also established contact with the British Retail Consortium and are exploring options for raising awareness of compliance issues amongst their members.

The BIS scheme to name employers who flout NMW law came in on 1 January 2011. As the title of the scheme suggests, it is envisaged that cases that are identified for naming will involve acts or omissions which, whilst falling short of the selection criteria for prosecution, point to the employer deliberately falling short of required standards or being negligent in some respect.

The objective of the naming scheme is to raise awareness of NMW enforcement and deter employers who would otherwise be tempted to flout NMW law. It recognises that some employers are more likely to respond to the social and economic sanctions that may flow from details of their payment practices being made public, than from financial deterrents. The naming scheme will ensure that the public and businesses, including workers, prospective workers, and law abiding employers, have access to information which will enable them to make informed choices about who they work for (in the case of workers) and who they do business with (in the case of employers). Raising awareness of NMW enforcement in this way could also encourage more workers who have been underpaid to come forward.

Since the scheme was introduced on 1st January 2011 **seven** cases have been referred to BIS for consideration.

HMRC are currently remitted by BIS to investigate all complaints from workers and previously this entailed HMRC carrying out a compliance visit in virtually every case. In an attempt to stream-line NMW investigations and reduce the burdens on compliant businesses, in 2010/11 HMRC trialed a new way of working, using a 'triage' approach to interventions on worker complaint cases. This involved contacting employers by phone and letter to resolve complaints, as well as continuing with compliance visits to employers where the risk of non-compliance indicated that this would be the most effective intervention. This is an approach which is employed elsewhere in HMRC and the trials were used to identify the operational process changes and products which might be required to support this new approach to complaints. BIS and HMRC are committed to this approach, which has now been rolled out across HMRC's NMW teams, and believe that this will, in due course, ensure an even more efficient and effective use of HMRC's resources.

HMRC's Dynamic Response Team goes from strength to strength. In 2010/11, the team participated in a number of cross enforcement agency initiatives and the investigation work included 'street sweeps' of businesses suspected of operating in the informal economy. This involved unannounced visits using a 'blitz' approach where large numbers of trade-specific employers were visited in particular geographic areas over a short period of time. This 'blitz' approach raised the profile of NMW to employers operating in the target area and sent a strong signal that failure to pay the NMW will not be tolerated.

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URN 11/280