



Enforcement of the National Minimum Wage in the social care sector

The National Minimum Wage is the legal minimum employers must pay their workers. The government is committed to creating an economy that works for everyone, and ensuring workers are paid fairly.

It is the responsibility of all employers to pay the correct minimum wage to their staff, and HM Revenue and Customs takes enforcement action against those who do not. The rules for when the National Minimum Wage must be paid are set out in the National Minimum Wage Regulations 2015 and are explained in government guidance entitled 'Calculating the National Minimum Wage'. The rules for when the National Minimum Wage should be paid to staff on overnight "sleep-in" shifts are described in that guidance.

"Sleep-in" shifts are most commonly undertaken by care workers in the social care sector. Care workers provide essential support to some of the most vulnerable members of society, and it is essential that they are paid in accordance with the law, including the National Minimum Wage, for the work that they do.

HM Revenue and Customs is currently investigating social care providers for underpayment of "sleep-in" shifts. The government recognises that the cumulative financial liability of penalties and arrears of wages could pose significant challenges to the social care sector. In extreme circumstances, providers may be unable to meet their obligations to repay their workers.

The stability of the social care sector is a key government priority. Consequently, at the Spring Budget the government announced that it was providing an additional £2bn to councils in England for social care, including £1bn this year.

Furthermore, the government is today (26 July 2017) announcing a set of further, exceptional measures to support the social care sector. These measures are aimed at minimising disruption to the sector, and in particular ensuring workers are not adversely impacted by that disruption and they receive wages owed.

The government will waive the financial penalties faced by employers who are found to have underpaid their workers for "sleep-in" shifts. These penalties are levied by HM Revenue and Customs and do not affect the arrears of wages to be received by workers in cases of underpayment of the National Minimum Wage. The government recognises that written guidance published before February 2015 was potentially misleading. The waiver is to apply to any arrears of pay resulting from "sleep-in" shifts that took place before today. Any employer underpaying their staff for these shifts in the future will be liable to pay financial penalties, in the usual way, of 200% of the arrears found.

The government will continue to work with representatives of the social care sector to see how it might be possible to minimise any impact on provision of social care as a result of this situation. To allow this work to take place before deadlines of arrears of wages are enforced, the government will adopt a policy of temporarily suspending enforcement activity of “sleep-in” shifts. This suspension will apply until 2 October 2017. It will apply to HM Revenue and Customs investigations where there may be an underpayment in respect of “sleep-in” shifts, and applies to employers in the social care sector only.

The government:

- Re-affirms its expectation all employers pay workers according to the law, including the National Minimum Wage, which is explained in guidance entitled “Calculating the National Minimum Wage”.
- Will waive financial penalties faced by all employers found to have underpaid their workers for “sleep-in” shifts, when those shifts took place before 26 July 2017;
- Has adopted a policy of suspending HM Revenue and Customs enforcement activity concerning payment of “sleep-in” shifts by social care providers, which will apply until 2 October 2017; and
- Will work with representatives of the social care sector, during the period of that suspension, to see how it might be possible to minimise any impact on provision of social care as a result of this situation.

July 2017