

## National Minimum Wage Compliance in the Public Sector

### Enforcement of NMW legislation

- HMRC enforce National Minimum Wage (NMW) legislation on behalf of the Department for Business, Energy & Industrial Strategy (BEIS).
- NMW Compliance is part of HMRC Taskforces & Specialist Compliance within Individuals Small Business Compliance (ISBC). They have 450 officers working nationally who act impartially to enforce the legislation.
- When HMRC receive a complaint from a worker, it MUST consider that complaint. This often results in an investigation.
- If HMRC find that workers have been underpaid it will usually issue a Notice of Underpayment (NoU).
- A NoU will include a penalty of up to 200% of the value of arrears.
- In all cases where a NoU is issued HMRC refer the details of the employer to BEIS.
- BEIS periodically 'Name & shame' employers who have failed to pay the NMW.

### What HMRC consider during an investigation

- **Status** – the first thing that HMRC check is that individuals are 'workers' for NMW purposes. An individual must be classified as a worker to have an entitlement to the NMW.
- **Type of work** – for NMW purposes there are four types of work, these are:
  - Salaried
  - Time
  - Output
  - Unmeasured

Type of work is determined by examining the way that we consider what is 'working time' for NMW purposes.

### Type of work – Public Sector

- HMRC find that the vast majority of employers do not understand type of work or the effect it has on the payment of the NMW.

- Employers and employees regularly believe that they are 'salaried' when in fact, HMRC determine that another type of work is being performed.
- In the majority of cases employees of UK Public Sector will be performing either salaried or unmeasured work.
- Because of the historical changes and variations in contractual arrangements it is possible that employees doing the same job at the same grade could be performing different types of work.

### **Risk of non-compliance?**

- The introduction of the National Living Wage (NLW) in April 2016 and its subsequent rate increases have slowly eroded the 'buffer' that may have existed between public sector basic pay levels and NLW.
- This has been exasperated by the pay freeze.
- HMRC would consider any employer paying at or even slightly above the NMW/NLW to be at risk of non-compliance.
- This is a potential problem at lower grade roles across the public sector where starting pay can be as low as £15,282 per year. When other factors are considered such as deductions, it may be possible for other grades to be impacted.

### **Common problems – non-payment of working time**

- Many public sector organisations operate flexible working arrangements that allow workers to work additional hours within a pay reference period (PRP).
- For workers performing salaried hours work this can be a problem at the end of the contractual year because workers might not be paid the NMW in the last PRP.
- For workers performing unmeasured work this can be a problem in almost any PRP because the worker should be paid for all of the hours that they work in that PRP. This is a particular issue when there are a higher than average number of working days in the PRP.
- In some organisations, workers might be required to pass through security before and after work. They might also be required to change in to uniform on site. HMRC are likely to consider this to be working time for NMW purposes.

### **Common problems – deductions from pay**

- Any deduction from pay (except statutory deductions for tax and NIC etc) or payment made by a worker in relation to their expenditure in connection with their employment will have the effect of reducing pay for NMW purposes.
- It does not matter whether the worker agreed to these deductions.
- Examples of deductions that can cause an NMW underpayment are:

- Cost of or payment for uniform
- Provision of childcare
- Salary sacrifice
- Administration charges

### **More information**

- HMRC recommends that public sector employers review their pay practices on a regular basis to ensure they are compliant with NMW legislation.
- We recommend that employers should be familiar with:
  - The NMW Act 1998
  - The NMW Regulations 2015
  - Guidance for employers is available online in the BEIS document – [‘Calculating the minimum wage’](#)
  - Employers should also be aware of the BEIS document – [‘National Minimum wage : Policy on HM Revenue & Customs enforcement, prosecutions and naming employers who break national minimum wage law’](#).