



FACT SHEET 3

ENFORCING YOUR RIGHT TO THE NATIONAL MINIMUM WAGE

The National Minimum Wage (NMW) came into force in the UK on the 1st April 1999. As a homeworker, unless you are running your own business, you are entitled to the national minimum wage and to protection if you take action to enforce your right. If you are entitled to the national minimum wage, and believe that you are being paid less than you should, there are a number of things that you can do:

- Contact NGH Employment Rights Advice Line on freephone 0800 174 095 for confidential advice, assistance or help, or
- Contact the supplier of your home work and tell them that you believe that you have not been paid the NMW
- Get access to records kept by the supplier of your homework that relate to your work and pay
- Make a complaint to the NMW Compliance Unit
- Make a claim for non-payment of the NMW to an Employment Tribunal (If you are an employee you will need to submit a grievance first.)
- Make a claim for non-payment of the NMW to the County Court

This Fact Sheet will help you to decide which option might be best for you.

How can I work out whether I have been paid the NMW?

If you have been keeping your own records of how much you have been paid, and how many hours you have worked for that pay, you should be able to work out whether you have been paid at least the level of the national minimum wage for each pay period. If you have not been keeping records of the number of hours that you have worked, it may be harder for you to work out whether you have

been paid the NMW, particularly if you are paid by piece rates. Homeworkers that are paid by piece rates tend to concentrate on how many items they produce, package, assemble or process rather than the amount of time that it takes them to do the work. However, the NMW is expressed as an hourly rate of pay and so it is important for homeworkers to start to think in terms of time as well as in terms of output.

If you do not keep records of the number of hours that you work now, you should start to do so immediately. Contact the NGH freephone Advice and Information Line for a copy of our Fact Sheet on keeping records for NMW purposes. You also have a right to see your employers' records that relate to your pay. These may also give you the information that you need to find out whether you have been paid enough. If you are still unsure about whether you have been paid the national minimum wage, contact the NGH Freephone Advice Line on 0800 174095 for advice.

Should I contact the supplier of my homework?

Some homeworkers have successfully enforced their right to be paid the NMW after telling their supplier of homework that they have not been paid enough. Several firms that use homeworkers have also contacted NGH asking for advice on how to ensure they are paying their homeworkers the right amount. Suppliers of homework, particularly those paying by piece rates, may believe that their rates of pay are enough to enable homeworkers to earn the NMW unless they are told otherwise.

If you are an employee you will not be able to take a case to Employment Tribunal unless you have first submitted a grievance.

If you do not wish to contact your supplier of homework, you can proceed straight to a complaint to the NMW Compliance Unit.

My supplier of homework says that I am not entitled to the NMW because I am self-employed. What should I do?

Homeworkers, unless they are genuinely self-employed and running their own businesses, are entitled to the national minimum wage (NMW). This means that most homeworkers, who work for another person, or for a firm or company, are entitled to the national minimum wage, even if they are currently deemed to be responsible for paying their own income tax and National Insurance contributions. According to the National Minimum Wage Act 1998, Section 28 (1), it is up to your employer to prove that you do not qualify for the national minimum wage rather than for you, the worker, to prove that you do qualify. If the supplier of your homework is treating you as a self-employed worker, or you are unsure of your employment status, contact the NGH Freephone Advice and Information Line on 0800 174095 for more information.

My supplier of homework has said that s/he cannot afford to pay the NMW. What should I do?

If you are entitled to receive the full level of the national minimum wage your employer cannot force you to accept a lower rate of pay, nor can you legally agree to accept a lower rate of pay from your employer. If your employer asks you to sign anything agreeing to a lower rate of pay, this will have no legal effect. If you are unsure about whether you are being paid the level of the national minimum wage, you can contact the NGH Freephone Advice Line on 0800 174095 or the confidential DTI National Minimum Wage Helpline on 0845 6000 678 in England Scotland and Wales, or 0845 6500 207 in Northern Ireland (local call rates apply).

If I want to see my supplier's records, what should I do?

You have a right to see the records that your employer keeps which relate to your pay, if you have reason to believe that you are be-

ing underpaid. Your employer must keep sufficient records to be able to prove that they are paying their workers the national minimum wage. It is an offence for an employer to fail to keep records or to keep false records. If you want to see your records, you must write to your employer and tell them. Contact NGH for more information.

Your employer must comply with your request within 14 days of receiving your letter. This deadline can only be extended if you agree. According to the National Minimum Wage Act 1998, Section 10 (8), the records must be produced for you to inspect either:

- At your place of work
- At any other place which it is reasonable for you to attend to inspect the records
- At any other place agreed between you and your employer

When you inspect your records, you are entitled to take someone with you if you wish to do so. You must let your employer know if you are going to take someone with you. You are also entitled to take copies of relevant records. You may be charged a fee for accessing your records under the Data Protection Act and your employer may also make a charge for making copies. Make sure you check with your employer whether you will be charged and how much you will have to pay beforehand.

What if my employer refuses to let me see the records?

If your employer refuses to let you see your records, you can lodge a complaint with an Employment Tribunal (ET). If you need more information about how to make an ET claim call the NGH Case Worker on freephone 0800 174 095 or the Employment Tribunal Service enquiry line on 0845 795 9775. If a tribunal upholds your complaint, your employer will have to pay you 80 times the level of the national minimum wage in compensation. This would be equal to £441.60 at the present NMW rate of £5.52 an hour.

Before lodging a complaint with an Employment Tribunal you should take advice. Call NGH on 0800 174 095 for more details.

If I have not been paid the NMW, what can I do?

There are several ways in which you can enforce your entitlement:

- Contact the NGH Case Worker for more advice on how we can assist you;
- Make a complaint (this can be anonymous if you choose) to the NMW Compliance Unit;
- Make an application to an Employment Tribunal (if you are an employee you will not be able to make a complaint unless you have first submitted a grievance.);
- Issue a claim through a county court.

Please note that, according to the National Minimum Wage Act 1998, Section 28 (2), it is up to the supplier of your homework to prove that s/he has paid you at least the level of the NMW rather than for you, the worker, to prove that s/he has not. **However, if you decide to make any kind of formal complaint about non-payment of the NMW you will be asked to provide evidence to show that you have not been paid enough.** For this reason, it is important for you to keep a record of the amount of pay that you receive, and the number of hours that you have worked for that pay, for each pay period. The Compliance Unit may be unable to investigate your case if you haven't kept records that can be used as evidence. If you want more information about keeping records for NMW purposes, contact the NGH and ask for our Fact Sheet on keeping records.

How do I make a complaint to the NMW Compliance Unit?

HMRC (Her Majesty's Revenue and Customs, formerly the Inland Revenue) is the main enforcement agency. This agency has a range of powers including:

- Requiring employers to produce and explain their pay records;
- Entering employers' premises to interview them;
- Requiring employers to attend their offices for interview;
- Serving enforcement notices requir-

ing employers to pay the national minimum wage;

- Serving penalty notices imposing a financial penalty on the employer for failing to pay the national minimum wage;
- Encouraging workers to take cases to employment tribunal or civil court;
- Taking cases on behalf of workers;
- Prosecuting employers.

If your employer fails to pay you at least the level of the national minimum wage, you can make a complaint to the compliance unit by calling National Minimum Wage enquiries on 0845 6000 678 in England, Scotland and Wales, or 0845 6500 207 in Northern Ireland (local call rates apply), or by completing a Complaint Form. Your complaint will be assessed and then may be passed to the team of Compliance Officers that deal with complaints in your area.

Will my supplier of homework know that I have made the complaint?

Any information that you give will be treated confidentially. The Compliance Officer that investigates your claim will not tell your supplier of homework who has made the complaint. The Compliance Officer will keep your details confidential for as long as possible and will not divulge them without checking with you first.

What if my supplier of homework sacks me or threatens me in some way?

If you are entitled to the national minimum wage, the law protects you from being sacked or victimised by your employer because you take action to enforce your rights. You can claim unfair dismissal if you have a contract of employment - if you are an employee. If you do not have a contract of employment, you can still claim that you have suffered detriment if your employer sacks you or takes some other action against you because you tried to enforce your right to the national minimum wage. You are protected against dismissal or detriment from day one of your employment if your case relates to the national minimum wage.

You should be aware that the Compliance Unit can take complaints from other people who are concerned that a particular employer is not paying the national minimum wage and can also inspect the records of randomly selected employers at any time. So your supplier of homework may be investigated even if no one makes a complaint, and you could be contacted by a NMW Compliance Officer.

If it can be proved that your supplier of homework has not paid you the NMW, you will be entitled to receive back pay from the 1 April 1999 (or from when you started work if it was after that date). If you have kept records of hours and amount of work done this can be used as evidence by the Compliance Unit if they take a case against the employer.

Some homeworkers receiving large amounts of money as a result of a NMW investigation. For example, a homeworker from Derbyshire was recently awarded over £1,700 in back pay by an Employment Tribunal. Also a group of homeworkers in the south of England received £140,000 in back pay after making a NMW complaint.

If you have already left the employment where you were not receiving NMW, you can still complain to the Compliance Unit who can make a claim on your behalf. You can still, if you prefer, make an individual claim through NGH, the County Court or through a trade union or solicitor. Please contact us if you are in this situation.

How do I make a claim to an Employment Tribunal or county court?

In some cases, the best option for enforcing your right to the NMW is to make a complaint to the NMW Compliance Unit. However, you may wish to consider making a claim through an Employment Tribunal or a county court. If

you wish to make a claim to an Employment Tribunal you must do so within three months of the event that you are complaining about (e.g. the date that you were sacked or the date that you were last paid).

NGH can assist you in making application to an Employment Tribunal, the NGH Case Worker can represent you and will support you throughout the process. You may also wish to consider these options if you have made a complaint to the NMW enforcement agency and you are advised that it is likely to take more than three months to investigate. You do not need legal representation to take a case to an Employment Tribunal or a county court but you should take some advice before you do so.

If you wish to discuss your entitlement to the national minimum wage and/or what you can do to enforce your entitlement, you can contact National Minimum Wage enquiries on 0845 6000 678 in England, Scotland and Wales, or 0845 6500 207 in Northern Ireland (local call rates apply), or write to NMW Enquiries, Freepost PHQ1, Newcastle upon Tyne, NE98 1ZH.

You could also log on to the government website TIGER (Tailored Interactive Guidance on Employment Rights) at www.tiger.gov.uk

Your local Citizens Advice Bureau (CAB), law centre or other local advice agency may be able to help (you will find their telephone numbers in your local telephone directory).

This document is intended only to provide general advice on this subject. The document is provided on this basis and NGH would like to make it clear that further specialist advice may need to be taken on this subject.

Last updated October 2007.

National Group on Homeworking,
Office 26, 30-38 Dock Street, Leeds LS10 1JF.
Telephone: 0113 245 4273. Fax: 0113 246 5616.
E-mail: admin@ngh.org.uk
Website: www.ngh.org.uk

NGH is a company limited by guarantee registered in England and Wales, company number 2467693