
STATUTORY INSTRUMENTS

1999 No. 584

The National Minimum Wage Regulations 1999

PART IV

**REMUNERATION COUNTING TOWARDS
THE NATIONAL MINIMUM WAGE**

Payments to the worker to be taken into account

- 30.** The total of remuneration in a pay reference period shall be calculated by adding together—
- (a) all money payments paid by the employer to the worker in the pay reference period;
 - (b) any money payments paid by the employer to the worker in the following pay reference period in respect of the pay reference period (whether in respect of work or not);
 - (c) any money payment paid by the employer to the worker later than the end of the following pay reference period in respect of work done in the pay reference period, being work in respect of which—
 - (i) the worker is under an obligation to complete a record of the amount of work done,
 - (ii) the worker is not entitled to payment until the completed record has been submitted by him to the employer, and
 - (iii) the worker has failed to submit a record before the fourth working day before the end of that following pay reference period,provided that the payment is paid in either the pay reference period in which the record is submitted to the employer or the pay reference period after that;
 - (d) where the employer has provided the worker with living accommodation during the pay reference period, but in respect of that provision is neither entitled to make any deduction from the wages of the worker nor to receive any payment from him, the amount determined in accordance with regulation 36.

Reductions from payments to be taken into account

- 31.—(1)** The total of reductions required to be subtracted from the total of remuneration shall be calculated by adding together—
- (a) any money payments paid by the employer to the worker in the pay reference period that, by virtue of regulation 30(b) or (c), are required to be included in the total of remuneration for an earlier pay reference period;
 - (b) in the case of—
 - (i) work other than salaried hours work, any money payments paid by the employer to the worker in respect of periods when the worker was absent from work or engaged in taking industrial action;
 - (ii) salaried hours work, any money payment paid by the employer to the worker attributable to the hours (if any) by which the number of hours determined under

regulation 21(2) is required to be reduced under regulation 21(3) (worker entitled to less than normal proportion of annual salary because of absence from work), whether under the direct application of those regulations or the application of them required by regulation 22(5)(a);

- (c) any money payments paid by the employer to the worker in respect of—
 - (i) time work worked by him in the pay reference period involving particular duties that is paid for at a higher rate per hour than the lowest rate per hour payable to the worker in respect of time work worked by him involving those duties during the pay reference period, to the extent that the total of those payments exceeds the total of the money payments that would have been payable in respect of the work if that lowest rate per hour had been applicable to the work;
 - (ii) particular output work worked by him in the pay reference period that is paid for at a higher rate than the normal rate applicable to that work by reason of the work being done at a particular time or in particular circumstances, to the extent that the total of those payments exceeds the total of the money payments that would have been payable in respect of the work if the normal rate had been applicable to the work;
- (d) any money payment paid by the employer to the worker by way of an allowance other than an allowance attributable to the performance of the worker in carrying out his work;
- (e) any money payment paid by the employer to the worker representing amounts paid by customers by way of a service charge, tip, gratuity or cover charge that is not paid through the payroll;
- (f) any money payment paid by the employer to the worker to meet a payment by the worker that would fall within regulation 34(1)(b) (payments by workers on account of expenditure in connection with their employment to persons other than their employer) but for the worker's payment being met or designed to be met by the employer;
- (g) any deduction falling within regulation 32;
- (h) any payment made by or due from the worker in the pay reference period falling within regulation 34;
- (i) the amount of any deduction the employer is entitled to make, or payment he is entitled to receive from the worker, in respect of the provision of living accommodation by him to the worker in the pay reference period, as adjusted, where applicable, in accordance with regulation 37, to the extent that it exceeds the amount determined in accordance with regulation 36.

(2) To the extent that any payment or deduction is required to be subtracted from the total of remuneration by virtue of more than one sub-paragraph of paragraph (1), it shall be subtracted only once.

Deductions to be subtracted under regulation 31(1)(g)

32.—(1) The deductions required to be subtracted from the total of remuneration by regulation 31(1)(g) are—

- (a) any deduction in respect of the worker's expenditure in connection with his employment;
- (b) any deduction made by the employer for his own use and benefit (and accordingly not attributable to any amount paid or payable by the employer to any other person on behalf of the worker), except one specified in regulation 33.

(2) To the extent that any deduction is required to be subtracted by virtue of both sub-paragraphs of paragraph (1), it shall be subtracted only once.

Deductions not to be subtracted under regulation 31(1)(g)

33. The deductions excepted from the operation of regulation 32(1)(b) are—

- (a) any deduction in respect of conduct of the worker, or any other event, in respect of which he (whether together with any other workers or not) is contractually liable;
- (b) any deduction on account of an advance under an agreement for a loan or an advance of wages;
- (c) any deduction made to recover an accidental overpayment of wages made to the worker;
- (d) any deduction in respect of the purchase by the worker of any shares, other securities or share option, or of any share in a partnership.

Payments made by or due from a worker to be subtracted under regulation 31(1)(h)

34.—(1) The payments made by or due from the worker required to be subtracted from the total of remuneration by regulation 31(1)(h) are—

- (a) any payment due from the worker to the employer in the pay reference period on account of the worker's expenditure in connection with his employment;
- (b) any payment paid in the pay reference period on account of the worker's expenditure in connection with his employment to the extent that the expenditure consists of a payment to a person other than the employer and is not met, or designed to be met, by a payment paid to him by the employer;
- (c) any other payment due from the worker to the employer in the pay reference period that the employer retains or is entitled to retain for his own use and benefit except for a payment required to be left out of account by regulation 35.

(2) To the extent that any payment is required to be subtracted by virtue of more than one subparagraph of paragraph (1), it shall be subtracted only once.

Payments not to be subtracted under regulation 31(1)(h)

35. The payments excepted from the operation of regulation 34(1)(c) are—

- (a) any payment in respect of conduct of the worker, or any other event, in respect of which he (whether together with any other workers or not) is contractually liable;
- (b) any payment on account of an advance under an agreement for a loan or an advance of wages;
- (c) any payment made to refund the employer in respect of an accidental overpayment of wages made by the employer to the worker;
- (d) any payment in respect of the purchase by the worker of any shares, other securities or share option, or of any share in a partnership;
- (e) any payment in respect of the purchase by the worker of any goods or services from the employer, unless the purchase is made in order to comply with a requirement in the worker's contract or any other requirement imposed on him by the employer in connection with his employment.

Amount permitted to be taken into account where living accommodation is provided

36.—(1) The amount referred to in regulations 30(d) and 31(1)(i) is whichever is the lesser of the following—

- (a) the amount resulting from multiplying the hours of work done in the pay reference period (determined in accordance with regulations 20 to 29) by 50p, and reducing that product

by the proportion which the number of days (if any) in the pay reference period for which living accommodation was not provided bears to the total number of days in the pay reference period; or

- (b) the amount resulting from multiplying the number of days in the pay reference period for which living accommodation was provided by £2.85.

(2) For the purposes of paragraph (1), living accommodation is provided for a day only if it is provided for the whole of a day from midnight to midnight.

Adjusted deductions and payments in respect of living accommodation

37.—(1) Where an employer is entitled to make deductions or receive payments in respect of the provision of living accommodation to a worker and in a pay reference period—

- (a) a worker is absent from work for a day or more when, but for his absence, he would be expected to perform time work (for example because he is sick or taking a holiday),
- (b) during that period of absence he is paid, for the hours of time work for which he is absent, an amount not less than the amount to which he would have been entitled under these Regulations, but for his absence,
- (c) the hours of time work worked by the worker in the pay reference period are, by reason of his absence, less than they would be in a pay reference period containing the same number of working days in which the worker worked for the normal number of working hours (and for no additional hours), and
- (d) the amount of the deduction the employer is entitled to make or payment he is entitled to receive in respect of the provision of living accommodation to the worker during the pay reference period does not increase by reason of the worker's absence from work,

the provisions of paragraph (2) shall apply.

(2) For the purposes of regulation 31(1)(i), the amount of the deduction the employer is entitled to make or payment he is entitled to receive in respect of the provision of living accommodation shall be adjusted by multiplying that amount by the number of hours of time work actually worked by the worker in the pay reference period (as determined in accordance with regulation 20) and dividing the figure so obtained by the total number of hours of time work the worker would have worked in the pay reference period (including the hours of time work actually worked) but for his absence.