
STATUTORY INSTRUMENTS

1999 No. 584

The National Minimum Wage Regulations 1999

PART III

**WORKING TIME FOR THE PURPOSES
OF THE NATIONAL MINIMUM WAGE**

The hours worked in a pay reference period

Determining the hours of salaried hours work where the basic hours have been exceeded

22.—(1) Where in any calculation year the total of the hours referred to in paragraph (3) exceeds the basic hours, this regulation, and not regulation 21, applies for the purpose of determining the salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded and in the subsequent pay reference periods (if any) in the calculation year.

(2) In this regulation and regulation 23—

“the basic hours” means—

- (a) in a calculation year when the basic number of hours in respect of which the worker is entitled under his contract to his annual salary is not varied, that basic number;
- (b) in a calculation year when that basic number of hours is varied—
 - (i) where the basic hours are determined in respect of the calculation year before the only or first variation takes effect, the basic number of hours ignoring the effect of the variation,
 - (ii) where the basic hours are determined after a variation has taken effect, the sum of the following numbers of hours—
 - (aa) for the period beginning with the day on which the variation in question takes effect until the end of the year, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with that variation, in a year of 365 days, which the number of days in the period bears to 365,
 - (bb) for the period starting with the beginning of the year and ending with the day before the day on which the only or first variation took effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, before the variation, in a year of 365 days, which the number of days in the period bears to 365, and
 - (cc) where there has been more than one variation, for each period beginning with the day on which a particular variation took effect and ending on the last day before the next variation took effect, the proportion of the basic number of hours in respect of which the worker would be entitled to his annual salary, in accordance with the earlier variation, in a year of 365 days, which the number of days in the period bears to 365,

but in applying regulation 22 for the purposes of paragraphs (5)(a) and (b)(i) and (6)(a) the definition of “the basic hours” in regulation 21(1) shall be used.

“calculation year” means–

- (a) in the case of a worker employed by an employer when these Regulations come into force, for so long as he continues in that employment, the year beginning on the day these Regulations come into force, and each subsequent year beginning on the anniversary of that day;
- (b) in the case of a worker whose annual salary is payable monthly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment–
 - (i) where the worker becomes employed on the first day of a month, the year beginning with the first day of that month and each subsequent year beginning on the anniversary of that day,
 - (ii) where the worker becomes employed on any other day of a month, the period beginning with that day and ending with the day before the first anniversary of the first day of the next month, and each year beginning on that anniversary or on a subsequent anniversary of the first day of that month;
- (c) in the case of a worker whose annual salary is payable weekly and who becomes employed by an employer after these Regulations come into force, for so long as he continues in the same employment, the year beginning with the first day of his employment and each subsequent year beginning on the anniversary of that day.

(3) In determining for the purposes of paragraph (1) whether the basic hours have been exceeded by a worker in any calculation year and, if so, when they were exceeded, the following hours in that year shall be taken into account–

- (a) the number of the worker’s working hours that fell within the basic hours,
- (b) the number of hours for which the worker has been absent from work that fell within the basic hours,
- (c) any hours worked by the worker outside the basic hours in respect of which the worker had no entitlement under his contract to any payment other than his annual salary,
- (d) time required to be treated as working hours by regulation 16, to the extent that such time consisted of hours in respect of which the worker had no entitlement under his contract to his annual salary or to any other payment,

but excluding the number of hours, if any, during which the worker was engaged in taking industrial action.

(4) In that part of the pay reference period during which the basic hours are exceeded which is referred to in paragraph (5)(b) and in each subsequent pay reference period (if any) in the calculation year, a worker shall be treated as working for the sum of the following–

- (a) the number of hours in the pay reference period that would have fallen to be taken into account under paragraph (3)(a) if the basic hours had not been exceeded, but excluding any time during those hours in which the worker was engaged in taking industrial action, and
- (b) time required to be treated as working hours by regulation 16, to the extent that such time consists of hours in respect of which the worker is not entitled under his contract to his annual salary or to any other payment,

and the number of hours determined under this paragraph is referred to in paragraphs (5) and (6) and in regulation 23(3) as “the actual working hours”.

(5) The salaried hours work worked by a worker in the pay reference period during which the basic hours are exceeded shall be the sum of the following–

- (a) in relation to the part of the pay reference period before the day on which the basic hours are exceeded, the number of hours that result from applying regulation 21 to the part as if it were a pay reference period containing the number of days in the part; and
 - (b) in relation to the part of the pay reference period beginning with the day on which the basic hours are exceeded, the sum of—
 - (i) the number of hours that result from applying regulation 21(2) to the part as if it were a pay reference period containing the number of days in the part, but ignoring any reduction required by regulation 21(3), and
 - (ii) the actual working hours in that part.
- (6) The salaried hours work worked by a worker in each subsequent pay reference period until the end of the calculation year shall be the sum of—
- (a) the number of hours that result from applying regulation 21(2) in relation to the pay reference period, but ignoring any reduction required by regulation 21(3); and
 - (b) the actual working hours in the pay reference period.