

Employers providing staff accommodation were in breach of the minimum wage

A recent landmark case means that many employers in the leisure sector may not be paying the National Minimum Wage (NMW) to staff provided with accommodation. The case, brought by HMRC against the owners of Butlins and Haven Holidays, concerned the so-called “accommodation offset” for the NMW, whereby a certain amount of money in respect of accommodation provided to staff may be taken into account when determining whether a worker has been paid the minimum wage.

The ruling is important as employers who are found not to have paid the minimum wage are required to pay arrears to the worker, may face strict fines if this is not done within a certain period, and in the worst cases may be criminally prosecuted. Two recent sets of policy and guidance notes issued by the DTI set out the government’s clear strategy of cracking down on NMW abuses.

Accommodation is the only benefit in kind which may be taken into account for the purposes of the NMW, but regardless of the value of the accommodation provided to the worker, only £4.15 per day may be taken into account, up to a weekly maximum of £29.05*. Any amount charged for accommodation above this operates to reduce the worker’s pay for the purposes of the NMW.

In this case, seasonal staff employed by Butlins and Haven Holidays as, for example, bar staff, shop assistants, receptionists and security guards were provided with on-site accommodation if they so chose. The employer charged the maximum weekly amount allowed for accommodation at the time, which did not reduce the workers’ pay for the purposes of the NMW. However, it did make an additional fortnightly charge of £6 for the supply of heat and light to the accommodation. The question was whether this compulsory charge operated to reduce the workers’ pay below the level of the NMW.

The Court of Appeal held that it did. The deduction was not a matter of choice for the worker. It did not matter that living in the accommodation was voluntary, nor that the amount deducted for heat and light was in all likelihood below the market rate for the supply of such energy. The legislation is strict to ensure that workers are protected from unscrupulous employers who may seek to make excessive deductions resulting in less pay.

Interestingly it was pointed out by one of the appeal judges that if the supply of energy had been made through individual gas bottles and pay-as-you-use meter charging, for which the worker was directly responsible to the energy supplier, the employer would not have deducted £3 per week from workers’ wages, and would not have been paying below the minimum wage.

*The accommodation offset rates normally change in October each year. From 1 October 2007 the day allowance will rise to £4.30 and the weekly maximum will rise to £30.10.

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