



November 2006

nursery and childcare news

The National Minimum Wage

With HM Revenue & Customs now 3 months into their year-long campaign to enforce payment of the National Minimum Wage (NMW) within the childcare sector, here are the things you should check before they check you.

Are you paying the correct rates?

From 1 October 2006 these changed to:

- £5.35 per hour for those aged 22 years or older
- £4.45 per hour for those aged 18 to 21 years inclusive
- £3.30 per hour for those under 18 and no longer of compulsory school age.

Anyone who is legally entitled to work in the UK should be paid at least the NMW if they are employed, or a worker (so that includes 'bank' staff).

Are your calculations correct?

There are long lists of payments that can be counted towards the NMW (eg pension contributions) and those that cannot (eg overtime payments). If you pay anything other than a straight hourly rate you should check the DTI's detailed guidance on what can and can't be counted.

You also need to ensure that you are paying the NMW for all hours worked. This sounds simple but can be a complex calculation. You need to make sure, for example, that you are correctly treating unpaid breaks, rest breaks and training during normal working hours.

Are you keeping proper records?

It is up to you to show that you pay the NMW. You must, therefore, keep sufficient written records for all your staff. This could include payslips, records of hours worked, records of overtime worked and the rate at which it was paid, evidence of shift premia and other allowances. In addition, you must be able to show that any deductions are made correctly so you

also need to keep records of any loans or advances made to staff, deductions for trade union subscriptions or pension contributions. You can be required to produce relevant pay documentation by both your staff and HMRC officers. Therefore it is prudent to keep records for 6 years.

Are you aware of the penalties?

If you fail to show your staff the records relating to them when they request it:	An award to each member of staff affected of up to 80 times the current level of the NMW
For failing to pay the NMW:	An enforcement notice: <ul style="list-style-type: none"> ■ to start paying the NMW ■ to make good previous underpayments and if the notice is ignored: <ul style="list-style-type: none"> ■ additional penalties ■ a claim by staff in the Employment tribunal or courts for the amount they have been underpaid.
There are 6 criminal offences under the legislation relating to refusal to pay NMW and failure to keep or produce proper records:	Each is punishable by a fine of up to £5000

There is a DTI booklet called 'A detailed guide to the National Minimum Wage' which can be found at <http://www.dti.gov.uk/files/file11671.pdf> which provides further information. Alternatively contact Mary Chant at mary.chant@bllaw.co.uk



Mary Chant is a partner in Blake Laphorn Linnell's Health and Care team, with a particular expertise in nurseries and childcare provision. Please contact her on 023 8063 1823, or email her at mary.chant@bllaw.co.uk.

This publication is not a substitute for detailed advice on specific transactions and problems and should not be taken as providing legal advice on any of the topics discussed.

The briefing can also be provided in electronic form. If you would prefer to receive it by email, please email John Parkinson at briefings@bllaw.co.uk and specify 'Nurseries' in the subject line.

If you do not wish to receive any similar mailings from Blake Laphorn Linnell in the future, please email John Parkinson at john.parkinson@bllaw.co.uk or contact him on 01489 555044.