

National Minimum Wage and the accommodation allowance



Tozers' Stephen Jennings explains the accommodation allowance and how parks can remain compliant with the law

All park owners are familiar with the need to pay the National Minimum Wage (NMW) or the National Living Wage (NLW), which increase every year.

The principal current rates (from 1 April 2018) are:

16 to 17-year-old rate	Development rate (age 18-20)	Adult rate (age 21-24)	National Living Wage (age 25+)
£4.20	£5.90	£7.38	£7.83

In theory, paying the minimum wage is very straightforward – businesses must simply ensure they are paying at or above the minimum rates and they will be fine. In practice, of course, there are pitfalls for the unwary which can and do catch out even well-informed park owners.

Does all pay count?

No – only the following:

- basic pay
- bonuses
- commission
- accommodation allowance – see below.

These payments do not count:

- overtime premiums – if higher rates are paid for overtime (e.g. £8.00 per hour overtime, but £7.00 per hour basic pay) only the basic pay rate (e.g. £7.00) can be taken into account for all hours worked including overtime
- benefits in kind (e.g. if childcare vouchers are provided)
- pension payments
- any top-up allowances (e.g. an on-call allowance)
- tips paid through the payroll.

Accommodation allowance

The policy behind the minimum wage legislation is that workers should receive the minimum wage in the form of cash, rather than benefits in kind. The general rule therefore is that non-monetary benefits in kind are not counted towards satisfaction of the minimum wage, with the key exception of the accommodation allowance.

The accommodation allowance is a notional sum of money which can be deducted from the minimum wage otherwise payable to a worker where accommodation is provided to him/her. As of 1 April 2018, the accommodation allowance is £7 for each day (midnight to midnight) that the employer provides accommodation to the worker in the pay reference period.

What is accommodation?

In most cases, it will be obvious whether or not accommodation is being provided. However, there are some grey areas – for example, where a park is providing only a pitch on which the worker will site their own caravan. I am not aware of this point having ever been considered by a court or tribunal, but my view is that provision of a pitch only is unlikely to count as the provision of accommodation, meaning it could be risky for a park owner to rely on the accommodation allowance in these circumstances.

Applying the accommodation allowance

Where accommodation is provided as a benefit in kind (that is, without charge by the park owner), the park owner can add an amount equal to the accommodation allowance onto the total remuneration when calculating pay for minimum wage purposes. ➤

1

Example

Alice owns a park and pays her employee Brenda, who is over 25, £7.60 per hour on a weekly basis. Alice also provides a caravan to Brenda without charge. Brenda works 25 hours each week.

Brenda is entitled to the National Living Wage, which is currently £7.83 an hour. Therefore, without taking accommodation into account, she is being paid under the minimum wage.

Multiplied by £7.60, 25 hours comes to £190 per week, which is the sum Brenda is actually paid. Alice is entitled to factor in the accommodation allowance of £7 per day or £49 per week. Adding this to the pay Brenda has actually received gives a notional figure of £239 per week.

Dividing £239 by 25 (the number of hours worked each week) gives an hourly rate of £9.56 – well above the minimum wage.

Where accommodation is not provided as a benefit in kind, but the worker pays rent to the employer (whether or not deducted directly from wages), any rent up to the value of the accommodation allowance can be disregarded, but any excess will be treated as a deduction so as to reduce the pay for NMW/NLW purposes.

2

Example

Charlie pays his employee Dave £8 per hour on a weekly basis. Dave is over 25. Charlie provides Dave with a caravan and deducts £10 a day from Dave's wages. Dave works 25 hours each week.

Dave is entitled to the National Living Wage, which is currently £7.83 per hour. On the face of it, he is therefore being paid over the minimum wage given his hourly rate.

Multiplying £8 by 25 hours comes to £200, which is the sum Dave is ostensibly paid. However, Dave is also charged £10 per day for accommodation. The accommodation allowance is £7 a day so rent up to this value can be disregarded. Dave is therefore being charged £3 per day (£21 per week) over the accommodation allowance, which is treated as a deduction from his wages.

Dave's weekly pay, for the purposes of calculating minimum wage compliance, can therefore be calculated as follows:

£8 per hour multiplied by 25 hours a week minus £21 equals £179 a week.

This figure, divided by the 25 hours Dave works each week, gives an hourly rate of £7.16, which is below the minimum wage. Charlie is at risk of a claim or enforcement action.

3

Example

Charlie realises he has a problem and decides to increase Dave's pay to £8.67 per hour.

£8.67 per hour multiplied by 25 hours per week minus £21 equals £195.75. £195.75 divided by the 25 hours Dave works each week gives an hourly rate of £7.83. Charlie is now compliant.

Market value

A question we are very often asked is what happens where the market value of the accommodation provided exceeds the accommodation allowance, which is often the case. The answer is that the market value of the accommodation provided is irrelevant for minimum wage purposes. However much the accommodation may be rented out for on the open market, an accommodation allowance of £7 a day still stands.

4

Example

Ellie employs Felicity, who is 23, to work for 35 hours per week on reception. Felicity is paid every week. While a receptionist would not normally be provided with accommodation, Felicity needs somewhere to live and Ellie has an older caravan available.

Ellie feels sorry for Felicity and is thinking of offering to rent her the caravan for £100 a week, which Ellie considers to be a very fair price as it represents a significant discount on market value.

Felicity is entitled to a minimum wage of £7.38 an hour. Working for 35 hours a week gives a figure of £258.30 per week.

Deducting the accommodation allowance of £49 a week gives a figure of £209.30, which is the minimum amount Felicity would need to be paid to comply with the minimum wage if the accommodation was provided free of charge. If Felicity is to be charged £100 each week for accommodation, this figure would increase to £309.30 a week. This means Felicity would need to be paid an hourly rate of at least £8.84 (£309.30 divided by a 35 hour week) for Ellie to be able to charge her £100 per week for the caravan.

It is not uncommon to come across situations where a worker is engaged to work on a park in return for free accommodation but with no (or very limited) pay. In most cases, unless the worker is working a very small number of hours, this is likely to be a breach of the minimum wage legislation.

5

Example

Gregor engages Harry, who is over 25, to do odd jobs on the park as required without pay. In return he lets him live in an older caravan on park for free. Harry works on average one hour each day including weekends.

Harry is entitled to a minimum wage of £7.83 an hour. Gregor is entitled to apply the accommodation allowance of £7 a day, or £49 a week. £49 per week divided by the seven hours per week Harry works gives an hourly rate of £7, which is below the minimum wage.

In this example, Gregor could become compliant by limiting Harry's hours – e.g. if Harry takes a day off each week. In this case, the £49 per week accommodation allowance divided by a working week of six hours gives an hourly rate of £8.17, which is above the minimum wage (this also has the additional benefit of complying with the law relating to weekly rest periods).

Worker choice

What if the worker can choose whether to occupy accommodation and pay a higher (perhaps market-level) rate? Many employers feel in this case that if a worker is not obliged to occupy accommodation but chooses to do so, they should be free to charge market rent as this is a separate transaction from the employment relationship.

This is not what the law says. Even in situations where a worker is happy to pay market value for accommodation or this is arranged separately from discussions about pay, the rules set out above still apply.

What about couples?

Each worker is entitled to the minimum wage and a separate calculation will need to be made for each one. Where two employees share accommodation, businesses are entitled to apply the accommodation allowance of £7 per day to each of them (i.e. they do not each have an accommodation allowance of £3.50 a day).

Accommodation-related charges

It is fairly common for a park owner to cover some or all of the incidental costs of accommodation, such as gas, electricity, water etc..

The Court of Appeal has confirmed that the accommodation allowance covers not only the accommodation itself, but any services provided in connection with the accommodation, such as gas and electricity. Therefore, a park owner paying workers the minimum wage, having already made full use of the accommodation allowance, is not entitled to levy a further charge for utilities, even if this was less than the workers would have had to pay to purchase the utilities direct from the supplier.

6

Example

Isabel wants to employ a warden couple - Julian and Katherine - who are in their 50s to work on her park over the season. Both will be paid weekly and Isabel estimates that each may work around 60 hours each week in high season. Isabel is thinking of paying them each £500 per week and deducting from this £75 a week for accommodation and a further £15 a week for gas and electricity. Each warden would therefore receive £410 per week.

To calculate minimum wage compliance, take the amount each worker is actually paid – £410 a week – to which can be added the accommodation allowance of £49 per week. This gives notional pay of £459 a week. Dividing this by the 60 hours worked each week gives an hourly rate of £7.65 – which is under the applicable minimum wage.

However, Isabel may have another compliance option which does not cost her more money. She might choose to pay each warden the same £500 per week and to deduct the same £75 a week for accommodation, but to treat utilities differently.

If she arranges for the wardens to pay the utility providers directly and so removes the £15 a week deduction for gas and electricity, the figures look rather different. Each worker will be paid £425 per week (£500 per week in wages less £75 a week for accommodation), to which can be added a notional £49 a week for the accommodation allowance, bringing the figure for pay to £474 per week. This figure, divided by the 60 hours in the working week, gives an hourly rate of £7.90 – well above the minimum wage. If, in fact, the cost of gas and electricity each week is more than £15, Isabel would actually be better off under the second option as well as being legally compliant!

7

Example

Lisa employs Minnie, who is 40, to work as a warden. Minnie comes to live on-park, sharing accommodation provided for her (which includes free gas and electricity) with her partner Nick who is not an employee.

Minnie works on average a 60 hour week, for which she is paid £500 per week. Under the terms of Minnie's contract, Lisa makes a deduction from Minnie's wages of £50 per week for Minnie's accommodation and utilities, plus an additional deduction of £50 per week for Nick, meaning Minnie receives only £400 a week. Lisa thinks it is only fair that a deduction is made for Nick's occupancy as he is staying in a park-owned unit and using gas and electricity paid for by the park.

As he is not directly employed, she thinks it makes sense to deduct this from Minnie's wages. However, this is likely to breach minimum wage legislation as the deductions exceed Minnie's maximum allowable accommodation allowance of £49 per week. Adding this to the £400 she is paid gives weekly pay of £449 (or £7.48 an hour) which is below the minimum wage.

A better approach might be to issue Nick with a separate Occupancy Licence, under the terms of which he agrees to pay £50 a week in return for the right to occupy. As always with accommodation, it is important to properly document arrangements and seek legal advice if unsure. ➤

Enforcement against park owners

A number of parks have found themselves on the wrong side of the law relating to the minimum wage. Often the owners and managers of those parks had assumed they were compliant but subsequently found out that, due to a technicality, they were in breach. The sums in question are frequently relatively modest and owners may well be able to address shortcomings by making minor changes to rates of pay or even by how pay is calculated.

Minimum wage claims can be hard to defend unless very clear records have been kept – and in the event of a challenge, the onus will very much be on park owners to be able to prove they have paid the minimum wage at all times.

With the removal of employment tribunal fees, it is much easier for workers to bring claims and the number of claims brought is on the rise. If at all unsure whether the park's arrangements comply with minimum wage legislation, act now to avoid the unnecessary risk of enforcement action being taken, or a claim being made.

For a referral to the Association's legal helpline, please contact BH&HPA central office on 01452 526911. ■

[Further information](#)

Model Work Record – timesheet: <https://tinyurl.com/y9yl7grz>