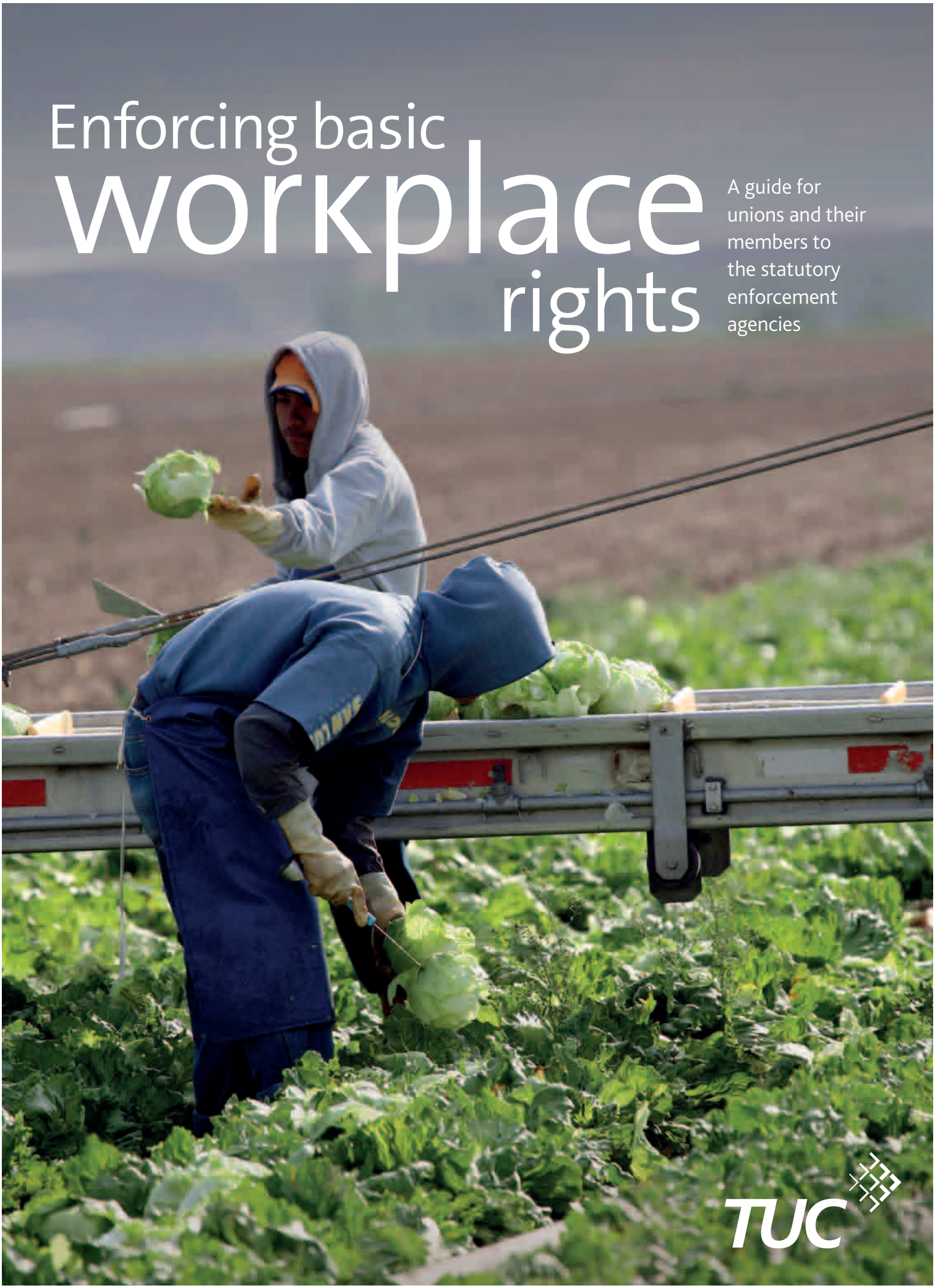
Enforcing basic workplace rights

A guide for unions and their members to the statutory enforcement agencies



TUC

Enforcing basic workplace rights

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INTRODUCTION

Trade unions are at the forefront of tackling the issues that vulnerable workers face. Trade unions have improved terms and conditions for low-paid workers and campaigned for the National Minimum Wage. A recent trade union campaign has brought about the introduction of equal treatment rights for agency workers, which will improve core terms and conditions on pay, working time and holidays for agency workers. For further information, please see the TUC guide, *Delivering Equal Treatment for Agency Workers*.

The best way for vulnerable workers to avoid being exploited and win a better deal at work is to join a union. Trade unions will often negotiate for terms and conditions that are much better than those provided by the statutory minimum. The more workers who join a trade union, the stronger their voice in the workplace becomes. Joining a union will not only offer workers support and representation: workers will also have the chance to become active in their workplaces and campaign to improve workplace conditions.

Through negotiating with employers and representing workers, unions have demonstrable experience in safeguarding the interests of vulnerable workers. However, some rogue employers may be unwilling to provide, or are ignorant of, the statutory floor of basic employment rights to which workers are entitled. In these situations workers and their trade union reps will try to resolve any workplace issues directly with the employer. This is not always possible, and negotiations may not resolve the issue. Union reps can involve enforcement bodies in their campaigns to ensure workers receive their basic workplace rights.

If union reps or vulnerable workers need information or help enforcing their basic workplace rights, they can call the Pay and Work Rights Helpline on 0800 917 2368 (see page 54). The Helpline was launched in 2009. It provides a single point of contact for all the enforcement bodies, which removes any confusion for callers of knowing who and what number to call to enforce their rights.

There are several enforcement bodies that can help workers and reps to ensure that basic workplace rights are being provided by employers. These are:

HMRC NATIONAL MINIMUM WAGE ENFORCEMENT TEAM

- enforces the National Minimum Wage for workers
- ensures unfair deductions are not taken from a worker's pay.

EMPLOYMENT AGENCIES STANDARDS INSPECTORATE

- makes sure an agency worker is paid what they are entitled to and doesn't have their wages withheld
- ensures an employment agency does not charge a fee for finding an agency worker assignments
- ensures an agency worker is given written information relating to the type of work that an employment agency will find for the worker and also relating to each assignment that an agency worker undertakes
- makes sure an agency worker is not forced into paying for additional services from the agency
- ensures an agency worker has a safe environment to work in.

GANGMASTERS LICENSING AUTHORITY

- ensures gangmasters operate with a licence
- ensures labour users only use gangmasters with a licence
- makes sure gangmasters comply with licensing standards, which ensure that agency workers:
  - are provided by a gangmaster who is considered to be a 'fit and proper person'
  - receive the National Minimum Wage
  - are provided with safe accommodation and transport services
  - are prevented from physical and mental mistreatment.

HEALTH AND SAFETY EXECUTIVE

- ensures workers are not required to work more than 48 hours per week, on average
- ensures night workers do not have to work more than eight hours in a 24-hour period, on average
- ensures night workers are given free health assessments prior to commencing work and at regular intervals from then on.

As well as describing the basic rights to which an individual is entitled, this guide examines the remit of each of these enforcement bodies, the powers of the respective enforcement officers and the sanctions they can impose on employers that breach basic workplace rights.

BIS Department for Business Innovation & Skills

GLA Gangmasters Licensing Authority

HSE Health & Safety Executive

SECTION ONE

The National Minimum Wage

Enforcement agency: HMRC

> THERE ARE PEOPLE WHO WOULD LIKE TO GET RID OF MINIMUM WAGE. BUT WE HAVE TO HAVE IT, BECAUSE IF WE DIDN'T SOME PEOPLE WOULD NOT GET PAID MONEY. THEY WOULD WORK ALL WEEK FOR TWO LOAVES OF BREAD AND SOME SPAM. **CHRIS ROCK, US COMEDIAN**

Since April 1999 the majority of workers in the UK have been entitled to receive at least the national minimum wage (NMW) for the work they do. The increase in precarious forms of employment means that there is a need for a minimum wage to provide a floor of basic rights for the most vulnerable workers.

Trade union reps and workers can assist the HMRC NMW enforcement team to protect the most vulnerable workers and ensure they are paid at least the NMW.

QUICK REFERENCE INDEX

WHAT RATE OF NMW IS A WORKER ENTITLED TO?

The NMW rate that applies to an individual is dependent upon:

- their age
- whether or not they are an apprentice.

You can check the current national minimum wage rates that apply to different categories of workers at: http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_10027201

WHO IS ENTITLED TO BE PAID THE NMW?

The majority of workers in the UK are legally entitled to be paid at least the NMW. It makes no difference:

- if a worker is paid weekly or monthly, by cheque, in cash or in another way
- if the work is full time, part time or any other working pattern
- if the work is carried out at the employer's own premises or elsewhere
- whether the employer has 500 staff or just one member of staff
- where in the UK the work is carried out.

If an individual has a contract of employment they will be an "employee" and entitled to the national minimum wage unless they fall into an exempt group. The contract of employment can be a written agreement, agreed orally or it can be based on what happens in practice in the workplace.

If an individual has a "worker" contract, to perform work or services personally, they will also be entitled to the NMW.

If an individual is genuinely self-employed and in business on their own account they will not be entitled to the NMW.

Please see the section on employment status: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm for further information on the different employment relationships between an employer and an individual and what factors help determine whether you are an "employee", "worker" or "self employed".

A worker cannot sign away their NMW rights by signing a contract agreeing to be paid at a lower rate. The contract will have no legal effect and they must still be paid the proper rate of NMW applicable to that person.

The following categories of workers are explicitly covered by the NMW legislation:

Agency workers

If an individual is supplied by an agency to work on an assignment for a hirer, the individual will be entitled to be paid the NMW for the work performed on that assignment. This is provided the individual is not genuinely self-employed and running a business on their own account.

Apprentices

Apprentices will be entitled to either the apprentice NMW rate or one of the higher NMW rates. The NMW rates a worker will be entitled to be paid at are dependent on the worker's age and whether they have been an apprentice for more than one year. To qualify for the NMW the apprentice must be employed under a contract of Apprenticeship (see the employment relationship section for further information at: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm) and/or be engaged in an official government apprenticeship scheme.

Migrant workers

Migrant workers who are legally working within the UK will be entitled to the NMW.

Homeworkers

A homeworker is an individual who agrees with their employer to carry out their work at a place where the employer does not control or manage the work, usually in their own home. Homeworkers do not have to do all the work personally and can pass some of their work to someone else, such as family members. Many homeworkers work at home so that they can also care for their children or fit their work around other family commitments. Members of the homeworker's family or friends may assist them in carrying out their work and the homeworker will still be entitled to be paid the NMW.

Workers in Crown employment

Workers in Crown employment, which includes civil servants in a government department, are entitled to be paid the NMW.

Seafarers

Seafarers are entitled to the NMW if they:

- work in the UK's internal waters, or
- ordinarily live in the UK, work on a UK-registered ship and do not work wholly outside of the UK's internal waters.

Offshore workers

Offshore workers, including those on oil rigs, are entitled to be paid at least the NMW if they work or usually work in UK territorial waters or in certain employments in the UK sector of the continental shelf.

Agricultural workers

Agricultural workers are entitled to the agricultural minimum wage. However, no agricultural worker can be paid less than the NMW. For the current AMW rates use the link at: http://origin.direct.gov.uk/en/Employment/Understandingyourworkstatus/agriculturalworkers/DG_179612

EXCLUDED GROUPS OF WORKERS UNDER THE NMW LEGISLATION

The following categories of workers are not entitled to the NMW:

Self-employed workers

If an individual is genuinely self-employed they will not be entitled to receive the NMW for any work performed in a self employment capacity. See the TUC Basic Rights website for further guidance on how to determine employment status: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm

Domestic workers

Domestic workers are not eligible for the NMW if they live with their employers as part of their family and the conditions below apply, for example some au pairs and some live-in servants.

Where an individual carries out their work in an employer's family household, they will not be entitled to the NMW if:

- the worker resides in the family home of the employer, and
- the worker is not a member of the family but is treated as such, for example being provided with meals and accommodation and sharing in family tasks and leisure activities, and
- the worker does not make any payments, or have deductions taken from their pay, towards their meals or accommodation, and
- had it been carried out by a member of the employers family, the work would not have been carried out under a 'worker's contract' (provided that the family member lived at the family home and took part in shared tasks and leisure activities).

Family workers

Where an individual works for their own family's business, they will not be entitled to the NMW if:

- they live in the family home of the employer, and
- they participate in the running of the family business, and
- the work is done in that context.

A limited company is a legal entity in its own right and cannot be considered to be part of a family or have a family home.

Volunteers

Individuals who do some tasks for an employer on a purely volunteer basis and who do not expect to be paid for their work may not be entitled to statutory employment rights. This is because they do not have a contract or an employment relationship with the employer.

However, because an employer labels an individual as a volunteer, refuses to pay a volunteer or pays only their expenses, this does not necessarily mean that the individual will have no rights at work.

A genuine volunteer must freely agree to work for no pay and is not under any obligation or pressure to work or will not suffer any detriment if they do not turn up for work.

Voluntary workers

Voluntary workers are different to volunteers. A voluntary worker will have a contract of employment, or a contract to perform work or provide services. See the section on employment relationships to see if a contractual relationship exists.

A worker employed by a charity, a voluntary organisation, an associated fundraising body or a statutory body does not qualify for the NMW if they receive or under their contract are entitled to receive:

- no monetary payments except expenses incurred carrying out their duties or to enable them to perform their duties or expenses paid that are a reasonable estimate of those expenses that might be incurred
- no benefits other than subsistence and accommodation that is reasonable to their employment
- any training that is not for the sole or main purpose of helping that worker carry out their role.

Students and trainees

A worker who is undertaking a UK higher or further education course and as part of that course is required to undertake some work experience before the course ends, will not be entitled to the NMW in respect of that work experience, provided the work experience is intended to last no more than a year.

However a worker who is employed as a trainee will still be entitled to the NMW.

Other workers

Other workers who are not entitled to NMW include:

- members of the armed forces
- share fishermen – those who are a master or member of the crew of a fishing vessel and in that employment are remunerated by a share of profits or gross earnings
- prisoners working under prison rules
- immigrants residing in detention centres
- resident workers for religious or other communities will not receive the NMW where:
  - the community is a charity or has been established by a charity, and
  - the purpose of the community is to practise or advance a belief of a religious or similar nature, and
  - all or some of the workers in the community live together for the above purpose.
- homeless workers who are part of certain schemes where they are entitled to certain benefits such as income based JSA. These are schemes in which homeless people have to work in return for shelter and other benefits.

WHO MUST PAY THE NMW?

Employers must pay a worker the NMW where they are entitled to it.

In the case of an agency worker, in the absence of a contract existing between the agency worker and the hirer or agency, then whoever usually pays the agency worker (either the hirer or the agency) will be responsible for ensuring the agency worker receives at least the NMW.

CALCULATING THE NMW

When calculating the NMW consideration will need to be given to:

- the pay reference period for the NMW
- the forms of pay that count towards the NMW
- pay that does not count towards the NMW
- payments to employers/third parties and deductions from workers which reduce NMW pay
- calculating NMW where a worker receives accommodation from their employer, and
- calculating the hours payable for the NMW.

As the rules for calculating the NMW are complicated, workers may wish to seek advice from their union rep or contact the Pay and Work Rights Helpline (0800 917 2368) for further guidance.

The pay reference period for the NMW

The NMW is set at an hourly rate but that does not mean workers need to be paid exactly that amount for each hour worked. Rather, average hourly pay must be at least the NMW, calculated over the pay reference period, which is the worker's normal pay period. If a worker is normally paid on a daily basis the pay reference period is one day; if a worker is paid weekly it will be one week; and if a worker is paid monthly, it will be one month.

The maximum pay reference period that an employer can use is one month. Even if a worker is paid quarterly the employer must be able to show that over a period of one month a worker has received the NMW. The employer can use a shorter pay reference period if that is when wages are normally paid.

The calculation to determine whether a worker has been paid the national minimum wage is:

The amount of pay received by a worker in the pay reference period

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The hours worked in the pay reference period

For example: Edward is paid monthly. Over the period of one month he works 163 hours. Due to receiving bonuses he is not paid at the same rate for all the hours worked. His wage for the pay reference period is £1,100.

NMW calculation: £1,100/163 = £6.75 (above the NMW rate in June 2011 – see the link below for current NMW rates): http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_10027201

The forms of pay that count towards the NMW

The basic calculation to check whether a worker is being paid the NMW for a pay reference period is:
Total pay minus deductions and pay that does not count to the NMW = NMW pay.

NMW is calculated on total pay paid during the pay reference period, which includes:

- the basic rate of pay
- any bonuses, sales commission and incentive payments, and
- performance-related pay

Deductions from pay

Employers can make deductions from a worker's pay without affecting their NMW pay only if certain conditions are met. See the section on deductions from pay on the TUC Basic Rights Website.

Deductions that 'count' towards NMW pay

Certain deductions that an employer can make from your gross pay do not reduce your NMW pay. These include:

- those that employers are legally required to make, including:
  - income tax
  - national insurance
  - student loan payments.
- those relating to advances in wages
- those relating to penalties for misconduct – as long as such deductions are permitted by the worker's contract
- those the worker agrees should be made from pay but only where they are paid to third parties on the worker's behalf, including:
  - pensions contributions
  - trade union subscriptions
- those for living accommodation that are no more than the accommodation off-set (see page 11).

Although a worker will not receive this money in take-home pay, the employer can count these amounts, before they are deducted from a wage packet, towards paying the NMW.

Payments that count towards NMW pay

If a worker pays for goods and services from their employer that are not connected to their employment – for example buying food and drink from a staff canteen – such payments do not reduce NMW pay. This, however, will not include any payments for goods or services that are required by the worker to be able to carry out their job or that they are required to purchase under their contract.

Deductions that do not count towards NMW pay

Certain deductions and payments cannot be counted by employers when calculating NMW pay. These include:

- expenses paid to workers that are incurred during their employment
- any deductions or payments for goods and services connected to the worker's employment. This will include payments or deductions for safety clothing, uniforms and tools. It makes no difference if a worker has an option to buy the uniform or to use the service. An employer cannot count such payments as part of the NMW pay. It also does not make a difference if an employer does not make a profit from providing the good or service
- any deductions for the provision of goods and services from the employer, such as buying food in the staff canteen, transport charges or provision of childcare. It makes no difference whether the worker has agreed to the deduction, or if a worker has an option to purchase the goods or use the service or whether the employer makes a profit or loss from providing the goods or service.

A worker should subtract these deductions/payments from their total pay before calculating the NMW pay. It is unlawful for employers not to pay workers at least the NMW. This is the case even where a worker has agreed in writing to such deductions or payments or they are referred to in the contract of employment.

Pay that does not count towards the NMW

Some forms of pay do not count towards a worker's NMW pay and should be deducted from total pay when checking whether a worker has been paid at least the NMW. Forms of pay that do not count towards the NMW include:

- any tips or gratuities (thanks to union campaigns, since 2009 employers have not been able to count any tips received from customers towards NMW payments)
- payments in respect of expenses, subsistence or accommodation allowed as a deduction from earnings for PAYE purposes under s.338 Income Tax (Earnings and Pensions) Act 2003
- any premium rates of pay that a worker receives on top of the basic rate for working at special times, for example overtime rates or bank holiday premiums
- unconsolidated attendance allowances
- unconsolidated allowances that a worker receives for:
  - working unsocial hours (for example night shift allowances)
  - working in a particular location (for example London weighting)
  - doing dangerous work (for example at-risk payments)
  - doing work extending beyond their normal duties.
- advances of wages for work not yet done
- loans from an employer, for example travel loans
- redundancy payments
- pension payments
- retirement lump sums.

Benefits in kind

Benefits in kind are anything an employer provides to a worker other than pay. There is nothing to stop an employer from providing benefits in kind, but they (or their equivalent value in money) cannot count towards a worker's NMW pay. The only exception is a set amount for accommodation (see below). Examples of benefits in kind that do not count towards a worker's NMW pay are:

- meals
- a car or fuel
- medical insurance
- subsidised gym membership
- luncheon vouchers
- childcare vouchers
- eye test vouchers
- contributions by the employer towards a pension.

Calculating NMW where a worker receives living accommodation from their employer

If an employer provides a worker with living accommodation, they can count some of the cost of the accommodation towards NMW pay. This is called the accommodation offset. NMW law places a limit on the accommodation offset that an employer can count towards a worker's NMW pay.

Follow this link for information on the latest limit for the accommodation offset: http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175108

It makes no difference if:

- the employer provides living accommodation for free
- the employer deducts rent from the worker's wages or salary
- the worker pays rent to the employer after they have been paid

- the employer provides the living accommodation as part of a package of pay and conditions
- the accommodation is not being provided in the context of the employment.

It makes no difference if the worker chooses to occupy the living accommodation or not, the accommodation offset applies.

The employer can charge more rent than the accommodation offset, providing they still pay the worker at least the NMW. However, they can still only count the amount of the accommodation offset towards the worker's NMW pay. The employer must ensure that the worker receives at least the NMW after the worker has paid any rent over and above the accommodation offset.

What counts as providing living accommodation?

In addition to the accommodation itself, any charges the worker has to pay to the employer for gas, electricity, water bills, cleaning, laundry and the provision of furniture are added to the rent for the purposes of the accommodation offset.

If someone other than the employer provides the living accommodation, but there is a connection between the employer and your landlord, the employer will still be treated as providing the worker with the living accommodation under NMW rules.

Normally when an employer is providing (or treated as providing) living accommodation to a worker, the accommodation offset applies even if there is no connection between the living accommodation and the work the worker does. But if the worker works for a social housing provider (such as a local authority or a registered social landlord) the accommodation offset will only apply if you live in accommodation which is connected to your employment (e.g. a care warden who is required to live on site). The accommodation offset also does not apply to full time students on UK further or higher education courses who also work part time for their educational institution.

Calculating the hours payable for the NMW

Different types of work covered by the NMW

An employer must pay an individual (at least the NMW) for any work that they carry out. Work that counts towards NMW pay is broken down into four categories for NMW purposes:

Time work

If a worker is paid according to the number of hours they work, they will be doing "time work". A good indication of time work is whether a worker's pay goes up or down depending on the hours they have worked.

For example: Alice is a part-time shop worker who works different hours every week. In the first week she works 30 hours and is paid per hour that she works. In the second week she works only 20 hours and is paid per hour that she works.

Time workers must be paid the NMW for work time and time spent 'on-call' at or near the employer's premises, subject to the following.

Work time for which the NMW must be paid includes:

- time spent doing work
- travel time connected to work, for example time spent travelling for work during normal working time but not the time spent travelling from home to work
- time spent on training or travelling to and from training.

Work time for which the NMW does not need to be paid includes:

- rest breaks, for example lunch breaks
- periods when the worker is away from work, for example due to annual leave, sick leave, maternity, paternity or adoption leave
- time when the worker is engaged in industrial action.

On-call time for which the NMW must be paid includes time when the worker is available at or near their place of work for the purposes of doing time work such as:

- time when the worker is kept at or near their workplace but is unable to work, for example because of machinery failure
- time spent in or near the workplace where the worker is provided with sleeping facilities and is allowed by the employer to sleep but is awake for the purpose of doing work, for example a care assistant who is on-call overnight and responds to calls from residents.

A time worker is not entitled to NMW for time:

- where the worker is on-call at their own home which is at or near their place of work and the time is time they are entitled to spend at home
- where the worker by arrangement sleeps at or near the workplace and is provided with suitable sleeping facilities. In these circumstances, the worker will not be entitled to NMW for time they are permitted to use those facilities for the purpose of sleeping, but it is likely that the worker will be entitled to be paid the NMW for all time where they are awake and are required to do work, e.g. when called out to respond to calls.

For example: Bettie is a care worker who visits patients to provide care for them in their homes. She normally has eight patients to visit in a day. Bertie sets off from home at 8am and arrives at her first patient at 8:30am. Throughout the day she travels around visiting patients in their homes. Her last patient visit finishes at 5pm and then she travels home. Bettie received her pay check and was astonished to see that her employer was only paying for the time she had spent in the patients' homes. This meant that some days Bettie wasn't being paid for the four hours' travelling time to see patients. Bettie raised the issue with her union, which started negotiations with the employer. At first the employer wasn't convinced that legally it had to pay Bettie for travelling time. The union contacted the HMRC NMW team via the Pay and Work Rights Helpline, which confirmed that the time Bettie spent travelling between appointments counted as time worked for NMW purposes. The employer paid Bettie her travel time from 8:30am onwards until 5pm. The union and the employer are now discussing other issues that affect Bettie and her colleagues in the workplace.

Salaried work

Where a worker is paid under a contract for a set basic number of hours a year, and receives an annual salary paid in equal weekly or monthly instalments, they will be a salaried hours worker for national minimum wage purposes. A contract does not have to state working hours as an annual figure (for example 2,000 hours a year), but it must be possible to work out from the contract what the basic annual hours are in relation to the full year.

For example: If a contract sets out a monthly number of hours it is possible to work out the annual total by multiplying by 12. However, if a contract sets out only the weekly number of hours, the hours for the whole year cannot be determined by multiplying by the number of weeks in a year because the days in a year cannot be divided by 52.

The number of basic annual hours for which a worker is entitled to their annual salary should be divided by 12 (if the pay reference period is a month) or by 52 (if the pay reference period is a week). These are the worker's basic hours, for which a worker has the right to be paid at least the NMW during each pay reference period.

The rules for determining when "on call" time counts as hours worked for a salaried hours worker are the same as explained above for time work.

If the worker is absent from work and is entitled to no pay or less than their normal pay for that time (for example, if they receive less than normal pay on sick leave), the hours spent away from work will not count.

If the worker is engaged in industrial action during the pay reference period, those hours should not be counted.

There are complicated rules that apply where salaried workers' hours exceed their basic hours.

For more information and advice either speak to the union rep or the Pay and Work Rights Helpline (0800 917 2368).

If a worker is required to be on duty for 24 hours and is not specifically provided with sleeping time between set hours they may have to be paid the NMW for the full 24 hours.

For example: Gary is 24 and is paid a salary of £12,000 per year, and works 2,080 basic annual hours a year. Gary is paid in monthly instalments of £1,000.
Step one: calculate the hours in each pay reference period – 2,080/12 = 173.3 hours.
Step two: calculate the hourly pay (the pay in each pay reference period divided by the hours in each pay reference period) – £1,000/173.3 = £5.77.
Gary's pay is below the NMW.

Output or piece work

An "output worker" or "piece worker" will be paid wholly according to the number of items they make or the number of tasks they complete. These workers will often work from home and are free to work at whatever times they choose.

Special rules, called the rated output work system, were introduced in 2004. This means that output workers should either be paid:

- the NMW for every hour that they have worked, or
- a fair "piece rate" for each piece produced or task performed.

For example, Chris works from home. His job involves filling and sealing envelopes ready for postage. Chris is not paid per hour that he works filling envelopes; he is paid per envelope that is ready for postage. Chris's employer must pay him a "fair piece rate" for the work he carries out. This fair piece rate must equate to at least the NMW for the average worker.

The "fair" piece rate

Under the rated output work system, a worker should be paid either at least the NMW per hour for all hours worked, or the employer must establish a "fair" piece rate for each output or task completed by the worker. A "fair" piece rate will be established by measuring (or in certain circumstances estimating) how long it takes the employer's average (mean) worker to complete a task. The number of tasks the average worker can complete in an hour is called the mean hourly output rate. The worker is assessed as having an hourly rate which is 120% of this average rate (regardless of the worker's actual rate or the time spent actually doing the work). To calculate a "fair" piece rate the worker's NMW rate is divided by the mean hourly output rate and the result is multiplied by 1.2. "Fair" piece rates must be recalculated whenever NMW rates change.

For example: if the tests show that for a particular job the average (mean) worker can complete 10 pieces an hour, the employer must pay adult workers at least 73 pence per piece in order to pay the current national minimum wage rate of £6.08* per hour (£6.08 ÷ 10 pieces x 120% = 73p).

*NMW rate at Oct 2011

The 20 per cent uplift was introduced to reflect that, while the average (mean) worker may complete the work in a certain time, some workers may complete it more slowly. The 20 per cent uplift means most output workers, including those who work a little slower than the average worker, can expect to receive at least the national minimum wage.

Notice explaining how the fair pay rate is explained

An employer must give a written notice to an output worker explaining how the "fair" piece rate has been worked out. The notice must be received before the start of the first pay reference period (see the section above on the pay reference period). If the "fair" piece rate is changed, the employer must issue a new notice to the worker.

For more details on the information that must be included in the notice please go to: www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175097

Hours that count towards NMW pay for output workers

Output workers have to be paid at least the NMW for time spent travelling in connection with the job, for example where a worker drops off assembled pieces at an employer's premises.

Workers who are paid piece rates but have to be at a factory for a set numbers of hours a day to produce their work are time workers for NMW purposes and should be paid at least NMW rates for the time they work.

Workers who carry out piece work at times fixed by their employer should also be paid at least NMW rates for the time they work.

Travelling time

An output worker must be paid at least the NMW for time spent travelling in connection with the job, for example where the worker drops off assembled pieces at an employer's premises. However, the worker does not need to be paid for time spent travelling between their home and the place of work.

Individuals who will not be "piece workers" or "output workers"

Workers who are paid piece rates but have to be at a factory for a set numbers of hours a day to produce their work should be paid on a 'time work' basis (see above). This means they should be paid the at least the NMW for each hour worked at your employer's factory.

Workers who carry out piece work at times fixed by their employer should also be paid on a time work basis.

Unmeasured work

Unmeasured work is any work that isn't time work, salaried hours work or output work. In particular, unmeasured work is where there is no connection between the number of hours worked and the payment made by the employer. For example, the employer sets a task for the worker but doesn't set the hours for the worker has to complete the task, or requires the worker to carry out the work as needed or when it is available.

The employer will have to pay a worker at least NMW for the number of hours it takes to complete the task, unless there is a "daily average" agreement in place prior to the worker undertaking the task. Any agreement in place must determine the average amount of hours that the worker is likely to spend completing the task. The employer must show that the estimation of the average hours it would take to complete the task is a realistic one.

For example: Doris is given the task of painting a row of cottages by her employer. Doris must be paid for every hour she works. Alternatively, Doris and her employer can agree the average daily number of hours the work is likely to take under the contract before undertaking the task. This agreement needs to be in writing and will need to be realistically based on the "average daily hours" needed to complete the task. The hours for which Doris needs to be paid at least NMW depend on the hours she is available to work each day under the contract and are ascertained in relation to the "daily average" agreement.

ADDITIONAL EMPLOYER OBLIGATIONS UNDER THE NMW ACT 1998

Written records of NMW

An employer must keep sufficient records to show at least NMW has been paid to workers. Where the worker has reasonable grounds to believe they are being paid below the NWM, that worker and their rep have the right to access, inspect, examine and copy any records. A worker must make a written request for the employer records (the 'production notice'). If the worker wishes their union rep to attend with them to inspect and examine the records they must inform the employer in the production notice.

An employer must produce the records within 14 days of receiving the production notice. If the employer fails to produce these records or allow the worker or rep to inspect the records then the worker or union rep can make a complaint to an employment tribunal, which must be lodged within three months from the date of expiry of the production notice. However, it is possible to bring a claim later than three months from the date of expiry of the production notice if the tribunal decides that it wasn't reasonably practicable for the worker to present a complaint within the three-month time period.

If an employer fails to comply with the requirements above, an employment tribunal can award a worker up to 80 times the NMW hourly rate.

NMW victimisation rights

All workers have the right not to suffer detriment or dismissal for a reason connected with the NMW. An employer must not cause a worker to suffer detriment because:

- of the workers actions or proposed actions, or their union rep's actions, that are taken with a view to enforcing their NMW rights.
- the employer has been prosecuted for an offence under the NMW Act as a result of the worker's or their rep's actions
- the worker is about to qualify or has qualified for the NMW.

An individual who has suffered a detriment due to one of the reasons listed above will be entitled to make a claim with an employment tribunal. Note that, if an "employee" is dismissed for making a NMW complaint and makes a claim of unfair dismissal to the tribunal, this dismissal will be automatically unfair.

If a "worker" is dismissed for one of the reasons above they will be entitled to compensation equivalent to that which an "employee" would receive had they been unfairly dismissed. However, unlike the case with an "employee", reinstatement to their job will not be possible.

THE HMRC ENFORCEMENT PROCESS

The HMRC enforcement process can be initiated by complaints from workers or third parties, such as union reps. HMRC will also carry out proactive enforcement activities where its risk assessments reveal suspected low-paid sectors and evidence of workers not receiving the NMW. In 2010/2011 HMRC targeted contractors providing cleaning services to hotel chains. Unions played a strong role in bringing the underpayment of NMW in this sector to the attention of NMW enforcement officers.

Workers or their union reps can contact the HMRC NMW enforcement team via the Pay and Work Rights Helpline (0800 917 2368). The Helpline can answer any initial queries that a worker might have about the NMW and can then refer the worker on to the HMRC enforcement team, if they need help making sure they are paid the NMW. Any calls to the Pay and Work Rights Helpline are confidential. The Pay and Work Rights Helpline can handle calls in more than 100 different languages.

It is also possible to fill in an online enquiry/complaint form: https://payandworkrights.direct.gov.uk/complaints/

Union reps will be able to call the HMRC NMW enforcement team on behalf of the worker/member that suspects they are not receiving the NMW. HMRC will be able to involve and give feedback to a union rep where the worker has given their consent for this to happen.

Powers of the compliance officers

To assist their investigation into whether an employer has paid workers the NMW, a compliance officer has the power to:

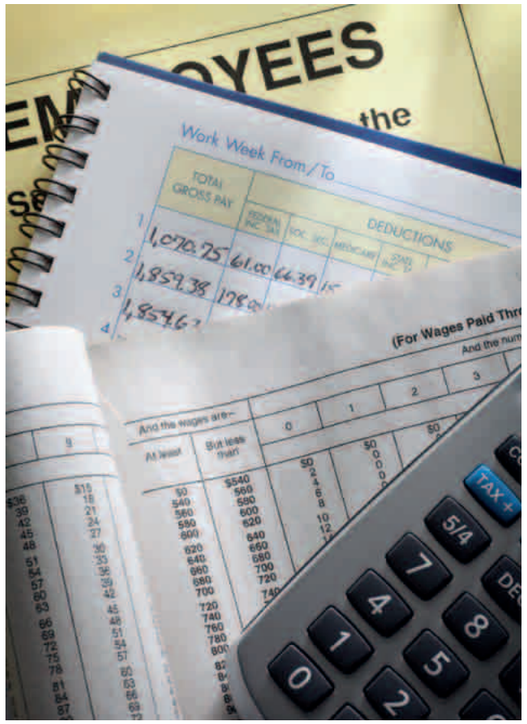
- access, inspect and examine the employer's wage records
- seek further explanation of the records from the employer, employment agency or person who provides work or the worker themselves.
- enter the workplace or employers' premises to enable the officer to inspect and examine the employer's records.

Once the investigation is completed, a compliance officer has the power to issue a 'notice of underpayment' requiring the employer to pay any sums owed to the worker or workers based on current rates in respect of current or previous failures to pay the NMW where the compliance officer is of the opinion that a worker has not received the NMW. The notice will require the employer to pay to the worker the sum owed within 28 days.

If a compliance officer discovers a breach of NMW and issues a notice of underpayment, the notice may require the employer to pay a financial penalty. This will be 50 per cent of the underpayment owed to all workers on the notice for pay reference periods starting on or after 06/04/09. The minimum amount of the financial penalty is £100, with a maximum cap of £5,000. If an employer pays the identified arrears and chooses to pay the financial penalty within 14 days of receiving the notice of underpayment, the penalty will be reduced by 50 per cent.

It is important to note that a compliance officer will issue a notice of underpayment regardless of the reasons for the underpayment. For example, where an employer claims that an underpayment of the NMW was accidental, a notice of underpayment will still be issued. These changes were brought about by the Employment Act 2008 to ensure that the HMRC enforcement team could effectively deter rogue employers from underpaying the NMW. A notice of underpayment will not be issued where an employer has repaid all sums owed prior to the start of the compliance officer's investigation.

If a notice of underpayment is not complied with, the enforcement officer can bring a complaint to an employment tribunal or a claim in the civil court for breach of contract to recover the money on behalf of the worker. By taking this action, HMRC compliance officers establish a debt that is enforceable in law. Where the debt to the workers remains unpaid following judgment, HMRC can seize an employer's business assets and use the funds to repay workers.



WHAT THE WORKER CAN RECOVER

If an investigation finds that a worker has not been paid the NMW the worker will be able to recover back pay for any difference between the amounts they have been paid and the amount they should have been paid had they received the NMW.

Where the worker has not received the NMW for a sustained period that stretches back over a period where the NMW rate has changed, the worker will be entitled to be paid increased arrears based on the current rate of the NMW which will be more than the rate that applied when the underpayment took place.

The worker can also seek to recover unpaid sums by making a claim to an employment tribunal, The worker should be aware that there are time limits for doing this. Workers should speak to their union rep, who will be able to give advice on taking a claim to tribunal.

A TUC publication *Enforcing the National Minimum Wage: a practical guide (2008)* is a resource for union reps who want to assist with enforcement of the NMW. It contains sections on NMW rights, how to help a worker with NMW questions, and the role of the compliance officers. Copies can be obtained free of charge from TUC Publications on 020 7467 1294.

Sanctions on the employer

An employer can typically face fines of up to £5,000 where it has:

- *refused or wilfully neglected to pay the NMW*

It is important to note that HMRC will generally only launch a criminal investigation for the above offence where five or more workers are affected.

- *failed to keep written records relating to wages payments for workers*
- *falsified records relating to wages payments for workers*

It is important to note that HMRC will not normally launch a criminal investigation into these offences unless the employer is suspected to have committed other offences relating to underpayment of the NMW or obstruction of a compliance officer.

- *intentionally obstructed an officer in their investigations or failed to answer queries or provide information to the compliance officer*

It is important to note that HMRC will normally launch an investigation into this offence only where the employer has obstructed the compliance officer on two or more occasions.

The objective of these criminal offences is to ensure that payment of the NMW and the role of compliance officers are taken seriously. Criminal prosecutions will be used against the small minority of employers that are persistently non-compliant and refuse to cooperate with compliance officers.

It is important to note that criminal investigations will not necessarily result in NMW arrears being paid to workers as this is not the objective of such proceedings. Further enforcement action may therefore be necessary to ensure that workers are repaid their arrears.

Financial sanctions an employer can face

- *If an employer fails to comply with the requirements relating to the rights of access to NMW records by a worker or their rep, an employment tribunal may award a worker up to 80 times the NMW hourly rate.*
- *Where a compliance officer issues a notice of underpayment, the employer must also pay a financial penalty of 50 per cent of the underpayment owed to all workers on the notice. The minimum amount of the financial penalty is £100, with a maximum cap of £5,000. If an employer pays all the arrears on the notice and chooses to pay the financial penalty within 14 days of receiving the production notice, the penalty will be reduced by 50 per cent.*
- *Employers can face fines of up to £5,000 in the Magistrates Court (£10,000 in Scotland) where they commit an offence under the NMW Act 1998 as amended in 2008. It is also possible for the magistrates to refer offences to the Crown Court, where much higher fines can be imposed.*

SECTION TWO

The Conduct Regulations

Enforcement agency: Employment Agency Standards Inspectorate

Many agency workers are entitled to basic workplace rights such as the National Minimum Wage (NMW), rights to statutory holiday and protection from discrimination. The Conduct of Employment Agencies and Employment Business Regulations 2003 ('Conduct Regs') also set out rules regulating how agencies treat agency workers.

The Conduct Regs provide agency workers with basic workplace rights such as:

- a written statement setting out terms and conditions of employment
- information on a work assignment prior to starting work
- receiving the correct pay
- not being charged any work-finding fees or forced into paying for additional services from the agency
- not being supplied to cover striking workers in official industrial disputes.

The Conduct Regs are enforced by the Employment Agency Standards inspectorate (EAS) in Great Britain. The EAS works with agencies, employers, trade unions and workers to ensure compliance with employment rights, particularly for vulnerable agency workers.

The EAS has powers to tackle rogue agencies by issuing warnings; seeking prosecutions; and prohibiting individuals from running an employment agency for up to 10 years.

WHAT IS AN AGENCY?

The Conduct Regs cover both employment businesses and employment agencies. Employment businesses supply temporary workers to a hirer: employment agencies seek permanent work for work seekers. For the purposes of this guide any reference to an 'agency' covers both employment businesses and employment agencies.

For a full version of the Conduct Regs and the 2010 Amendment Regulations and Government Summary guidance please use the links below:
www.opsi.gov.uk/si/si2003/20033319.htm
www.opsi.gov.uk/si/si2007/uksi_20073575_en_1
http://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file23765.pdf

As a result of trade union campaigning, since October 2011 agency workers also have rights to equal treatment on pay and basic working conditions as if they were directly employed by the hirer after 12 weeks in the same job with a hirer. Agency workers will also have the right to equal treatment from day one of an assignment on access to collective facilities and to information relating to permanent jobs.

THE CONDUCT REGULATIONS

Agreement to be reached between an agency worker and an agency

When an agency worker registers with an agency they must agree on certain terms before the agency can start looking for work for them. The agreement must cover the following issues:

Checklist for the agreement

- *whether the agency worker is seeking temporary or permanent work*
- *the type of work that an agency worker is seeking*
- *whether the agency worker will be an 'employee' or a 'worker'/'self employed' – please see section on status at: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm*
- *any notice period to terminate the contract*
- *the amount of paid holiday an agency worker will be entitled to (this must be at least the statutory minimum: http://www.direct.gov.uk/en/Employment/Employees/Timeoffandholidays/DG_10029788)*
- *the rate of pay or the minimum rate of pay that the agency reasonably expects to achieve for the agency worker*
- *how often the agency worker will get paid – weekly or monthly, for example.*

In order to comply with the Regulations, the agreement must include a guarantee that the agency worker will be paid regardless of whether the hirer pays the agency.

An agency cannot change the terms and conditions of the contract between the agency and agency worker without gaining the consent of the agency worker. The EAS guidance suggests that this consent should be given in writing.

If an agency worker agrees to the changes they must be given a new document with the full details of the changes and the date they apply from, within five business days of agreeing to the variation in terms and conditions.

Written information to be provided before each assignment

An agency worker must be provided with the following written information before each assignment:

Checklist for agency workers before starting work

- *the name of the hirer and the type of work it does*
- *any updated information on rates of pay for the assignment*
- *the proposed start date and proposed duration of the assignment*
- *the job position and the type of work to be done on the assignment*
- *the experience, training and qualification needed for the role*
- *the location of work*
- *hours of work*
- *any expenses that will be payable to the agency worker*
- *health and safety risks and what precautions the hirer has undertaken to prevent or minimise risks. Agencies should not only ensure that hirers have carried out a thorough risk assessment in the workplace, but they should also obtain a copy of the risk assessment. This information must be given to the agency worker in written or electronic form.*

An agency has to obtain confirmation from a worker that they are willing to work on the assignment. The agency will also check that the agency worker has the relevant skills and qualifications to do the work.

An agency does not have to provide the written information above to an agency worker:

- *where an agency worker is due to return to the same hirer within five days after their first assignment;* ***and***
- *where the information about terms and conditions supplied by the agency is exactly the same as previous assignments, except for the starting date of the assignment.*

Pay and other financial issues

The Conduct Regs contain important provisions protecting an agency worker from financial detriment.

Prohibition of work-finding fees

An agency cannot charge an agency worker a fee for finding or trying to find work. This might include:

- *a signing-on fee*
- *a fee each time an agency finds an agency worker an assignment*
- *a fee for publishing an individual's details/ CV on a website or in a publication*
- *a fee that exceeds the cost of the service being provided, e.g. where an agency needs to carry out a CRB check on a worker, the agency can only charge the worker the costs of the check and not an additional admin charge.*

(The only exceptions to these are where an agency worker is seeking work in the entertainment, modelling, media and sports industries. Please see special provisions for agencies in the entertainment sector on page 26.)

An agency cannot withhold pay to an agency worker

An agency cannot withhold or threaten to withhold payment to an agency worker because:

- *the agency has not yet received payment from the hirer*
- *the agency worker has not produced a signed timesheet*
- *the agency worker has given notice to end their assignment*
- *there has been a payroll error at the agency*
- *of any matter within the control of the agency.*

The BIS guidance also states that it is unlawful for an agency to insert a term into an agency worker's contract stating that if they do not work a specified number of hours per week they can be paid at a lower rate.

It is important to note that the Conduct Regs do not provide the EAS with the power to recover unpaid wages for agency workers. However, the prospect of enforcement action by the EAS against an agency is often enough to persuade the agency to pay the individuals the sum owed. For example:

Alison is told that she will be paid £8.50 per hour. Alison is unaware that a term states in her contract that if she fails to work 55 hours per week she will be paid only £6.00 per hour. Alison works 52 hours in the week and is paid much less than she expected. Alison spoke to her union rep, who got in touch with the EAS, via the Pay and Work Rights Helpline. The EAS confirmed that it was unlawful to include such a term in Alison's contract and encouraged the agency to pay Alison the wages she was due.

Where an agency loans an agency worker money

An agency cannot charge interest on loans made to agency workers. The terms of any loan repayment must be given to the agency worker in writing.

Amor is an agency worker who came to the UK from the Philippines to work in the care sector. Before leaving the Philippines, Amor paid the agency an upfront fee to pay for her visa and her flights. Upon arrival the agency required Amor to start paying back the money with monthly deductions from her salary.

Amor's payslip had the following details:

Basic pay	*£1,500*
Tax	*£300*
NI	*£200*
Flight deduction	*£100*
Visa deduction	*£50*
Finding fee for first assignment	*£200*
Interest payment on loan	*£50*

Amor was shocked when she received her payslip and went to her union for advice and support. Bashir, the union rep, realised that too much had been deducted from her wages and called the P&WR helpline for guidance, which was able to advise on the rules around lending agency workers money. Bashir contacted the agency and the money that the agency had deducted for interest and the work-finding fees were repaid to Amor. Bashir also informed the agency that any repayment terms of the loan should have been given to Amor in writing. Bashir was able to renegotiate the repayment terms of the loan, excluding interest, to just £50 per month.

Services provided by an agency

Alongside finding work, some agencies may also provide additional services to agency workers. The Conduct Regs protect agency workers from being forced to pay for these additional services.

The Regs ensure that agency workers have the option to select which services offered by the agency they decide to accept. These rights apply whether services are provided by the agency or individuals/companies connected to the agency.

In what circumstances can an agency charge for additional work services?

An agency cannot make work assignments conditional on the taking up and paying for additional services. Additional services may include:

- *CV writing skills*
- *training courses*
- *accommodation*
- *banking services*
- *transport to the assignment.*

Before the agency provides services to an agency worker it must:

- *inform the agency worker of any charges related to these services, including the method of calculation, description of services and also any arrangements for refunds where the agency worker is unhappy with the service*
- *inform agency workers of any services it is not allowed to charge for, for example finding the agency worker work.*

Where an agency offers a worker a gift or benefit to persuade them to take up a service, the terms on which the gift or benefit is offered must be made clear.

If signing up for additional services, an agency worker has the right to cancel or withdraw from these services by giving five working days' notice (10 days' notice in the case of accommodation).

An agency worker should not be penalised for opting out of a service, for example by having their assignment terminated, being offered less-favourable terms and conditions or being refused future assignments.

Services that must be provided by the agency

In certain circumstances (usually where the agency worker is required to work away from home) the agency must provide accommodation and transport.

Situations where an agency must provide accommodation to an agency worker

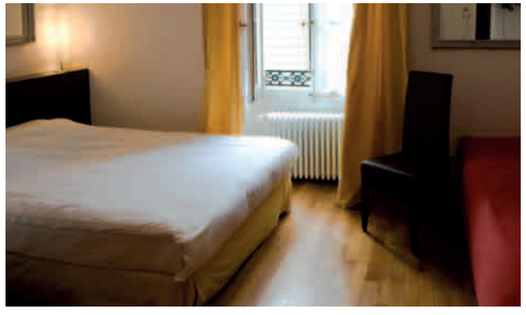
An agency must not arrange an assignment for an agency worker that requires them to live away from home unless:

- *the agency has arranged suitable accommodation for an agency worker*
- *the agency worker has been informed beforehand of any details relating to the cost of the accommodation.*

Situations where an agency must provide transport to an agency worker

Where the location of the assignment requires an agency worker to live away from home, the agency must arrange and pay for travel to the accommodation

Where an agency or hirer has arranged for free travel to an assignment (even if the assignment is cancelled), free travel for the return journey must be arranged for the agency worker.



Accessing employment opportunities

The Conduct Regs seek to ensure that agency workers are not prevented from finding permanent work through another agency or accessing permanent employment with the hirer.

Where an agency loans an agency worker money

Working for another agency

Agency workers cannot be prevented from signing up to more than one agency.

Agencies cannot insert a term into an agency worker's contract stating that they are prohibited from obtaining permanent employment with the hirer.

Temp to perm fees

If a hirer offers an agency worker permanent employment, the hirer may have to pay a 'temp to perm fee'. An agency can charge a hirer a fee only where it has agreed a contract with the hirer that provides for a temp to perm fee and an extended period of hire. A temp to perm fee is unenforceable unless the agency also gives the hirer an option of an extended period of hire.

There is no limit on the size of the temp to perm fee or the duration of the extended period of hire.

A hirer can also avoid paying a temp to perm fee after a certain period of time has elapsed after the end of a worker's assignment. This period is 14 weeks from the start of the assignment or eight weeks from the end of the assignment, whichever ends later. After this period the employer is free to hire the individual directly without paying a temp to perm fee.

It is important to note that if there has been a break of more than six weeks between the agency worker's assignments for the hirer, this will break continuity for the purpose of calculating the 14-week period. If the agency worker starts a new assignment via the agency, the first day after the gap ends becomes the starting point of the 14 weeks.

For example:

Arnold works for a hirer for two weeks as an agency worker. The hirer offers Arnold permanent employment. There is a term in the contract between the hirer and the agency that a temp to perm fee for 15 per cent of Arnold's proposed first years' salary should be paid by the hirer to the agency if Arnold is recruited by the hirer. However, because the contract does not provide for an 'extended period of hire', the hirer can employ Arnold without having to pay a temp to perm fee.

Bernadette has been an agency worker, on and off, for eight months. Her longest gap between assignments was just over six weeks. She has recently started another assignment after this six-week gap. The hirer now wants to employ her directly. The agency has contracted for a temp to perm fee of £5,000 or an extended period of hire for 30 weeks.

The hirer has three options:

- *pay the temp to perm fee of £5,000*
- *hire Bernadette from the agency for an additional 30 weeks and then employ Bernadette directly without a temp to perm fee*
- *wait for a 14-week period after the start date of Bernadette's last assignment and then employ Bernadette directly without a temp to perm fee.*

Use of agency workers during industrial disputes

The Conduct Regs prohibit agencies from supplying workers to a hirer to replace staff who are taking part in official industrial action.

Restrictions on providing agency workers in official industrial disputes

An agency is not permitted to supply workers to a hirer to carry out duties:

- *normally performed by a worker who is taking part in an official strike or other industrial action, or*
- *normally performed by a worker who is employed by the hirer and who has been transferred to cover the duties of the workers taking part in a strike or other industrial action.*

An agency does not breach the regulations if it supplies workers to a hirer where they were unaware that industrial action was due to take place. Therefore union reps may want to make the agencies aware that industrial action is proposed in the hirer's workplace.

If the union rep suspects that the hirer intends to use agency workers during the dispute, the rep or official should contact the EAS directly, which will investigate as soon as possible.

To date, no successful prosecution has taken place under this Regulation. However, in the dispute between the CWU and the Royal Mail towards the end of 2009, the CWU and GMB have raised awareness among union members and workers that supplying agency workers in an industrial dispute could lead to a breach of the Conduct Regs 2003.

The GMB set up a phone hotline for members of the public to report the names of employment agencies supplying staff to the Royal Mail.

Through raising awareness of the issue and the potential role that the EAS could play in enforcing this conduct regulation, trade unions may have deterred agencies from supplying agency workers to carry out duties normally carried out by workers taking part in industrial action.

Special provisions for agencies in the entertainment sectors

The Conduct Regs include distinct rules that apply to agency workers in the entertainment and modelling industries.

The distinctions in the Conduct Regs are listed below:

Exceptions to the Conduct Regs

The occupations to which these exceptions apply are:

- *actors, musicians, singers, dancers or other performers*
- *those who work behind the scenes in the film industry or theatre*
- *photographers*
- *models*
- *professional sports people.*

Commission/fees

In these occupations an agency can charge a commission. Commissions can be charged only on the earnings for work done that the agency found. Alternatively, an agency is permitted to charge a fee for introducing agency workers to a hirer. The agencies cannot charge both a commission and an introduction fee.

Additional services

As noted above, agencies cannot charge for work-finding services. This includes publishing a person's CV or details on a website or publication.

However, agencies in the modelling and entertainment sectors use 'publications' to find agency workers' assignments. They may take the form of a trade publication or a website, including any photographic, audio or video information.

Agencies are permitted to charge agency workers in the occupations above for the use of 'publications' where:

- *the purpose is to find work for agency workers or to provide information to prospective hirers about the agency worker;* ***and***
- *it is the only service provided by the agency to an individual or the fee charged is no more than a reasonable estimate of the cost of producing and circulating the information relating to the individual;* ***and***
- *before entering into a contract with the agency worker, the agency has provided the agency worker with a current example of the publication.*

Where an agency fails to produce the publication and make it available to hirers, then the agency worker will be entitled to a full refund within 60 days.

The cooling-off period

Where the agency worker agrees to use the agency's 'publication', the agency cannot charge the agency worker for this service until 30 days have elapsed. Within this period the agency worker is entitled to cancel the contract without incurring any charges. The agency must inform the agency worker of the right not be charged and the right to withdraw from such services without charge within the 30 day period.

Agency workers not working in the occupations mentioned above, but who still agree to use the publications of an agency, will be entitled to a seven-day cooling-off period. This cooling-off period will allow an agency worker to cancel or withdraw from the service without incurring any charge. Agencies will not be able to charge an agency worker for this service until seven days after the agency worker and agency have agreed to the provision of the publications's service.

Agreement to be reached between an agency and an agency worker

In addition to the terms listed above, agency workers seeking work in the occupations above must also agree terms with the agency on:

- *details of the work-finding services fee*
- *the agency's authority to enter into contracts on behalf of the worker*
- *whether the agency can receive money on behalf of the work seeker.*

Entering into a contract on an agency worker's behalf

As a general rule an agency cannot enter into a contract with a hirer on an agency worker's behalf. This means that an agency is not permitted to agree with a hirer that an agency worker will undertake an assignment until receiving confirmation from the agency worker that they willing to do so. However, where the agency secures work for the agency worker in one of the occupations above the agency is permitted to enter into a contract on behalf of a client, or on behalf of the hirer.

When this happens, the terms of the contract must be sent to the agency worker within five business days.

Receiving money on behalf of an agency worker

Where an agency receives money on behalf of a worker they must maintain client accounts to hold the money. When an agency makes a payment to a worker from the client account this should be accompanied by a statement setting out when the payment was received, who made the payment, the work to which it relates, and any fees or deductions to be made by the agency from this payment.

An agency must hold money for a worker in a client account for a maximum of 10 days. An agency worker can request the agency to hold money for longer periods; in this case an agency must provide statements at regular periods not exceeding 32 days.

Special provisions for agency workers under the age of 18

The regulations also contain special provisions for workers under the age of 18.

An agency must not seek work for a young worker where they will be required to live away from home unless they receive consent directly from the parent/guardian of that young worker.

In the case of one modelling agency the EAS discovered several breaches of the Conduct Regs:

- holding payments to models for longer than 10 days
- failing to provide records of job requests from the hirer, records of booking details from the hirer, a copy of the terms issued to the hirer, or copies of applications from models
- paying money received on behalf of models into the business account rather than the client account, and
- issuing to models only very basic terms of employment that did not comply with the relevant regulations.

The owner of the modelling agency was banned for five years.

ENFORCEMENT

The Conduct Regs are enforced by the EAS. An agency worker or union rep can complain to the EAS about a breach of the Conduct Regulations via the Pay and Work Rights Helpline (0800 917 2368).

The Helpline has trained advisers who may be able to answer enquiries. If the caller needs detailed information about their rights or has a complaint that warrants further investigation or enforcement action then they will be directed on to the EAS.

The Pay and Work Rights Helpline website also has information about basic employment rights translated into more than 100 different languages: http://payandworkrightscampaign.direct.gov.uk/index.html

It is also possible to make an enquiry or a complaint online.

INVESTIGATIONS

Targeted enforcement – the EAS approach

When deciding whether to carry out an investigation, the EAS takes the following factors into account:

- the geographicical areas where the EAS receives a higher than average numbers of complaints, or a pattern is emerging
- sectors where the EAS receives a higher than average numbers of complaints, or a pattern is emerging
- where the nature of the activity is high risk
- any previous history of inspections of employment businesses or agencies in particular sectors or locations
- where information from other related enforcement bodies (such as HMRC's National Minimum Wage team) suggests the agency could be high risk.

Details from workers are treated in confidence and not disclosed during an investigation unless the individual has given the EAS permission.

The EAS welcomes information and complaints from third parties such as union reps. Where an agency worker has indicated on a complaint form that a union rep is acting as their representative, the union rep will be provided with all relevant information about the outcomes of any investigation or enforcement action.

When the EAS receives a complaint or information that indicates there has been a breach of the Conduct Regs, it will conduct an investigation in order to establish:

- the causes of the complaint
- any breaches of the Act and Conduct Regulations
- the seriousness of any breaches of the law
- what action has been taken or needs to be taken in order to comply
- an appropriate and proportionate response to any breaches of the law
- that compliance with the law has been obtained.

POWERS OF EAS ENFORCEMENT OFFICERS

The EAS officers have a variety of powers to carry out their investigations.

- They have the power to enter and inspect those premises that they believe are being used, or have been used, for the purpose of an employment agency or employment business. Inspectors may ask for examples of an agency worker's terms and terms of business with hirers.
- They will normally inspect details of several placements; details of any additional services provided to work-seekers; payments of fees or wages to work-seekers (including, where necessary, timesheets, invoices, remittances, bank statements etc); and advertising of vacancies.
- They can inspect, copy or remove (for the purpose of copying) any records and documents relevant to the Conduct Regs. In addition, inspectors are able to examine financial records and other financial documents. They can also, on written notice, require a bank to supply the financial records where the person operating an agency/employment business has failed to comply with a written request to do so.
- They can demand detailed information not only from the agency's directors, sole traders and managers but also from others (for example employees and third parties) who may be in possession of relevant documents and information. Inspectors may also extend their investigation where necessary and contact users of the agency services (for example hirers and work-seekers) for information.

The EAS enforcement activity is not based solely on complaints. It also undertakes proactive investigations, as illustrated in the following examples:

- The EAS carried out a targeted enforcement operation covering the construction sector throughout October 2010.
- A total of 58 agencies were visited in England, Scotland and Wales. EAS inspectors identified two construction agencies that had failed to pay nearly £30,000 to a total of 39 workers for the hours that they had worked. The EAS successfully secured payment in full for the workers and is currently considering whether legal action should be taken against the agencies involved.
- On average, the EAS found six infringements of the Employment Agencies and Employment Businesses Regulations 2003 at each agency, although the majority of these were low-risk paper infringements. Inspectors offered advice and guidance where non-compliance was found and agencies were given warning letters and three weeks to amend their business practices.

Operation Hazard

In a targeted national exercise called Operation Hazard, 50 teaching and childcare agencies in a towns and cities including London, Birmingham and Newcastle upon Tyne were visited. In total, inspectors found and tackled 140 breaches of the law. These varied in severity. The most serious offences included not agreeing terms with workers before trying to find them work, not obtaining all the necessary information from the hirer about the job and not confirming in writing to the hirer essential information such as the name of the worker or to the worker the location of the assignment.

Sanctions

Where breaches of the Conduct Regs are found, the EAS states it will seek to take a proportionate, appropriate enforcement action. In most cases this will involve the issuing of warning letters but in serious cases could lead to prosecution and/or prohibition.

Warning letters

Usually the EAS will initially seek compliance with the Conduct Regs by issuing warning letters to an agency. According to the EAS, every warning letter will contain a clear statement of any breaches of the Conduct Regs and a formal warning of the EAS powers regarding prosecution and prohibition.

An agency issued with a warning letter will be asked to confirm in writing what actions they intend to take or have taken to remedy the breaches. The EAS can specify a set timeframe for each breach to be corrected and, where appropriate, request supporting evidence to be provided.

Criminal proceedings

In determining whether or not it is appropriate to refer a case for criminal proceedings, the EAS states it will consider a range of factors, including:

- the effect of the breach on the agency workers
- the reason for the breach provided by the agency
- whether the agency has been found to have breached the legislation previously and has disregarded any previous advice and guidance regarding compliance
- the impact or potential impact of the offence on the industry
- the severity and degree of non-compliance
- the benefit, financial or otherwise, to the offender arising from the failure to comply
- whether there is sufficient admissible and reliable evidence to provide a realistic prospect of conviction
- whether conviction would be in the public interest.

Where there is sufficient evidence and it is in the public interest, the EAS will normally prosecute the offences. The purpose of prosecution is to punish rogue agencies and to deter other agencies from breaching the Conduct Regs.

Issuing a caution

It is an offence for a person to obstruct an inspector in the exercise of their powers. If the EAS inspector is refused entry or access to records, they may issue a formal caution.

Prohibition orders

The EAS can apply to an employment tribunal to ban an individual or corporation from running or being involved in running an employment agency or employment business because of its misconduct or unsuitability. Different conditions can be attached to prohibition – for example a person can be allowed to continue running an employment business, but prohibited from doing so from their own home.

Rogue agencies can be banned from operating for up to 10 years.

The following example shows the EAS prohibition sanctions in effect:

The directors of an HGV recruitment company were banned from running an employment agency for up to 10 years at a hearing at Leeds Employment Tribunal following an investigation by the EAS.

The agencies supplied HGV drivers to hirers in Yorkshire and the north of England.

These recruitment businesses breached the law by failing to keep records, withholding payment of wages to drivers, failing to issue terms of employment to drivers, failing to carry out checks on drivers such as confirming their identity or that they held the correct driving licenses, and supplying drivers who did not hold the required licences.

The companies are now dissolved and the businesses have ceased trading. The tribunal banned the owners from running or being concerned with running an employment agency or employment business for the maximum period of 10 years.

A current list of prohibited people is available on the EAS website: www.bis.gov.uk/eas

Financial penalties

There are several financial penalties that a rogue agency can face:

- Failure by an agency to comply with a Prohibition Order can lead to a fine of up to £5,000.
- It is an offence for a person to obstruct an inspector in the exercise of their powers. If the EAS inspector is refused entry or access to records, they may issue a formal caution or a fine of up to £3,000.
- An employment agency that is found guilty of the offence of keeping fraudulent entries or records can be fined up to £5,000.

The example below demonstrates the enforcement powers and sanctions available to the EAS:

The director of a recruitment firm supplying rail workers was banned from running or being concerned with the running of an employment agency or employment business for seven years following action taken by the EAS.

The tribunal heard how an employment agency withheld wages from workers totalling over £11,000.

The EAS brought the case having successfully prosecuted the owner at the Magistrates Court. This resulted in the owner being ordered to pay back withheld wages as well as £1,000 costs.

Over the course of 2010/2011, the EAS recovered over £300,000 for workers. This was a significant increase on the £63,341 recovered during 2008/2009.

SECTION THREE

GLA licensing standards

Enforcement agency: The Gangmasters Licensing Authority

On 5 February 2004, 23 Chinese cockle pickers lost their lives due to the behaviour of a ruthless and criminal gangmaster. The cockle pickers were stranded and abandoned on the mud flats of Morecambe Bay as they harvested cockles and were drowned by a rising tide. They had no protection and they had no escape. Investigations into the events surrounding the deaths of the cockle pickers revealed the severe exploitation that they faced in and out of work. Up to 70 workers had been forced to live in four properties provided by the gangmaster.

The Morecambe Bay tragedy shone a bright light into the murky world of gangmasters who are willing to exploit temporary migrant workers. Following this tragedy, Parliament supported a Bill to establish the Gangmasters Licensing Authority (GLA). The Bill was part of a long standing campaign to introduce licensing in the agriculture and food industries, based on proposals developed by a coalition coordinated by the Ethical Trading Initiative involving trade unions, employers and labour providers. The GLA was established in 2006.

The GLA's role is to protect all vulnerable workers in the agricultural, horticultural, food processing and packaging industries. Many of the workers supplied by gangmasters are involved in the picking and processing of produce that subsequently ends up on our supermarket shelves.

DEFINITIONS – WHO AND WHAT THE GLA COVERS

The GLA is a statutory enforcement agency set up to protect workers who are supplied by a gangmaster (labour provider) to work for another person (labour user) in the following sectors:

- agriculture
- the forestry industry
- horticulture
- fish processing
- gathering shellfish
- dairy farming
- packaging or processing of food and drink products.

Any labour provider supplying workers in these sectors requires a gangmasters licence.

What is a gangmaster?

A gangmaster is an individual or a business that:

- supplies workers to a labour user, in the sectors listed on the previous page
- uses workers to provide a service in the sectors on the previous page, for example harvesting or gathering agricultural produce
- uses workers to gather shellfish.

Someone is considered to be using a temporary worker if they employ the worker under a contract of employment or engage a worker under a contract for services. The GLA will consider someone to be using a temporary worker if they:

- require the worker to follow his or her instructions
- determine where, when or how the worker carries out the work, or
- (when using workers to gather shellfish) require the worker to sell their gathered shellfish to them as the first link in the buying chain.

Gangmasters may have registered their businesses abroad. If they supply workers within the UK it is necessary for them to hold a gangmasters licence.

A gangmaster who uses other gangmasters or subcontractors to supply workers must ensure that they hold a GLA licence.

The GLA's licensing scheme

The GLA ensures that a gangmaster holds a licence and complies with a set of licensing standards that are based on basic legal requirements.

A licensing scheme provides effective protection for temporary workers because:

- applicants and existing gangmasters must comply with the GLA licensing standards in order to be granted and to retain a GLA licence
- if a gangmaster breaches critical licensing standards the licence may be revoked immediately to prevent further exploitation (see a list of these critical standards below)
- the licence will clearly stipulate what activities the gangmaster is allowed to carry out; for example, the GLA can limit the sectors that a gangmaster can operate in
- persons who are employed by the gangmaster must also be specified on the licence if they are involved in supplying the workers to labour users; this would include employees or workers of the gangmaster who strike deals with labour users to supply workers
- the legislation requires the GLA to operate a public register of gangmasters. This could be a useful tool for reps to ensure their members are being employed by a licensed gangmaster. Union reps may also wish to sign up for the free GLA 'active check' system: this will allow reps to be provided with alerts about the status of gangmasters and their current licensing status. Reps should be aware that a gangmaster will be notified of who is making enquiries under the active check system. To maintain confidentiality it may be advisable for reps to call the GLA on 0845 602 5020 to check whether a gangmaster is licenced.

Follow this link to the GLA 'active check' system: http://laws.gla.gov.uk/Default.aspx?Menu=UserAccessMenu&Module=UserAccess&UType=1&RType=2

Who is a worker?

The GLA protects all workers who are supplied by gangmasters or who work directly for gangmasters in the sectors listed above.

The GLA will protect workers regardless of whether they:

- are an employee
- are a worker
- run their own business.

It is welcome that the GLA provides protections for all workers including the self-employed. However it is important to note that the application of licensing standards will depend on the employment status of the individuals concerned. For example, some of the licensing standards will apply only to 'employees' whereas others will also apply to 'workers'.

Please refer to the section on employment status on the TUC Basic Rights @ Work website for the factors that help determine an individual's employment status and also the rights/licensing standards that will apply for those categories: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm

Workers who are working illegally in the UK are also covered by the Act. The GLA works with the police and the United Kingdom Human Trafficking Centre to protect workers who are the victims of human trafficking.

Protection of migrant workers

The use of migrant workers is prevalent in the sectors covered by the GLA. Due to language difficulties and fears over deportation migrant workers are particularly vulnerable to exploitation. The GLA has published workers rights' materials in a number of different languages. These materials are available on the GLA website: http://gla.defra.gov.uk/index.asp?id=1013184

Gangmasters who are based abroad must have a GLA licence to supply workers in the UK. This means that all migrant workers, including posted workers are protected by GLA licensing standards. The GLA attempts to raise workers' awareness about their rights and how to enforce them in the UK and abroad in order to prevent exploitation occurring. The GLA has worked with labour inspectorates abroad to ensure that licensing rules are complied with by foreign gangmasters. It also works with UK embassies abroad to distribute information to workers before they make a choice to leave to work in the UK.

LABOUR PROVIDERS AND STANDARDS

The GLA licensing standards seek to ensure that gangmasters comply with their obligations relating to employment law, tax and national insurance (NI) and the provision of accommodation and whether they are a fit and proper person to supply workers.

The fit and proper test

This test ensures that gangmasters or persons specified on the licence act at all times in a fit and proper manner.

This standard takes into account circumstances where the gangmaster or other person specified on the licence has:

- previously tried to obstruct the GLA from carrying out its functions
- any unspent criminal convictions, with particular reference to offences of dishonesty, fraud, violence, human trafficking, carrying offensive weapons, firearms offences, intimidation, blackmail or harassment
- been connected with someone who has previously been deemed by the GLA not to be fit and proper for two years from the date of the fit and proper decision.

This is an important licensing standard as the GLA has uncovered gangmasters who have had their licences revoked but have continued to run employment agencies by using other individuals as a front for their agency. A previous GLA investigation revealed a banned gangmaster opening a new employment agency, using her former driver as a front to continue exploiting agency workers.

Gangmaster arrests in Liverpool

A joint raid between Merseyside Police and the Gangmasters Licensing Authority saw two men and a woman arrested in the Bootle area on suspicion of operating as gangmasters without a licence.

Police officers, supported by police dogs and the police helicopter, entered two premises in the Bootle area of Liverpool due to suspicions of firearms being present in the buildings.

Once the properties were deemed safe, officers from the Gangmasters Licensing Authority and the Merseyside Human Trafficking Team entered to speak to a number of individuals found on the premises. GLA officers also seized documentation and computers.

A 55-year-old man, 41-year-old man and 41-year-old woman were arrested for suspected offences under Section 12 of the Gangmasters (Licensing) Act 2004 for the offence of operating without a licence.

Proper management processes

A gangmaster must also have in place the proper management processes/systems to ensure they comply with the standards. The GLA will check that the gangmaster has the following in place before issuing a licence:

- worker contracts (where the gangmaster is not yet operating they must demonstrate that they have draft worker contracts in place)
- an understanding of health and safety requirements of the workers
- itemised payslips that detail any deductions from pay
- draft tenancy agreements, with a tenancy notice period of no more than 10 days for the worker
- the required gas and electricity safety standards
- an example of how they intend to compile a worker file.

Gangmasters must also ensure that:

- they are registered with the HMRC and have a valid PAYE number
- tax and NI is accurately calculated and deducted from pay, and then paid to the HMRC
- be registered with the HMRC If they exceed the VAT threshold
- charge and pay the correct amount of VAT.

National Minimum Wage

A worker must be paid at least the National Minimum Wage (NMW) or, if applicable, the Agricultural Minimum Wage (AMW).

The gangmaster must keep sufficient records to prove payment of the NMW.

Where a worker is paid on a 'piece rate' basis (for example, paid per carton of picked fruit), the piece work wage should not work out less than the NMW or AMW (including overtime) for the hours worked. See the section on NMW piece work for further information on calculating piece rates.

A gangmaster must not make deductions that take a worker's pay below the NMW rate (except a limited amount for accommodation – see the NMW section of the TUC Basic Rights website for further information (http://www.tuc.org.uk/workplace/tuc-19820-f0.cfm). This applies even if the worker has permission for deductions to be made from their pay.

Finding fees

Gangmasters cannot charge workers a fee for finding work. This includes workers who are provided from outside of the UK. The GLA has uncovered the widespread abuse of migrant workers paying an exorbitant fee to travel to and find work within the UK. These workers are then forced to pay off the debt from their wages. These sorts of fees are not permitted for gangmasters supplying workers within the UK.

Withholding wages

The licensing standards state that a gangmaster cannot withhold or threaten to withhold payment to agency workers on the following grounds:

- the gangmaster has not yet received payment from the labour user
- the agency worker has not produced a signed timesheet
- the agency worker has terminated their assignment (working the notice period)
- a payroll error at the agency – all mistakes must be rectified promptly.

However, in these circumstances the GLA cannot force a gangmaster to repay withheld wages to a worker. However, should the employer fail to do so, it could lead to their licence being revoked. The threat of licence revocation may lead to the gangmaster complying with the licensing standards.

There are also additional protections in place to prevent pay being withheld from a worker. In certain situations it will be unlawful for an employer to make deductions from an individual's wages. Employers also have a duty to pay their workers at least the NMW. For further information, see the section on deductions below and the TUC Basic Rights @ Work website: www.tuc.org.uk/workplace/tuc-19833-f0.cfm

Sick pay

All employees or workers will be entitled to at least statutory sick pay from the gangmaster. They may be entitled to an enhanced sick pay entitlement if this is agreed in their contract.

Please see the website below to find the current rate of statutory sick pay: http://www.hmrc.gov.uk/paye/rates-thresholds.htm

A gangmaster must keep sufficient records to prove payment of sick pay.

Other employment rights

Many of the licensing standards reflect the basic minimum workplace rights that workers are entitled to. These are set out below:

Written information checklist

Before a worker is supplied by a gangmaster to a labour user they must be given written information about their terms and conditions. This includes:

- whether they have a contract of employment or a contract for services
- the names of the worker and the employer
- the job title of the worker
- the starting date of work
- the place of work
- the amount of pay and how often the worker will be paid
- hours of work
- holiday entitlement
- sick pay entitlement
- grievance and disciplinary procedures
- the notice period.

The terms and conditions of a worker's contract must be in an accessible, clear format, and must be understood by the worker.

If an individual is an 'employee' of the gangmaster they will also be entitled to a written statement of terms and conditions within two months of starting work.

An itemised payslip highlighting any deductions from wages

Workers should receive individual written payslips on the day that they are paid. The payslip must show gross pay and take-home pay. Deductions that change weekly, such as tax and NI, should also be listed on each payslip.

Workers are protected against a gangmaster making unlawful deductions from pay. Before making any deductions, the gangmaster must put in writing the full amount owed by the worker and make a demand for the payment. This must also be in writing.

A gangmaster is allowed to make a deduction from a worker's wages only in certain circumstances. These include:

- deductions required or permitted by law such as NI, income tax and student loan repayments
- deductions agreed in writing with the worker
- deductions allowed by a contract of employment
- when the deduction is to recover an earlier overpayment of expenses or wages.

Annual leave

Workers are entitled by law to a minimum of 5.6 weeks' paid holiday per year and the ability to take that leave.

The gangmaster must keep sufficient records to prove payment of holiday pay.

Hours of work

Workers should not have to work more than 48 hours per week on average, including overtime. However it is possible to opt out of the Working Time Regulations. This must be voluntary and in writing. It is possible for a worker to cancel an opt-out agreement with the employer.

Workers are entitled to take a minimum of one day off per week. Workers are entitled to a rest break of at least 20 minutes if they work for more than six hours a day.

For further information relating to working time rights, see also the section on the HSE and also the TUC Basic Rights @ Work website: http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm

Disciplinary and grievance procedures

It is good practice for gangmasters to allow workers access to a grievance procedure and to operate fair disciplinary procedures. If a gangmaster employs an individual as an employee they must comply with the ACAS code of practice on disciplinary and grievance procedures. Failure to do so may mean that any award made by an employment tribunal will be increased by up to 25 per cent.

Right to join a trade union

An agency worker should not be prevented by the gangmaster or labour user from joining a trade union.

An agency worker should not be subjected to any detriment by a gangmaster who is seeking to prevent the agency worker from joining a trade union, or penalise the agency worker for being in a trade union.

Health and safety

The GLA ensures that workers have a safe environment in which to work and live. It ensures that any transport services used to take the worker between home and work are safe.

- Both the labour provider and labour user have a legal responsibility for the health and safety of workers in the workplace. The labour provider and labour user may agree in writing who will be responsible for managing workers' health and safety.
- A worker must be provided (by the labour provider or user) with any necessary health and safety training. Workers must not be charged for this training.
- Workers must be provided with any required personal protective equipment.
- Workers must be provided with adequate facilities such as drinking water, toilets and washing facilities.
- All vehicles used to transport workers must be roadworthy and well maintained with no obvious defects. Vehicles should be registered, insured, taxed and have a MOT certificate.

See the section on annual leave on the TUC Basic Rights @ Work website for further information on all basic workplace rights: http://www.tuc.org.uk/workplace/tuc-19836-f0.cfm

Prevention of forced labour and mistreatment of workers

- Workers must not be subjected to physical or mental abuse.
- Workers must have freely chosen to work.

Two convictions after waiters and waitresses shoved into cabbage fields to work

Two men who mistreated their workers were convicted of breaching gangmaster laws. An investigation found eight Polish workers, wearing only sports clothing and trainers, drenched in a cabbage field.

The young men and women had arrived in the UK via an unlicensed agency in Poland and were given contracts specifying they would be working in the catering industry as waiters and waitresses.

As the workers believed they would be working in restaurants they were not prepared for the Cornish fields in winter where they were expected to cut, weigh and pack 1,200 cabbages per hour each in order to be paid the agricultural minimum wage.

The GLA found the workers in near freezing conditions in a muddy and wet field dressed in lightweight sports clothing that was not waterproof.

This means that a gangmaster cannot force a worker to work against their will or allow any debts to be in place between a gangmaster and worker that prevent the worker from moving freely to other work.

- Workers can leave the assignment without incurring a penalty.
- Workers cannot be penalised for giving notice.

Loaning money to workers

A gangmaster cannot charge interest on any loans made to agency workers.

The terms of any loan repayment must be given to the agency worker in writing.

The GLA uncovered an example of 30 Latvian fruit pickers who were subjected to appalling treatment. They were paid below the NMW and through unfair deductions were often left owing the gangmaster money after a month of working in the fields. If the workers needed money the gangmaster would loan them money with an interest repayment rate of six per cent. This is not permitted under GLA standards.

Accommodation

- Any accommodation provided for workers must comply with local housing regulations on multiple occupation.
- Workers must not be placed in poor or overcrowded accommodation.
- Workers must be able to leave and find alternative accommodation after giving their notice period. The maximum tenancy notice period allowed is 10 days.
- There is a maximum allowable deduction for accommodation costs. For the maximum allowable deduction a gangmaster can make see: http://www.direct.gov.uk/en/Employment/Employees/TheNationalMinimumWage/DG_175108
- Any accommodation provided must have appropriate facilities (toilets, bathrooms, washing machines, heating, lighting, furniture) and must be safe for habitation.
- If accommodation is provided for workers then details of cost and the terms on which the accommodation is to be offered must be provided to those workers.
- Under-18 workers cannot be compelled to stay away from home for work purposes.

One GLA investigation revealed workers living in filthy and dangerous houses without suitable bedding and any electrical safety documentation, and having to use a toilet covered in mould.

Transport

The GLA checks that any vehicles used to transport workers are safe. This includes checks on tax discs, MOT certificates and insurance documents. GLA officers take a common sense test of whether a vehicle is obviously unsafe, for example missing seatbelts or unsafe seating and doors.

A recent coordinated GLA event with the police in Norwich involved carrying out a vehicle stop in an area where gangmasters transported workers. The operation revealed a vehicle transporting workers driven by a driver with no PCV driving licence and no hire and reward insurance, which resulted in the police seizing the vehicle.

Another GLA investigation revealed workers being ferried to fields in an uninsured minibus sometimes driven by an underage driver.

Using workers to gather shellfish

The GLA has a wide range of standards that must be adhered to by gangmasters using workers to gather shellfish. These include standards relating to:

- planning the work of agency workers and supervision of these workers, including reference to tide timetables and health and safety equipment needed for this occupation
- ensuring the safety of the transport to the cockle picking area
- provision of life jackets and life rafts
- the use of boats in cockle picking work
- the requirement for gangmasters to hold relevant shellfish gathering permits.

For workers who gather shellfish or union reps representing these workers see licensing standards 6.5 to 6.9 for a comprehensive guide to steps that must be taken to protect this vulnerable group of workers.

To download a full version of the GLA licensing standards go to: http://www.gla.defra.gov.uk/embedded_object.asp?id=1013491

LICENSING AND COMPLIANCE

The GLA will carry out investigations and audits prior to granting a licence, which ensure compliance with minimum legal rights and the GLA licensing standards (see above). Inspections will test the labour provider against the relevant licensing standards. The GLA may also visit and inspect any labour users.

The GLA concentrates its resources on identifying the more persistent and systematic exploitation of workers. Therefore where unions can identify a critical breach or several minor breaches of the licensing standard there is a greater chance that the GLA will impose sanctions against a gangmaster or labour user.

Enforcement powers of the GLA

The GLA has a range of powers at its disposal to carry out inspections and enforce the licensing standards. The GLA has a team of officers to ensure that licensing standards are being complied with.

An enforcement officer has the power to arrest, without warrant, if they have reasonable grounds to suspect that someone has committed one of the three offences under the Gangmasters Licensing Act 2004:

- acted as a gangmaster without a licence
- impersonated a gangmaster
- conspired, attempted, aided or abetted others to act as or impersonate a gangmaster.

Enforcement officers are given powers to assist their inspections. Enforcement officers may:

- require any relevant person to produce records (for example records of annual leave, sick pay, tenancy agreements, written statements, MOTs etc.). This includes the relevant person providing computer records in a clear and legible format for the enforcement officer. The enforcement officer may require access to any computers to inspect records.
- inspect, examine, remove and copy any material part of the records
- require any relevant person to provide an explanation of any records, if necessary
- enter premises at all reasonable times to carry out the above.

When carrying out inspections where necessary, a GLA officer can obtain a warrant and enter premises using reasonable force in the following situations:

- where admission to the premises has already been refused or it is expected admission will be refused and the GLA has notified the occupier that they intend to apply for a warrant; the GLA does not need to notify the occupier if they consider that giving notice could detrimentally affect the investigation
- where extreme urgency is required
- where premises are unoccupied or the occupier is temporarily absent.

Officers are permitted to retrieve materials on the premises and retain them for as long as necessary.

An agency worker or union rep can contact the GLA via the Pay and Work Rights Helpline (0800 917 2368). The helpline has trained advisers who may be able to answer any enquiries. If the caller needs detailed information or assistance in enforcing their rights then they will be directed on to the GLA.

The website has basic employment rights translated into more than 100 different languages.

See the Pay and Work Rights Helpline section of this guide for further information.

The GLA can also be contacted directly on 0845 602 5020. This may be useful where a union rep wants to check whether a gangmaster is licensed.

SANCTIONS AVAILABLE TO THE GLA

Licence revocation

Where an investigation reveals that the GLA licensing standards have been breached, the GLA has the power to revoke the licence of a gangmaster. Whether a licence will/may be revoked immediately depends on whether the standard breached is critical or non critical.

All critical breaches in the table above are assigned a score of 30 by the GLA investigation team. All non-critical breaches in the table above are assigned a score of 8. The GLA may/will revoke a licence where the inspection reveals that the labour provider has scored 30 or more points. Therefore a combination of non-critical breaches can also lead to the gangmaster's licence being revoked.

If the score is under 30 the GLA also has the power to modify licences. This means that it can stipulate additional licence conditions that must be met within a certain time period. For example, where the GLA discovers that clauses are missing from a worker's contract it can stipulate that the contract must be amended to reflect the licensing standards within three months, or the licence may be revoked. The conditions upon the licence can make a gangmaster comply with these standards in the future by placing a time limit for compliance.

Gangmaster Licensing Authority standards

Critical	*Non-critical*
*PAYE, NI & VAT***	*Payment of annual leave and sick, maternity, paternity and adoption pay*
*Payment of National Minimum Wage***	*Health and safety*
*Fit and proper test**	*Workers must be provided with payslips*
*Fit and proper test – management processes**	*Licensing of accommodation for multiple occupation*
*Prevention of forced labour and mistreatment of workers**	*Situations arising where free travel must be provided to workers*
*Restricting a worker's movement, debt bondage**	*Provisions where workers are required to live away from home*
Loaning of money to workers	*Tenancy notice periods*
*Withholding wages**	*Rest breaks*
*Standards of accommodation**	*Working hours*
*Providing safe transport for workers**	*Right to belong to a trade union*
*Using workers to gather shellfish**	*Providing labour to replace striking workers*
Charging of fees and providing additional services	*Confidentiality*
*Sub-contracting and using other labour providers**	*Disciplinary and grievance procedures*
	Discrimination
	Right to work
	Worker records

** If these licensing standards are breached, this may result in immediate revocation.*
***If these licensing standards are breached, this will result in immediate revocation pending appeal.*

Criminal offences

The Gangmaster (Licensing) Act 2004 includes a number of criminal offences. It is illegal to:

- operate as a gangmaster without a licence
- use an unlicensed gangmaster
- falsify documents or obtain documents by deception or use a document that relates to another person with the intention of impersonation a gangmaster
- obstruct a GLA officer in the course of their duties
- provide a GLA officer with material false information.

The maximum penalty for operating as a gangmaster without a valid licence is 10 years in prison and a fine of up to £5,000.

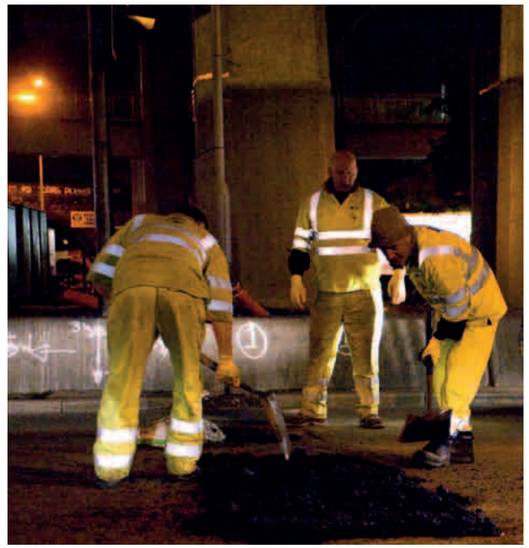
The maximum penalty is for using an unlicensed gangmaster is six months in prison and a fine of up to £5,000.

The maximum penalty for obstructing a GLA officer or providing them with material false information is 51 weeks in prison or a fine of up to £5,000.

SECTION FOUR

Working time

Enforcement agency: The Health and Safety Executive



QUICK REFERENCE GUIDE

Working long hours could lead to fatigue and carelessness and the risk of an accident, putting at risk not only a worker's health and safety but also that of colleagues and members of the public.

The Working Time Regulations (WTR) came into force on 1 October 1998 to counter the risks above. They achieve this by imposing hourly limits on a working week and ensuring that workers get adequate rest breaks while at work and can take adequate paid holidays away from work.

Union reps will be familiar with the role that the Health and Safety Executive (HSE) plays in minimising health and safety risks in a workplace. The HSE is also responsible for enforcing some of the WTR. This guide focuses on these rights and the powers that HSE officers have to enforce them.

HSE and local authorities are responsible for the enforcement of:

- the maximum weekly working time limit
- night work limits
- health assessments for night work
- work patterns and adequacy of breaks
- record keeping.

WHICH WORKERS ARE COVERED BY THE WTR?

The majority of workers are covered by the WTR.

If an individual has a contract of employment they will be an 'employee' and will be covered by the WTR. The contract of employment can be a written agreement, agreed orally or based on what happens in practice in the workplace.

If an individual has a 'worker' contract, to perform services personally, they will also be covered by the WTR.

If an individual is genuinely self-employed they will not be covered by the WTR.

Please see the section on employment status at: www.tuc.org.uk/workplace/tuc-19833-f0.cfm for further information on the different employment relationships between an employer and an individual and what factors help determine whether you are an 'employee', a 'worker' or 'self-employed'.

WHICH WORKERS ARE NOT COVERED BY THE WTR?

Certain categories of workers are not covered by the WTR:

- jobs where the worker can choose freely their hours and duration of work (such as a managing executive) or where their hours of work are not monitored by their employer (such as senior executives, family members and workers officiating at religious ceremonies)
- the armed forces, emergency services and police are excluded in some circumstances
- domestic servants in private houses.

WHAT COUNTS AS WORKING TIME?

As well as a worker's normal duties, the following activities will also count towards working time:

- job-related training
- job-related travelling time, for example if you are a care worker who visits patients at their home
- paid and some unpaid overtime
- time spent on-call at the workplace
- working lunches, for example business lunches
- time spent working abroad, if you work for a UK-based company
- employers and trade unions may negotiate for additional categories of activities to count towards working time.

'On-call' time

If a worker is 'on call' away from their workplace it means that they are at their employer's disposal to potentially carry out work usually outside of the normal working day. When a worker is required to actually carry out the work of the

employer or when an employer requires a worker to be on call at their place of work (even if resting) this time will count towards working time.

Even if the worker is allowed to be asleep, or the employer provides rest facilities during this "on call" period, whilst the worker remains at or near the workplace, these hours will count towards working time. In certain circumstances the employer may provide live-in accommodation on the premises or nearby to the premises.

What hours don't count towards working time?

The following time away from work will not count towards working time:

- time spent travelling to and from work (a commute)
- breaks where no work is carried out, such as rest breaks and lunch breaks
- evening and day class release, where the course is not related to work
- unpaid overtime the worker has volunteered for, for example staying late to finish something
- any paid or unpaid holiday.

THE 48-HOUR WEEKLY LIMIT

Employers have to ensure that workers do not work more than an average of 48 hours in a weekly period. The employer must count overtime hours towards the average 48-hour weekly time limit.

Average hours are worked out using a 17-week reference period, though a reference period can be changed by a collective agreement. Therefore it is possible for an individual to work more than 48 hours per week, as long as the average over a 17-week period is 48 hours or less per week.

Where there is a trade union in the workplace an alternative reference period, for example, six months or 12 months, may be determined by collective agreement. The WTR also allow for workplace agreements to determine alternative reference periods. These would be negotiated between the employer and non-union employee representatives.

If the worker has been employed for less than 17 weeks, the reference period will be from the starting point of their employment to the termination date.

If an employer thinks it likely that a worker will work more than 48 hours they should take steps to reduce their hours. Union reps in the workplace may work with employers to monitor hours and ensure that members are not being forced to work more than 48 hours.

How to calculate weekly working time

1. Add up the number of hours worked in the reference period.
2. Divide that figure by the number of weeks in the reference period (normally 17 weeks).

For example:

Andrew has a standard working week of 40 hours (eight hours per day).

He does 15 hours' of overtime per week for the first 10 weeks of the reference period.

Step 1

Multiply Andrew's standard working hours by the number of weeks in the pay reference period (17 weeks x 40 hours = 680 hours).

Step 2

Add on Andrew's overtime (15 hours x 10 weeks = 150 hours overtime + 680 hours = 830 hours).

Step 3

Divide Andrew's total hours by the number of weeks in the pay reference period (830 hours ÷ 17 weeks = 48.82 hours).

Andrew has worked an average of 48.82 hours per week, which is a breach of the working time limit.

The calculations become more complicated if at any time during the reference period the worker is absent from work on:

- paid annual leave (up to the first four weeks of statutory paid annual leave entitlement)
- maternity leave
- paternity leave
- adoption leave
- parental leave
- sick leave.

These are known as 'excluded days'.

For example:

Bernice works a standard working week of 35 hours (seven hours per day). She then does overtime of eight hours per week for the first 15 weeks of her 17-week reference period. In Bernice's 16th week she takes four days' annual leave. When Bernice returns to work, she resumes her normal 35-hour week, with no overtime.

Step 1

Add Bernice's 16 weeks of normal hours and one other normal work day (35 hours x 16 weeks = 560 hours + 7 hours = 567 hours).

Step 2

Work out her overtime hours worked (8 hours x 15 weeks = 120 hours).

Step 3

Add her total normal hours plus overtime hours worked in the pay reference period (567 hours + 120 hours = 687 hours during the pay reference period).

Step 4

Add the 4 days that Bernice took as annual leave to the total hours she worked, before the calculation below is carried out (687 + 28 = 715).

Step 5

Divide the total hours by the number of weeks in the reference period (715 hours ÷ 17 weeks = 42.06 hours).

Bernice has worked an average of 42.06 hours per week, which is within the working time limit.

The weekly working limit and young workers

The weekly working time limits for young workers are 8 hours a day and 40 hours per week.

For the majority of young workers these are absolute limits. A young worker's working time is not averaged over a reference period, so in one week they must not work more than 40 hours. The opt-out provisions (see section below) do not apply to young workers.

Young workers will be able to work more than eight hours per day, or 40 hours per week, only if they are needed to:

- keep the continuity of service or production
- respond to a surge in demand for a service or product

and provided that:

- there is no adult available to do the work
- their training needs are not negatively affected.

A young worker is between the ages of 15 and 17 and is over compulsory school-leaving age. The school-leaving age in the UK is the last Friday in June in the school year when the young worker turns 16.

OPT-OUT AGREEMENTS

The regulations allow those adult workers who wish to work more than 48 hours the choice of opting out of the 48-hour weekly working limit. The opt-out agreement applies only to the weekly working time limit. The remaining provisions continue to apply to workers who sign an opt-out agreement.

Any opt out agreement:

- must be in writing
- must allow for the worker to terminate the agreement with seven days' notice
- should cover whether the agreement is for a specified period of time or will apply indefinitely.

An employer may ask the employee to extend the period of notice to terminate the opt-out agreement. This can be a maximum of three months. The employer has to agree this with the employee. It should be included in the agreement.

An employer must keep up-to-date records of opt-out agreements including any revised terms of notice that have been agreed to.

The HSE does not enforce opt-out agreements. If a worker has concerns about being pressured into signing an opt-out agreement or finds that their employer resists their attempts to opt back in to the weekly working time limits, they should speak to their union rep about who can try to resolve the issue with the employer.

Opt-out provisions and young workers

Young workers (any individual over the school leaving age and under 18) cannot opt out of the weekly working time limits.

NIGHT WORK LIMITS

The Regulations place a duty on the employer to ensure that a 'night worker' does not have to carry out more than an average of eight hours' night work in one 24-hour period.

In order for a night worker to be carrying out night work, three hours of their shift must be worked during the "night time" period of 11pm to 6am.

This regulation applies only to 'night workers'. To be considered a night worker a worker must work the majority of their shifts during the 'night time period'.

In an identical way to the weekly working time limits, the night work limits are calculated over a 17-week reference period. This means that some nights a worker may work more than eight hours, but over a 17-week period it must average out that a worker is working eight hours or less per night. Note that workers are legally entitled to and must take one day off per week. This means that there is an effective 48-hour average limit on weekly night work, with no opt outs permitted.

Overtime hours can be counted towards night work.

If the night work involves any special hazards, heavy physical or mental strain then there is an absolute limit placed on night work per night. In these circumstances a worker must not work more than eight hours. (This type of work can be defined in a collective agreement negotiated by the trade union or recognised in a health and safety assessment carried out in conjunction with the union health and safety representative).

There are exceptions to limits on a worker's night working hours where the work is in the following areas:

- jobs where the worker freely chooses how long they will work, such as a managing executive
- the armed forces, emergency services and police are excluded in some circumstances
- domestic servants in private houses.

In certain situations workers will not be covered by the rules relating to night work:

- where the worker's home and workplace are distant from each other, including offshore workers
- where the worker's activities have been affected by:
  - an accident
  - unusual and unforeseeable circumstances beyond the control of the employer
  - exceptional events that could not have been avoided had the employer exercised all due care.

How to calculate night work hours

Average night-time working hours are calculated by dividing the number of normal working night hours worked in a reference period by the number of days in the period. This does not include the number of rest days you are entitled to take.

For example:

Clarissa is a night porter at a busy hotel. She regularly works Monday to Friday and has always covered the 7pm to 8am shift. She works five 13-hour shifts each week. To calculate whether Clarissa is within the night limits set out in the WTR, follow the steps below:

Step 1

Multiply the number of weeks in the reference period (17) with the number of hours worked each week: 17 x (5 x 13) = 1,105.

Step 2

In a 17-week period there are 119 days (17 x 7). Allowing for the entitlement to take 17 weekly rest periods, the number of days Clarissa could be asked to work is: 119 – 17 = 102 days.

Step 3

To calculate Clarissa's daily average working time, divide the total hours by the number of days she could be required to work: 1,105 divided by 102 = 10.8 hours.

Clarissa has worked an average of 10.8 hours a day, which is a breach of the WTR for night work.

Night work limits and young workers

Generally, young workers are not permitted to work between 10pm and 6am. Collective agreements negotiated by a trade union may allow for this period to be changed to 11pm to 7am.

Young workers will be permitted to carry out night work when they work in:

- hospitals or similar establishments
- agriculture
- retail
- hotels or the catering industry
- post or newspaper delivery
- cultural, sporting, artistic or advertising activities.

Such workers can carry out night work only if it is crucial to their job, and only if they are needed to either:

- maintain continuity of service or production, or
- respond to an increase in demand for a service or product

and provided that:

- there is no adult available to perform the task
- their training needs are not negatively affected
- they are allowed later in the day to take a rest period the same length as the time they worked.

A young worker is an individual over the school leaving age and under 18.

HEALTH ASSESSMENTS PRIOR TO NIGHT WORK

Before an individual can start night work an employer must have offered the worker an opportunity to undertake a free health assessment unless the worker has previously had a health assessment that is still valid.

Employers must ensure that all night workers are offered the opportunity of free health assessments at regular intervals.

Where an employer is advised by a doctor/registered medical practitioner that a worker cannot undertake night work, the employer should where possible transfer the worker to daytime work to which the worker is suited.

Health and capacities assessments prior to night work and young workers

Before a young worker can start night work an employer must have offered any young workers an opportunity to undertake a free health and capacities assessment unless the young worker has previously had a health assessment that is still valid. This provision does not apply where the night work the young worker is undertaking is considered to be of an 'exceptional nature'.

HSE guidance suggests that health and capacities assessments differ to health assessments as they take into account such things as "physique, maturity, experience and competence" to undertake the job. The HSE guidance also suggests that work of an 'exceptional nature' will cover situations where the employer has no reasonable alternative than to use a young worker, or where the young worker is covering for a sick worker.

A young worker is an individual over the school leaving age and under 18.

Where an employer is advised by a doctor/registered medical practitioner that a worker cannot undertake night work, the employer should where possible, transfer the worker to daytime work to which the worker is suited.

REST PERIODS AND BREAKS

Individuals have the right to standard rest breaks each shift, each day and each week. For further details of these rest breaks please visit the website at: www.direct.gov.uk/en/Employment/Employees/WorkingHoursAndTimeOff/DG_10029451

The HSE does not enforce standard rest breaks. These are enforceable through an employment tribunal. Workers should consult with their union reps when considering whether to make a claim to an employment tribunal.

The HSE is responsible for ensuring that an employer provides adequate, regular rest breaks where a worker is given uninterruptible and monotonous tasks that put their health and safety at risk.

CATEGORIES OF WORK WHERE THE WTR APPLY DIFFERENTLY

As noted above, there are groups of workers to whom the WTR do not apply at all. In certain categories of work the WTR will apply differently.

Transport workers

A minority of transport workers are covered by separate directives. However, most gain protection from the WTR.

Transport workers must be given 'adequate rest' periods that are:

- regular
- set periods of time
- long enough to make sure that injury is prevented to the worker and their co-workers
- long enough to prevent either short-term or long-term damage to their health.

These adequate rest periods will not apply where the transport worker's activities have been affected by:

- an accident
- unusual and unforeseeable circumstances beyond the control of the employer
- exceptional events that could not have been avoided had the employer exercised all due care.

Special rules apply to HGV drivers, PSV drivers, air cabin crew, inland waterway transport service workers, seafarers and workers onboard seagoing fishing vessels. For information on these rules contact your union rep or the Pay and Work Rights Helpline.

See the guidance above on weekly working time limits above for further information.

Certain categories of worker activities are not covered by the rules relating to rest and night work regulations:

- security guards and surveillance operatives
- where there is a need for continuity of service:
  - airport workers
  - dock workers
  - agricultural workers
  - hospital workers
  - press, radio, television and cinematographic production workers
  - postal and telecommunications services workers
  - civil protection services workers
  - gas, water and electricity workers
  - refuse collectors and incinerators
  - prison workers
  - researchers and developers
  - industries in which work cannot be interrupted on technical grounds
- workers in the agriculture, tourism and postal services sectors where there is a foreseeable increase in workload.

A trade union and employer may negotiate a collective agreement that excludes categories of workers from the rules relating to night work. Workers should speak to their union rep or consult their staff handbook for further information.

REQUIREMENT TO KEEP RECORDS OF WORKING TIME

An employer must keep records to prove that the requirements under the WTR have been met. An employer must hold the following records for each worker for a period of two years:

- weekly hours worked
- 'night work' worked
- health assessment and health and capacities assessment details
- opt-out agreements, including any revised terms of notice.

During an HSE investigation an inspector has the power to request to inspect and examine the records above, to determine whether there has been a breach of the WTR.

WHO ELSE ENFORCES THE WTR?

The WTR are enforced by the HSE. However, there are certain situations where other enforcement bodies will be responsible for enforcing, working hours, night work and

health assessments. Determining which agency enforces WTR depends upon the type of work that is being undertaken.

- Local authority – responsible for enforcing working time for workers in retail, consumer services, restaurants
- VOSA – road transport workers
- Civil Aviation Authority – civil aviation workers
- Office of Rail Regulators – enforcement for railway workers.

Regardless of which agency enforces a worker's working time rights, the powers granted to the inspectors will be the same. See the section below for further information relating to the powers inspectors have at their disposal to enforce a worker's rights.

All the above enforcement agencies can be signposted via the Pay and Work Rights Helpline.

WHAT THE HSE DOES NOT ENFORCE

The following WTR are not enforced by the HSE:

- daily rest break periods
- weekly rest periods
- paid annual leave entitlement.

The entitlements to rest and leave are enforceable through employment tribunals. If a worker suspects they are not receiving their rest breaks or their full entitlement to annual leave, they should speak to their union rep. Their union rep will be able to provide further advice about making a claim to an employment tribunal.

See the links below for further information on these Regulations:

Rest breaks
www.tuc.org.uk/workplace/tuc-19837-f0.cfm

Holiday entitlement
www.tuc.org.uk/workplace/tuc-19835-f0.cfm

HSE INVESTIGATIONS – ENFORCEMENT POWERS

Working with union reps

Unlike other areas of health and safety law there is no requirement for the HSE to consult with H&S reps in the workplace when investigating a potential breach of the WTR. However, the HSE welcomes any information from union reps. The HSE acknowledges that the involvement of a trade union can assist in preventing harm and injury in the workplace.

> TRADE UNIONS TRAIN THEIR SAFETY REPRESENTATIVES TO A HIGH STANDARD AND WE KNOW THAT SAFETY REPRESENTATIVES APPOINTED BY TRADE UNIONS ARE PARTICULARLY EFFECTIVE AT ENSURING SAFER AND HEALTHIER WORKPLACES.
>
> HEALTH AND SAFETY COMMISSION

Union reps will be able to contact the HSE on behalf of the worker/member that suspects they have a working time complaint. The HSE will be able to involve and give feedback to a union rep where the worker has given their consent for this to happen.

Enforcement powers

The enforcing authorities have a range of tools at their disposal to secure compliance with the WTR. For the purposes of investigating and examining any potential breaches of the WTR, an inspector has the power to:

- enter premises at any reasonable time
- be accompanied by a police officer when carrying out their inspections
- question individuals as part of the investigation
- request copies of any relevant records relating to the WTR
- request facilities to assist the investigation.

Actions following the investigations

Inspectors can offer employers information, and advice, both face-to-face and in writing. This may include warning an employer that they are failing to comply with the law. Where appropriate, inspectors may also serve Improvement Notices and Prohibition Notices.

Improvement notices

Where an inspector suspects a breach of the Regulations has occurred they may wish to serve on the employer/individual an Improvement Notice. Every improvement notice will contain a statement that in the opinion of an inspector an offence has been committed and will detail the reasons for the suspected breach. An Improvement Notice will require an employer to remedy any breach of the regulations within a set time period.

Prohibition notices

Where an inspector thinks there is a breach of the Regulations that involves a risk of serious personal injury to any workers, they may issue a Prohibition Notice. Every Prohibition Notice will contain a statement that in the opinion of an inspector an offence has been committed and will detail the reasons for the suspected breach and why there is a risk of serious personal injury.

A prohibition notice stops any work being done in order to prevent serious personal injury.

SANCTIONS AS A RESULT OF WTR BEING BREACHED

See the table below for sanctions that can apply where an employer commits an offence under the WTR. The HSE can also identify and prosecute or recommend prosecution of individuals if it considers a prosecution to be warranted. In particular, it could consider the management chain and the role played by individual directors and managers, and should take action against them where the inspection or investigation reveals that the offence was committed with their consent or connivance or to have been attributable to neglect on their part.

The WTR give HSE inspectors the power to carry out prosecutions in a magistrate's court for the offences below.

The HSE has a publicly available register of prosecutions taken and notices issued which can be found at: www.hse.gov.uk/enforce/prosecutions.htm

Union reps may wish to use this register to check whether their employers have previously breached the Working Time Regulations or to highlight to their employer the consequences of breaching the Regulations.

The HSE will also consider drawing media attention to factual information about charges that are going to court. It will also consider publicising any conviction that could serve to draw attention to the need to comply with health and safety requirements, or to deter anyone tempted to disregard their duties under health and safety law. This could be a useful tool for reps who are seeking to get employers to comply with the WTR.

Remedies available to the courts

Where a person is convicted of an offence listed above and the court believes the employer/individual has the power to remedy the offence, the court can order the employer/individual to do so. This is in addition to or instead of the punishments listed above.

Offence	*Max penalty*
Breach of 48-hour working limit, night work or health assessment regulations	*£5,000*
Preventing an individual from answering an inspector's enquiries	*£5,000*
Breaching a requirement to put in a Prohibition or Improvement Notice	*£5,000*
Failing to give the inspector relevant information for their investigation	*£5,000*
Failure to provide the inspector with relevant records	*£5,000*
Failure to assist the inspector by providing facilities	*£5,000*
Intentionally obstructing an officer carrying out their investigation	*£5,000*
Falsely stating compliance with the Regulations	*£5,000*

CONTACTING THE HSE

A worker or union rep can contact the HSE via the Pay and Work Rights Helpline (0800 917 2368). The Helpline has trained advisers who may be able to answer any enquiries. If the caller needs detailed information or assistance in enforcing their rights then they will be directed on to the HSE.

See the link below for further information, which also provides for making an enquiry or a complaint online: http://payandworkrightscampaign.direct.gov.uk/index.html

The website has basic employment rights translated into more than 100 other languages.

THE PAY AND WORK RIGHTS HELPLINE

If union reps or vulnerable workers need information or help in enforcing their basic workplace rights, they can call the Pay and Work Rights Helpline on 0800 917 2368. Advisers on the Helpline can give information and advice about the:

- National Minimum Wage (NMW) or Agricultural Minimum Wage
- 48-hour working time limits
- night work rules
- basic standards that agencies and gangmasters must comply with.

The Helpline was launched in 2009. It provides a single point of contact for all the enforcement bodies, which removes any confusion for callers of knowing who and what number to call to enforce their rights.

The Pay and Work Rights Helpline has been specifically designed to assist vulnerable workers. For example:

- It provides a confidential service.
- It is a freephone 0800 number, which is also free from most mobiles.
- There are translation facilities for more than 100 different languages to assist migrant workers calling the Helpline.
- It is open beyond normal working hours (8am to 8pm) and on Saturdays (9am to 1pm) to make contacting the Helpline easier.
- It can deal with complaints involving multiple breaches of basic workplace rights.

Where it appears that an individual's rights have been breached and a worker or a rep wants to make a complaint, the advisers can refer callers to the appropriate statutory enforcement body.

The Pay and Work Rights Helpline welcomes calls from third parties such as union reps. Where a union rep calls on behalf of a worker, the Helpline will register the complaint and pass it on to the relevant enforcement body. Where the worker gives their consent to the enforcement body, an enforcement officer will be able to provide feedback and liaise with the union rep.

The Pay and Work Rights Helpline can also deal with multi-issue complaints from callers. For example, where a caller suspects they are not being paid the NMW or they are working more than 48 hours per week, on average, the advisers will refer the complaint to both the Health and Safety Executive and the HMRC NMW enforcement team.

Further information about the Pay and Work Rights Helpline can be found at http://payandworkrightscampaign.direct.gov.uk/index.html. This website contains information on basic employment rights, contact information and also an online complaint form: https://payandworkrights.direct.gov.uk/complaints/

Please also take a closer look at the TUC vulnerable workers website for further information about basic workplace rights: http://www.tuc.org.uk/workplace/tuc-19833-f0.cfm

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