

National Minimum Wage Act, 2000



Detailed Guide to the National Minimum Wage

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NATIONAL MINIMUM WAGE

1. INTRODUCTION

The National Minimum Wage Act 2000, became law on the 1st April, 2000.

What is the national minimum hourly rate of pay?

From 1 July 2007 the national minimum hourly rate of pay is €8.65.

Who is covered by the Act?

The Act applies to all employees except the following categories of employees who are excluded from its provisions:

- (i) close relatives of the employer such as a spouse, father, mother, son, daughter, brother and sister;
- (ii) apprentices within the meaning of the Industrial Training Act, 1967 and Labour Services Act, 1987 including an apprentice printer, bricklayer, mechanic, plumber, carpenter/joiner and electrician. (See S.I. No. 168 of 1997 for full list).

Apprentice hairdressers are covered by the provisions of the Act, as they do not fall within (ii) above.

What is the definition of employee under the Act?

An employee means a person of any age who has entered into, or works or has worked under, a contract of employment. A contract of employment means a contract of service or apprenticeship or any other contract whereby an individual agrees with another person to do or perform personally any work or service for that person or a third person (whether or not the third person is a party to the contract).

Are part-time employees covered by the Act?

Yes. The Act applies to full-time, part-time, temporary and casual employees for any hours worked.

Are employees who are paid on the basis of output/productivity covered by the Act?

Yes. An employer can pay an employee according to his/her output/productivity. The national minimum hourly rate of pay is expressed as an hourly rate of pay, not a piece or productivity rate. Therefore at the end of a pay reference period, an employer must ensure that such an employee's reckonable pay when divided by the employee's hours of work is not less than the employee's statutory minimum hourly rate of pay entitlement under the Act.

2. MINIMUM HOURLY RATES OF PAY

Who is entitled to be paid at least €8.65 per working hour?

An experienced adult worker must be paid an average hourly rate of pay that is not less than €8.65 per working hour in a week, a fortnight or no longer than a month (known as a pay reference period for the purposes of the Act).

Who is an experienced adult worker?

For the purposes of the Act an experienced adult worker is an employee who is not:

- (i) under age 18 or
- (ii) in the first two years after the date of first employment over age 18, or
- (iii) a trainee undergoing a course that satisfies the conditions set out in S.I. No. 99 of 2000.

What are the circumstances allowed to an employer to pay less than €8.65 per working hour in a pay reference period?

Table 1 illustrates the circumstances where a lower rate than €8.65 per working hour may be paid by an employer.

TABLE 1

| Employee | Minimum Hourly Rate of Pay |
|---|--|
| Experienced adult worker | €8.65 per working hour |
| Under age 18 | €6.06 per working hour |
| * In the first year after the date of first employment over age 18, whether or not the employee changes employer during the year | €6.92 per working hour |
| * In the second year after the date of first employment over age 18, whether or not the employee changes employer during the year | €7.79 per working hour |
| In a course of training or study over age 18, undertaken in normal working hours 1st one third period 2nd one third period 3rd one third period NB Each one third period must be at least one month and no longer than twelve months. | €6.49 per working hour €6.92 per working hour €7.79 per working hour |
| Experienced adult worker named by the Labour Court in granting a temporary exemption to an employer from paying €8.65 per working hour NB. Minimum period of temporary exemption is 3 months and maximum period is 12 months | Labour Court will decide the lower hourly rate of pay that the employee must be paid for the period of the temporary exemption |

* Only employment experience acquired after age 18 is taken into account for these rates. Employment experience prior to age 18 does not count.

The above statutory minimum hourly rates of pay are gross amounts i.e. before tax/PRSI is deducted.

An employer must, by law, pay the appropriate minimum hourly rate of pay. It is a criminal offence for an employer to pay an employee less than his/her minimum hourly rate of pay entitlement, or to exceed the duration permitted for the payment of an hourly rate of pay that is lower than €8.65. Nothing in the Act prevents an employer from paying in excess of the statutory minimum hourly rates of pay.

Example 1. An employee is under age 18. Employer must pay employee at least €6.06 per working hour until the employee is age 18. Thereafter the employee must be paid at least €6.92 per working hour as the employee is in the first year from the date of first employment over age 18, ignoring any employment under age 18.

Example 2. Employee commenced first employment over age 18 on the 1st August, 2007. Employee must be paid at least €6.92 per working hour until the 31st July, 2008.

Can an employee who is not an experienced adult worker be paid a lower rate than €8.65 per working hour?

Yes, but this is subject to the employee being paid the correct minimum rate of pay in accordance with his/her employment circumstances. The answers to the following questions are relevant in order to determine which is the correct minimum hourly rate of pay for the employee concerned (as detailed in Table 1):

- (i) *Is the employee under age 18?*
- (ii) *Is the employee in the first or second year since the date of first employment over the age of 18, not taking into account any employment experience under age 18?*
- (iii) *Is the employee in a course of training or study that satisfies the criteria in Table 2 below and which third of the course is the employee in?*

How do the statutory minimum hourly rates of pay for an employee in the first two years from the date of first employment over age 18 apply?

The following examples illustrate how these rates apply.

Example 3

A person leaves full time education and enters employment on their 20th birthday. This person has no previous employment experience. Employer must pay employee at least:

- €6.92 per working hour in the first year after the date of first employment over age 18 i.e. until age 21;
- €7.79 per working hour in the second year after the date of first employment over age 18 i.e. until age 22.

Example 4

A person has 6 months employment experience under the age of 18. No further employment until he/she gets a job at age 19. Employer must pay employee at least:

- €6.92 per working hour in the first year after the date of first employment over age 18 i.e. until age 20;
- €7.79 per working hour in the second year after the date of first employment over age 18 i.e. until age 21.

The employment experience of the employee at under age 18 is not taken into account when determining the minimum hourly rate of pay of the employee from the date of first employment over age 18.

Example 5

A person starts work aged 17 years and six months and continues in employment at age 18. Employer must pay employee at least:

- €6.06 per working hour until employee reaches age 18.

- €6.92 per working hour in the first year after the date the employee is aged 18 i.e. until age 19;
- €7.79 per working hour in the second year i.e. until age 20.

After the two year period from the date of first employment over age 18, an employee cannot be paid this rate of €6.92 per working hour or this rate of €7.79 per working hour again, even if the employee changes employment or leaves employment for a period of time. However if the change of employment occurs within the two year period, the new employer can only pay the employee the appropriate minimum hourly rate for the remaining unexpired part of the two year period.

If an employee changes employment and starts work with a new employer, does the legal entitlement of an employee under the Act change?

No. The mere fact that an employee changes from one employer to another employer does not, of itself, affect the employee's statutory entitlement to a minimum hourly rate of pay, as detailed in Table 1.

3. TRAINING / STUDY CRITERIA

What criteria must a course of training or study satisfy in order for an employer to pay the trainee rates?

Table 2 illustrates the criteria (see extract from S.I. No. 99 of 2000 in Appendix I for more detail) that a course of training or study must satisfy for the purposes of the Act, in order for an employer to pay an employee the trainee rates.

An employer, even if an employee changes his/her job, cannot pay the employee the trainee rates a second time unless the employee undergoes a course of training or study that is different in purpose or content from the previous training or study undertaken by the employee.

TABLE 2

| |
|--|
| 1. The employee's participation in the course is directed or approved by the employer. |
| 2. The duration of the course is for a minimum period of 3 calendar months. |
| 3. Subject to number 4, the course takes place during the normal working hours of the employee. |
| 4. The course includes workplace training and also must involve at least 10% of directed training or study i.e. away from ordinary operational work, which may be within or outside of normal working hours. |
| 5. Any fees concerned with the employee's participation in the course which is directed by the employer, are paid by the employer. |
| 6. The course enables the acquisition of skills and/or knowledge expected to enhance the work performance of the employee at the end of the course. |
| 7. The course involves supervision of the employee during workplace training. |
| 8. The course includes a system of recording the progress and results of the employee. Such records must be retained by the employer for 3 years after the end of the employee's participation in the course. |
| 9. The course includes an assessment and certification procedure, or written confirmation of the employee's completion of the course identifying the level of employee attainment against the objectives, which must include the employee's signature. |
| 10. The course is the subject of a pre-existing written document or documents detailing the following information: |
| a. its title and purpose; |
| b. its objectives; |
| c. an outline plan of duration and approach; |

| |
|--|
| d. the record system to apply; |
| e. the assessment and certification procedure; |
| f. advice by the employer of any facilities, including any time-off, to be given to the employee during the period of the employee's participation in the course to enable the employee to successfully complete the course, and any changes to the employee's working arrangements during the period of the employee's participation in the course. |

How does an employer determine which one third period of a course of training or study an employee is in?

An employer must establish the date the employee commences the course and the date that the employee is expected to finish the course. This period of time is divided by three to establish the duration of each one third period. Each one third period must be for a minimum period of a month and a maximum period of twelve months. An employee is only entitled to the appropriate trainee rate when the employee is age 18 or over.

Example 6: Training period is 3 years. Employee has undergone 2 years training on 25th July when employee is age 18. From 26th July the employee is entitled to be paid €7.79 per working hour, because the employee is in the third year of training.

4. PAY REFERENCE PERIOD

What decision must be made by an employer in relation to the pay reference period of an employee?

Every employer must select a pay reference period for each individual employee. A pay reference period may be a week, a fortnight but can be no longer than a month. An employer should carefully consider which pay reference period is selected for each individual employee. Factors influencing the selection will include whether an employee is paid on a weekly, fortnightly or monthly basis, whether the employee's earnings remain constant or

fluctuate from week to week, and the requirement on an employer to provide an employee with a written statement, if requested by the employee, of the employee's average hourly rate of pay in a pay reference period or periods (See section 9 below).

Subject to the Terms of Employment (Information) Act, 1994, new employees must be notified in writing of the pay reference period selected by their employer and other terms of employment within two months of taking up employment. A pay reference period must not be longer than one month.

The selection of a pay reference period for the purposes of this Act, does not affect the pay period of an employee. An employer could select a pay reference period of a month, while paying an employee on a weekly basis.

5. AVERAGE HOURLY RATE OF PAY

How is the average hourly rate of pay of an employee determined?

The gross reckonable pay earned by an employee in a pay reference period (a week, a fortnight or a month) is divided by the employee's working hours in that pay reference period. The average hourly rate of pay obtained must not be less than the minimum hourly rate of pay entitlement of the employee, as detailed in Table 1 above.

6. WORKING HOURS

Is there guidance on working hours in the Act?

Yes, the working hours of an employee includes any overtime hours worked in the pay reference period, any time spent on standby in the workplace, and any training time during normal working hours. Working hours for the purposes of the Act, do not include the time that an employee is absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, while laid-off, on strike or time for which an employee is paid in lieu of notice (See section 8 of the National Minimum Wage Act, 2000 - Appendix II).

N.B. Other legislation governs the entitlement of employees during some of these periods of absence from the workplace. (See Guide to Labour Law published by the Department of Enterprise, Trade and Employment).

An employee's hours of work are not normally controlled by the employer. Is the employee covered by the Act?

Yes. If an employer does not control the hours of work of an employee, the employee must keep a written record of hours worked each day. At the end of a pay reference period, the employee must give this record of working hours to the employer as soon as possible. This requirement mainly affects homeworkers (See section 9 of the National Minimum Wage Act, 2000 - Appendix III).

If the employee does not provide the record of working hours to the employer, the employer is entitled to calculate the working hours of the employee for that pay reference period from a number of alternative sources which includes the contract of employment, any collective agreement that relates to the employee, any statement provided to the employee under the Terms of Employment (Information) Act, 1994 or any other agreement made between the employee and the employer, that includes a provision in relation to the hours of work of the employee. An employer is obliged to notify the employee of this circumstance no later than the time the employee receives the payment for the pay reference period concerned.

If the employee is likely to earn, on average, €12.98 or over, per working hour in the pay reference period, the employee is not obliged under the Act to keep a written record of the working hours or to submit it to the employer.

It is a criminal offence for an employee to supply an employer with information on hours of work which is known by the employee to be false or misleading.

7. RECKONABLE PAY

What is reckonable pay?

Some employees earn more than basic pay. For example if the employee does shift work, he/she may be paid a shift premium. Reckonable pay means

those payments that are allowable in calculating the average hourly rate of pay of an employee in a specific pay reference period, in order to determine if the employee has been paid his/her minimum hourly rate of pay entitlement under the Act.

Table 3 illustrates what reckonable pay components may be taken into account to determine an employee's average hourly rate of pay in a specific pay reference period.

TABLE 3

| |
|--|
| 1. Basic Pay. |
| 2. Shift premium. |
| 3. Piece and incentive rates, commission and bonuses which are productivity related. |
| 4. If an employee receives board and lodgings, board only or lodgings only from an employer, then the following amounts are reckonable: |
| €54.13 for full board and lodgings per week, or €7.73 per day; |
| €32.14 for full board only per week, or €4.60 per day; |
| €21.85 for lodgings only per week, or €3.14 per day. |
| 5. The amount of any service charge distributed to the employee through the payroll. |
| 6. Any payments under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection). |
| 7. Any payment in respect of any of the above items advanced in a previous pay reference period that relates to the specific pay reference period. |
| 8. Any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the next following pay reference period. |

9. In the case of an employee whose hours of work are not controlled by the employer, any amount in respect of any of the above items earned in the specific pay reference period and paid no later than the pay reference period in which the record of working hours is received or due to be received by the employer, or the pay reference period immediately after that.

Board and lodgings

If an employer provides an employee with full board and lodgings, or lodgings only or full board only, a monetary allowance can be included as reckonable pay as long as it does not exceed the amounts set out in No. 4 of Table 3. The term full board means an entitlement to meals during the day.

Example 7

If an employee gets full board and lodgings for the 5 days he/she works, the applicable allowance would be the daily rate of €7.73 X 5.

If an employee gets full board for the 4 days he/she works, the applicable allowance would be the daily rate of €4.60 X 4.

The treatment of productivity related bonuses and commissions.

Productivity-related bonuses and commissions are included in reckonable pay. Like other reckonable payments, in order for the amount of the bonus or commission to be taken into account in calculating an employee's average hourly rate of pay in a specific pay reference period, the payment to the employee must be made in the specific pay reference period in which it is earned, or no later than the next pay reference period.

Example 8

An employer has selected a calendar month as the pay reference period. In January an employee achieves his/her output target and earns a productivity bonus of €90.00 for the month. The €90.00 is only reckonable for the month of January if the payment is actually made to the employee in January, or no later than February. If paid in June or December it would not be reckonable.

8. NON-RECKONABLE PAY

What is non-reckonable pay?

Some pay components if earned by the employee in a specific pay reference period are non-reckonable. The pay components in Table 4 are non-reckonable in calculating the average hourly rate of pay of an employee, in order to determine if the employee is being paid his/her minimum hourly rate of pay entitlement, under the Act.

TABLE 4

| |
|--|
| 1. Overtime premium. |
| 2. Call-out premium. |
| 3. Service pay. |
| 4. Unsocial hours premium. |
| 5. Any amount distributed to the employee of tips or gratuities paid into a central fund managed by the employer and paid through the payroll. |
| 6. Public holiday premium, Saturday premium and Sunday premium, where any such holidays or days are worked. |
| 7. Allowances for special or additional duties including those of a post of responsibility. |
| 8. Any payment of expenses incurred by the employee in carrying out his or her employment, including travel allowance, subsistence allowance, tool allowance and clothing allowance. |
| 9. On-call or standby allowance. |
| 10. Any payments for or in relation to a period of absence of the employee from the workplace, such as sick pay, holiday pay, payment for health and safety leave under the Maternity Protection Act, 1994 or pay in lieu of notice, but not including a payment made under section 18 of the Organisation of Working Time Act, 1997 (zero hour protection). |
| 11. Any payment by way of an allowance or gratuity in connection with the retirement or resignation of the employee or as compensation for loss of office. |

| |
|---|
| 12. Pension contributions paid by the employer on behalf of the employee. |
| 13. Any payment referable to the employee's redundancy. |
| 14. Any advance of a payment referred to in Table 3 in the specific pay reference period relating to a subsequent pay reference period. |
| 15. Any payment-in-kind or benefit-in-kind, except board with lodgings, lodgings only or board only. |
| 16. Any payment to the employee otherwise than in his or her capacity as an employee. |
| 17. Any payment representing compensation for the employee, such as for injury or loss of tools and equipment. |
| 18. An amount of any award under a staff suggestion scheme. |
| 19. Any loan by the employer to the employee, other than an advance payment referred to in No. 7 of Table 3. |

An employer must not change a payment or benefit-in-kind listed as a non-reckonable pay component and classify it as a reckonable pay component for the purposes of the Act.

The treatment of non-reckonable premiums.

As shown in Table 4, premium payments which are non-reckonable include overtime premium, unsocial hours premium, Public Holiday premium, Saturday premium and Sunday premium. Premium means the amount in excess of basic hourly pay paid to an employee for working hours in the above situations. Therefore, in calculating an employee's average hourly rate of pay in a specific pay reference period, these premium payments must not be taken into account.

Example 9

An employee works overtime and earns, in addition to basic pay for the overtime hours worked, a premium payment of 33 1/3% of basic pay for each hour worked. In calculating the employee's average hourly rate of pay in a specific pay reference period, only the amount of basic pay for the overtime hours worked can be taken into account. The premium payment must not be taken into account.

9. STATEMENT OF AVERAGE HOURLY RATE OF PAY

Entitlement of employee to a written statement of average hourly rate of pay in a specific pay reference period or periods.

An employee is entitled to a written statement from an employer detailing his/her reckonable pay, working hours, average hourly rate of pay and statutory minimum hourly rate of pay entitlement under the Act, in a pay reference period or periods, within the previous twelve months.

In order to obtain this statement the employee must write to the employer and ask for the statement in relation to the specific pay reference period or periods for which the employee requires the information. The employee's request must not relate to the employee's current pay reference period.

The employer must reply in writing to the employee within four weeks with the information. If the statement discloses any under-payment of the employee's statutory minimum hourly rate of pay entitlement, the employer should immediately pay the employee the amount of the under-payment for each hour worked. Failure by the employer to do so is a criminal offence.

If the employee has earned an average hourly rate of reckonable pay of €12.98 or over in the specific pay reference period, the employer is not obliged to supply the employee with the written statement.

Subject to the Terms of Employment (Information) Act, 1994 an employer is obliged to notify a new employee that the employee is entitled, under and subject to the terms of section 23 of the National Minimum Wage Act, 2000 to request from the employer a written statement of the employee's average hourly rate of pay for any pay reference period in the previous twelve months. New employees must be notified in writing of this and other terms of employment within two months of taking up employment.

(This communication to an employee can issue with the communication of the pay reference period selected by the employer in relation to the employee as mentioned earlier in page 10).

An employer must keep a copy of any statement of the average hourly rate of pay of an employee in a specific pay reference period or periods, for at least 15 months from the date it is issued to the employee.

10. EMPLOYER IN FINANCIAL DIFFICULTY

Are there any conditions that must be satisfied by an employer to be granted a temporary exemption by the Labour Court?

Yes. An employer must be in financial difficulty and unable to pay an employee the experienced adult rate of at least €8.65 per working hour. If compelled to pay this hourly rate, the employer would have to show that he/she would likely terminate the employment of an employee or put the employee on lay-off. The employer must have the consent of an employee or at least the consent of the majority of employees affected to apply to the Labour Court for a temporary exemption. The Labour Court decides, after convening a hearing involving the employer and the employees, or a representative acting on behalf of the employees, whether to grant the temporary exemption.

An employer is not entitled to be granted a second temporary exemption by the Labour Court and may not apply for a temporary exemption in respect of an employee being paid a lower hourly rate of pay than €8.65, e.g. an employee under age 18. *An employer in financial difficulty should contact the Labour Court for further details of the procedure to apply for a temporary exemption.*

It is only the Labour Court that can grant an employer a temporary exemption from paying an experienced adult worker less than €8.65 per working hour. The agreement of an employee is, of itself, not sufficient for an employer to pay an experienced adult worker less than €8.65 per working hour.

11. DISPUTES AND ENFORCEMENT

If an employee is not satisfied he/she is being paid his/her statutory minimum entitlement under the Act, what could happen?

The employee could refer the dispute to a Rights Commissioner. An employee cannot refer a dispute to a Rights Commissioner unless the employee has written to the employer requesting the written statement of his/her average

hourly rate of pay from the employer, in relation to a specific pay reference period or periods that are the subject of the dispute and has either obtained that statement or waited for the four weeks to elapse, that the employer is permitted to respond to the employee's request.

An employee must refer the dispute to a Rights Commissioner within a period of six months from the date the employee obtained the written statement or, in the case where an employer fails to supply the written statement, within six months from the latest date the employer was obliged to supply the statement. This time limit may be extended to twelve months, at the discretion of the Rights Commissioner.

The decision of a Rights Commissioner, if an employee's case is upheld, may include an award of arrears of pay owing to an employee under this Act and reasonable expenses of the employee in bringing the case against the employer. A party aggrieved by the decision of a Rights Commissioner may, within six weeks of the date on which the decision of the Rights Commissioner was communicated to the party, appeal the decision to the Labour Court.

The employee may instead of referring a dispute to a Rights Commissioner make a complaint to the Labour Inspectorate at the Department of Enterprise, Trade and Employment. Labour Inspectors also have powers to undertake routine inspections which are not dependent on complaints from employees. These powers include authority to enter workplace premises and undertake the necessary enquiries to establish if an employee is being paid his/her statutory minimum hourly rate of pay entitlement.

It is open to the employee to choose whichever course of action he/she wishes to pursue (i.e Rights Commissioner Service or Labour Inspectorate) but it is not possible to engage both services in the resolution of the same dispute. An employee may not refer a dispute to a Rights Commissioner *and* also make a complaint to the Labour Inspectorate in relation to the same alleged under-payment of the employee's statutory minimum hourly rate of pay entitlement.

12. PROHIBITION OF VICTIMISATION OF EMPLOYEES

Victimisation of an employee by an employer because the employee exercises or proposes to exercise his/her rights under this Act, or because the employee is due a pay increase under this Act is prohibited.

An employer must not victimise an employee for exercising his/her rights or proposing to exercise his/her rights under this legislation or because the employee has become entitled, or is due to become entitled, to an increase in pay under the Act. Similarly, an employer must not reduce an employee's working hours, without a corresponding reduction in the amount of work or duties of the employee, because the employee is due an increase in pay under the Act.

If an employee has such a complaint, he/she should try and resolve it with the employer. If the employer fails to resolve the dispute to the employee's satisfaction within two weeks, the employee or his/her representative may refer the dispute to a Rights Commissioner within 6 months of the date of the alleged victimisation of the employee by the employer, or the date of the alleged reduction in the hours of work. This time limit may be extended, at the discretion of the Rights Commissioner, to 12 months from the date of the alleged victimisation or the date of the alleged reduction in the hours of work.

Dismissal of an employee for exercising or proposing to exercise his/her rights under this legislation or because he/she is due a pay increase under the National Minimum Wage Act, 2000, is an unfair dismissal within the meaning of the Unfair Dismissals Acts, 1977 to 1993. (See 'Guide to the Employment Appeals Tribunal', which has been published by the Employment Appeals Tribunal).

13. RECORDS

What records must be kept by an Employer?

An employer must keep all records that are necessary to show whether this Act is being complied with in relation to an employee, for at least three years

from the date any record is made. The records must be kept by the employer at the premises or place where the employee works, or if the employee works at two or more premises or places, the premises or place from which the activities of the employee are principally directed or controlled.

In any dispute about national minimum wage entitlements, the onus is on the employer to prove that the law has been complied with. To enable the employer to do this, records will be required. In addition, records will be required to show an inspector that the law is being complied with. Examples of records which may be necessary, depending on the situation of each employee, would include:

- notification to the employee of his/her pay reference period;
- gross pay paid to the employee;
- any shift premium paid to the employee;
- any allowances or premiums paid to the employee;
- details of board and/or lodgings provided to the employee;
- the working hours of the employee including any overtime;
- any absences of employee from work, for example, sick leave, holidays;
- any time spent on training during working hours;
- date of birth of the employee, if under 18 years of age;
- dates of commencement and/or termination of employment of the employee;
- C.V. of the employee.

An employer must also keep a copy of any statement of the average hourly rate of pay of an employee in a specific pay reference period or periods, for at least 15 months from the date it is issued to the employee.

14. CRIMINAL OFFENCES

This Act provides for a number of criminal offences including:

- (i) the failure by an employer to pay an employee his/her statutory minimum hourly rate of pay entitlement under this Act;

- (ii) an employer paying an employee a lower hourly rate of pay than €8.65 for a longer period than is permitted for the payment of the lower hourly rate of pay;
- (iii) the failure by an employer, on request from an employee, to supply the employee *within four weeks* with a written statement of the average hourly rate of pay of the employee and other specified information in relation to a specific pay reference period or periods. It is also a criminal offence for an employer to supply information in the written statement which the employer knows to be false or misleading;
- (iv) the failure by an employer to keep records that are necessary to show whether the Act is being complied with in relation to an employee for at least three years and a copy of the written statement of the employee's average hourly rate of pay for a period of 15 months from the date it issued to the employee;
- (v) obstructing an inspector from carrying out his/her duties.

15. REPERCUSSIVE CLAIMS

There is no legal obligation under the Act on an employer to grant an increase in pay to an employee, who is not entitled to an increase in pay under the Act, on the basis that the employee wants to restore the pay differential that existed between the employee and a lower paid employee who was or is entitled to an increase in pay under the Act.

The Labour Relations Commission or the Labour Court is not empowered to recommend or endorse a claim by an employee or group of employees, if the claim is based on the restoration of a pay differential between an employee and another employee who has secured or is to secure an increase in pay under the Act.

16. EMPLOYMENT REGULATION ORDERS AND REGISTERED EMPLOYMENT AGREEMENTS

If the employment of an employee is covered by a Joint Labour Committee the employee may be entitled to a higher rate of remuneration than under this Act. An employee should consult the relevant Employment Regulation Order which should be displayed in the workplace. Similarly if an employee is covered by

a Registered Employment Agreement he/she should consult the pay rates specified in the relevant Registered Employment Agreement.

17. USEFUL CONTACTS

Labour Relations Commission

Rights Commissioner Service,
Tom Johnson House,
Haddington Road,
Dublin 4.
Ph: (01) 613 6700 Fax: (01) 613 6701
Web: www.lrc.ie

The Labour Court,

Tom Johnson House,
Haddington Road,
Dublin 4.
Ph: (01) 613 6666 or Lo-Call 1890 220 228 Fax: (01) 613 6667
Web: www.labourcourt.ie

Employment Rights Information Unit

Address until 13 July 2007

Employment Rights Information Unit,
Davitt House,
Adelaide Road,
Dublin 2.

From 16 July 2007, the Employment Rights Information Unit will be located at the following address:

Employment Rights Information Unit,
National Employment Rights Authority,
O'Brien Road,
Carlow.

Ph: (01) 631 3131 Lo-Call 1890 201 615 Fax: (01) 631 3267
Email: erinfo@entemp.ie Web: www.entemp.ie

This information guide is not intended to be a legal interpretation of the Act.

APPENDIX I
S.I. No. 99 of 2000

National Minimum Wage Act, 2000
(Prescribed Courses of Study or Training) Regulations, 2000

I, Mary Harney, Minister for Enterprise, Trade and Employment, in exercise of the powers conferred on me by section 3(1) of the National Minimum Wage Act, 2000 (No. 5 of 2000), and by reference to section 16(1) of that Act, make the following regulations:

Citation

1. These regulations may be cited as the National Minimum Wage Act, 2000 (Prescribed Courses of Study or Training) Regulations, 2000.

Definitions

2. In these regulations, in relation to a course of study or training

“approach” means the training methods and techniques, and how the learning will be delivered;

“assessment and certification procedure” means how the course is to be assessed for certification purposes and identifies the certifying body or the arrangements concerning written confirmation of the employee’s completion of the course identifying the level of employee attainment against the objectives, which must include provision for the employee’s signature;

“directed study or training” means planned and structured study or training which is insulated from immediate operational job pressures and can be delivered inside or outside the workplace;

“duration” means the total time allocated to the course in terms of hours per week and number of weeks; the duration of all main elements including workplace training and directed training, as appropriate, and the assessment time

should be clearly shown; “objectives” means the expected performance to be demonstrated by the employee at the end of the overall period of the course; that is, what the employee will be able to do on completion of the course in terms of knowledge, practical and personal skills to be demonstrated;

“outline plan” means the content of each module of the course which should state the titles, sequence of delivery, and time (in days/weeks/months) of each module;

“purpose” includes the rationale for the course, describing what it is expected to achieve and the expected outcomes of the training in terms of trainee opportunities;

“record system” means the types of records to be kept for the purposes of

- a. planning and implementing the study or training;
- b. showing progress against the training objective;
- c. administration;

“title” means the name of the course;

“workplace training” means planned and structured study or training carried out under normal operational job pressures.

Prescribed courses of study or training

A course of study or training that satisfies the following criteria is a prescribed course of study or training for the purposes of section 16 of the National Minimum Wage Act, 2000:

- (1) The employee’s participation in the course is directed or approved by the employer.
- (2) The duration of the course is for a minimum period of 3 calendar months.
- (3) Subject to paragraph (4), the course takes place during the normal working hours of the employee.

- (4) The course involves at least 10% of directed study or training, which may be within or outside of normal working hours.
- (5) Any fees concerned with the employee's participation in the course directed by the employer, are paid by the employer.
- (6) The course –
 - (a) enables the acquisition of skills and/or knowledge expected to enhance the work performance of the employee at the end of the course,
 - (b) includes directed study or training,
 - (c) includes workplace training,
 - (d) involves supervision of the employee during workplace training,
 - (e) includes a system of recording progress and results, which must provide for the retention by the employer for 3 years after the end of the employee's participation in the course at the premises or place where the employee works or, if the employee works at 2 or more premises or places, the premises or place from which the activities of the employee are principally directed or controlled,
 - (f) include an assessment and certification procedure or written confirmation of the employee's completion of the course identifying the level of employee attainment against the objectives, which must include the employee's signature.
- (7) The course is the subject of a pre-existing written document or documents detailing the following information:
 - (a) its title and purpose,
 - (b) its objectives,
 - (c) an outline plan of duration and approach,
 - (d) the record system to apply,
 - (e) the assessment and certification procedure,

- (f) Advice by the employer of any facilities, including any time-off, to be given to the employee during the period of the employee's participation in the course to enable the employee to successfully complete the course, and any changes to the employee's working arrangements during the period of the employee's participation in the course.

Appendix II
National Minimum Wage Act, 2000
Section 8

Working hours of employee for pay reference period

(1) For the purpose of determining under this Act whether an employee is being paid not less than the minimum hourly rate of pay to which he or she is entitled in accordance with this Act, but subject to section 9, “working hours”, in relation to an employee in a pay reference period, means-

(a) the hours (including a part of an hour) of work of the employee as determined in accordance with -

- (i) his or her contract of employment,
- (ii) any collective agreement that relates to the employee,
- (iii) any Registered Employment Agreement that relates to the employee,
- (iv) any Employment Regulation Order that relates to the employee,
- (v) any statement provided by the employee’s employer to the employee in accordance with section 3(1) of the Terms of Employment (Information) Act, 1994,
- (vi) any notification by the employee’s employer to the employee under section 17 of the Organisation of Working Time Act, 1997,
- (vii) section 18 of the Organisation of Working Time Act, 1997,
or
- (viii) any other agreement made between the employee and his or her employer or their representatives that includes a provision in relation to hours of work,
or

- (b) the total hours during which the employee carries out or performs the activities of his or her work at the employee's place of employment or is required by his or her employer to be available for work there and is paid as if the employee is carrying out or performing the activities of his or her work,

whichever, in any case, is the greater number of hours of work.

(2) "Working hours" under this section shall include

- (a) overtime,
- (b) time spent travelling on official business, and
- (c) time spent on training or on a training course or course of study authorised by the employer, within the workplace or elsewhere, during normal working hours,

but shall not include –

- (i) time spent on standby or on call at a place other than a place of work or training provided by or on behalf of the employer for whom the employee is on standby or on call,
- (ii) time spent absent from work on annual leave, sick leave, protective leave, adoptive leave, parental leave, while laid-off, on strike or on "lock-out", or time for which the employee is paid in lieu of notice, or
- (iii) time spent on travelling between an employee's place of residence and place of work and back.

Appendix III
National Minimum Wage Act, 2000.
Section 9

Certain employees to provide record of working hours to employer.

- (1) Where an employee's working hours are assessed as provided in section 8(1)(b) but are not normally controlled by his or her employer, the following shall apply:
 - (a) the employee shall keep a written record of his or her working hours during every day he or she is employed during a pay reference period;
 - (b) the employee shall give the record to his or her employer as soon as reasonably practicable after the end of the pay reference period;
 - (c) if the employee fails to comply with paragraph (b), the working hours of the employee shall be calculated in accordance with section 8(1)(a) and the employer shall notify the employee of that circumstance as soon as possible after the expiration of the period, but in any case not later than at the time of receipt by the employee of his or her pay for the working hours concerned.
- (2) Subsection (1) does not apply to an employee whose average hourly rate of pay for the working hours concerned is likely to be not less than 150 per cent, or such other percentage as may be prescribed, of the national minimum hourly rate of pay.
- (3) An employee who provides his or her employer with information in a record of working hours under this section that the employee knows to be false or misleading in a material respect shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,904.61.

Note: Official copies of the Act and related Statutory Instruments can be obtained from the Government Publications Office, Molesworth Street, Dublin 2. The text of the Act and related Statutory Instruments can also be accessed on the website of the Office of the Attorney General at **www.attorneygeneral.ie**.