

A practical guide to making a complaint if not being paid your full wages

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This article applies to workers who are not being paid their full wages. Thus includes workers who are not being paid the minimum wage.

Minimum Wage

If you think that you are being paid less than the minimum wage you can call the Minimum Wage Helpline on **0845 6000 678**. These calls are confidential. If you are a trade union member, you should talk to your union. You can also contact a local advice agency.

If it sounds as if you have a claim to the minimum wage (for example, you are a worker who is entitled the minimum wage) your complaint will be sent via the Helpline to your local Minimum Wage Enforcement Team who are part of HMRC. An officer will be appointed to investigate your complaint and will contact you to ask to interview you about your complaint. The officer will then interview the employer and try to reach a decision on whether you have been paid less than the minimum wage and, if so, how much wages are due to you.

However, making a complaint about the minimum wage is rarely easy. The enquiry is kept confidential but the employer will be contacted. You also have to provide enough evidence to convince the Minimum Wage Enforcement Officer that you have been paid less than the minimum wage.

Not being paid for all the hours worked

For workers who are not paid for all the hours that they have worked but, nevertheless, still end up being paid above the minimum wage, enforcement is through employment tribunals. However, you will still have to gather evidence to convince an employment tribunal that you have, in fact, worked these hours so the same recommendations made below will apply here as well. In addition, the more evidence that you gather, the better position you will be in to get your money without having to go through the full tribunal process.

Reasons often given by employers

Common reasons that employers give when investigated over a minimum wage complaint include

- Presenting records that make it appear that the minimum wage is being paid;
 - Not having some workers listed as having worked for them;

- Making deductions from wages that the employer or employment agency is not entitled to make
- Warning workers not to co-operate with any minimum wage investigation or threatening to dismiss workers.

However, there are steps that workers can take to address each of these issues.

Employer presents records that make it appear that the minimum wage is being paid

This usually revolves around the number of hours that you have worked. For instance the employer's records might say that you have worked, say, 25 hours a week whereas, in fact, you have worked 40 hours. If your gross pay shows at least £138.00 (£5.52 x 25) then it would appear that you have been paid the minimum wage.

It can be very difficult to argue your case if the employer has records and you don't. It is, therefore, very important to keep a details of the hours that you have worked. This should include a daily log of when you started work, when you finished and any breaks that you took. The VWP has produced a handy 'Time Record Notebook' that can be downloaded from the VWP website (www.vulnerableworkersproject.org.uk).

If you complete the 'Time Record Notebook' every day you then have some concrete evidence to confront the employer's records. You can then supplement your records by giving details that support your claim. This can include

- When the business opened and closed
- Details of the workload including volume and any daily work pattern
 - Shift patterns, who worked which shifts and when
 - How the business kept their staff time records.

Employers failing to list you as a worker

Employers can fail to put you on their books. In this situation employers often pay 'cash in hand' meaning that they do not make any tax or National Insurance deductions from your wages. Although this might mean sound attractive in that you earn more than if you paid your tax and National Insurance there are serious disadvantages to being in this situation.

First of all, not paying tax or National Insurance is illegal – and if you can't provide any evidence that you have protested about being in this position you may very well be regarded as being complicit with the employer in avoiding paying tax and National Insurance. If you are judged to be complying with the employer you will lose any employment rights that you have including the right to the minimum wage.

Secondly, you are completely at the behest of the employer. There is guarantee that they will pay even the minimum wage. In fact, workers in this position sometimes go weeks with no pay at all.

If your employer is paying you cash in hand you can write to your local tax office and tell them that you are working, who you are working for and that you want to check your tax and National Insurance records.

This will be confidential between you and the tax authorities. It will form strong evidence that you have been working for a particular employer and that you are not helping the employer avoid paying tax and National Insurance. The authorities will want to inspect the employer's records and if you are not on the books want to know why. They are also less likely, in this situation, to believe anything that the employer

says including any claim that you are making about not being paid the minimum wage.

Deductions from wages that not entitled to make

Employers have to obtain your written authorisation to make any deductions from your wages other than statutory deductions – mainly tax and National Insurance. Employers wishing to give themselves the power to make deductions often include a clause in the contract of employment or employment agency agreement which enables them to do this.

If, however, an employer makes a deduction from your wages that you have not agreed to, in writing, you should first, of all, query why the deduction has been made (see later article on raising issues at work).

For employment agency workers the situation can be more complex. Sometimes agencies charge workers for services that they offer such as transport, accommodation or lunches. However, workers should be given a choice as to whether they use these services, or not. If you choose not to use them, you should not have any deductions made from your wages for these services. You also have the right to withdraw from any services provided such as transport or accommodation without suffering a detriment as long as you give written notice – 10 days if withdrawing from accommodation, 5 days for any other services.

The most common detriment that agency workers are likely to face is not being offered any more work. In order to enforce this right it is important, therefore, to keep a record of all the days and hours worked so that if you do suffer a detriment by not being offered work you have records that show that this coincided with when you gave notice that you were withdrawing from the service being provided.

Employer threatening workers

It is obviously better that workers complain about not getting paid their full wages, or the minimum wage, as soon as possible. However, it can be difficult for workers to make a complaint if they suspect that they are likely to be bullied at work or lose their job as a result. It is easier if you leave that particular employer and this is why most workers who make a minimum wage complaint do so after they have left. The same can apply to workers not being paid their full wages.

The above two options may give you more confidence about making a complaint about not being paid the minimum wage or full wages. However, if you are still reluctant because, for example, you fear losing your job it might be an option for you to keep a record of your hours, contact the tax authorities but, rather than make a complaint about your wages straight away wait until you have another job to go to.

Complaints about the minimum wage can go back up to 6 years so you will not necessarily lose that money if you hold on until you get a more secure position. This, of course, means that you have to live on less than the minimum wage in the meantime.

Complaints about wages, other than the minimum wage, have to be made to an employment tribunal within 3 months of when you should have been paid. You can then go back to when you started as long as there is not a period of more than 3 months from one period of underpayment to the next.

Vulnerable Workers Project

TUC/BERR working with building services workers in Tower Hamlets and the City