



# COVENTRY LAW CENTRE

## EMPLOYMENT

## PAY AND CONDITIONS

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Although every effort is made to ensure the information in this leaflet is accurate and up to date, it should not be treated as a complete and authoritative statement of the law and does not constitute legal advice - we cannot be held liable for any inaccuracies and their consequences. The information in this leaflet is written for people resident in, or affected by, the laws of England and Wales only.

The subjects contained in this advice leaflet cover the basic minimum required by law. Many workers will receive better terms than those described, these may be written in a contract of employment, or your written statement of terms and conditions (which all workers should receive within two months of starting work). It is important to note that you can agree to more favourable pay and conditions, but a contract saying that you would receive less favourable than those described would be unenforceable in law.

The following subjects apply to all workers and employees but not those people who are genuinely self-employed. If you have a contract of employment you will be an employee, but some employees are not given a written contract. The legal definition of a worker is broader in scope than that of an employee and includes agreements to carry out work where the worker could not be described as self-employed, but is not working under a contract of employment. As not all cases are clear cut it is worth seeking further advice if you are uncertain as to your status.

Throughout this leaflet the term worker will be used to cover both workers and employees.

## **MINIMUM WAGE**

The National Minimum Wage was introduced on the 1<sup>st</sup> April 1999. The current rates of the national minimum wage are:

Workers aged 22 or over	£5.80per hour
Workers aged 16-17	£3.57 per hour
Workers aged 18 -21	£4.83 per hour

The minimum wage applies to all employees from day one, there are no minimum weekly hours that an employee has to work and no minimum length of service. Provided you are not in one of the groups that are exempt, you will be entitled to the minimum wage regardless of whether you are a permanent, full time, part time, or temporary worker. The minimum wage should also apply to those who work on call during the night, those who obtain work through an agency and those who work from home.

However, certain groups are exempt and you will not be entitled to the minimum wage if you are:

- Self Employed
- Child Worker (under compulsory school leaving age)
- Volunteer
- Work Experience
- A member of the armed forces
- A worker within the family for example someone who lives with family performing household tasks such as an au-pair or nanny
- Certain Apprenticeships

Some payment can be included in the minimum wage such as performance, productivity and incentive payments, for example, an attendance bonus. Also tips or gratuities which are paid through the payroll and also profit related pay. Deductions can be made for accommodation if you are required to live-in.

However, benefits in kind for example, uniforms, meals etc., are not pay and cannot be included in the minimum wage calculation.

If you believe you are not receiving the minimum wage and you do not fall into an exempt group you do have the right to inspect your employer's pay records (and you may be accompanied by a person of your own choice when doing so). If you are not being paid the minimum wage then you can take your employer to an Employment Tribunal.

### **Deduction From Wages**

Certain deductions must be made from a worker's pay such as deductions for tax and/or national insurance. Some workers will also have deductions made for pension contributions, student loan deductions or possibly a Court Order (for example maintenance or fines).

Equally, if you have mistakenly received too much money (an overpayment of wages) then in most cases the employer will be justified in attempting to recover the money.

Some employers will attempt to make further deductions from wages, for example, if the worker is employed in a shop and there is a deficit in cash or stock. These types of deductions are only authorised by law if the employer has received the written consent of the worker either at the start of employment or expressly for that purpose.

If an employer has made an unauthorised deduction then it is possible to bring a case against them to an Employment Tribunal. The Law Centre produces a self-help pack for workers who have reason to believe that they have had money unlawfully deducted from their wages.

### **Itemised Pay Statements**

All workers should receive a breakdown of the money they receive and any deductions that have been made. So, the pay statement should include the gross amount of wages, the amount of any deductions such as tax or national insurance, and any other deductions (such as those described above). The itemised pay statement should also have a clear summary of the net wages that are payable.

If you do not receive an itemised pay statement, your employer may not be making proper tax and national insurance contributions and this could affect your future entitlement to benefits. For example, if you are made unemployed or you attempt to draw a state pension. If you are uncertain, it is possible to contact the Inland Revenue to ensure that deductions are being made. Any deductions which are made and are not shown on a payslip may be recoverable and you could take your employer to Tribunal.

Many workers are also entitled to receive tax credits so it is worth making further enquiries if you think you may be eligible. Coventry City Council run a benefit advice line on 024 76832000.

### **Working Hours**

It is essential to health and safety at work that workers receive adequate breaks during the day, adequate days off during the working week, that they do not work excessive hours during the working week and that the working patterns of night workers are restricted to allow adequate rest.

Although legislation has been passed to address these issues certain workers are still exempt from protection including sea fishermen and trainee doctors. During times of emergency workers in the armed forces, police and other civil protection services may also be exempt.

The general rule is that all workers over the age of 18 should receive a rest break of a minimum of 20 minutes if the daily working time exceeds 6 hours, the worker should also have a minimum of 24 hours uninterrupted rest in a 7 day period (or 48 hours in a 14 day period) and should not work in excess of 48 hours without consent.

A worker can agree to exceed the 48 hour working week by giving his/her written consent to their employer. Equally, it is also possible to revoke this consent by giving 7 days written notice.

A night worker's normal hours of work should not exceed an average of 8 hours for each 24 hour period. Potentially there are some complications with this approach (for example those who work on call in a residential nursing home). You are advised to take further advice if you think that your circumstances may warrant it.

An employer should keep records which are adequate to show that the requirements surrounding working hours are complied with.

Young workers (namely those who are over compulsory school age, but under 18) should receive a break of at least 30 minutes if they work for longer than 4½ hours in a day, they are entitled to a rest period of at least 12 consecutive hours in each 24 hour period and cannot work more than 40 hours in a week.

### **Holiday Pay**

All full time workers are entitled to 28 days paid annual leave per year. This can include bank holidays. This is calculated on a pro rata basis if you work part time.

For the first year of employment the worker accrues holiday at the rate of 1/12 of their entitlement per month. It is not possible to carry over statutory annual leave entitlement from one year to the next so you should pre-arrange with your employer to take it before the expiry of the leave year.

The leave year can run from any date providing there is a written agreement, but in the absence of a written agreement (and providing you were employed after the 1<sup>st</sup> October 1998) the leave year will run from the date on which you started work.

The four weeks can include bank holidays, so it is advisable to check your written contract or statement of terms and conditions to see whether your leave entitlement includes bank holidays.

A worker who is on long term sick leave can still accrue holiday pay. This may become relevant if the worker leaves the employment of the company.