

The Agricultural Wages Complaint Recovery Process

The Agricultural Wages Act 1948 (the 1948 Act) gives the Agricultural Wages Board the responsibility for fixing minimum rates of wages and other terms and conditions of employment for workers employed in agriculture. The 1948 Act defines "agriculture" as including "dairy farming, the production of any consumable produce which is grown for sale, or for consumption or other use for the purposes of a trade or business or of any other undertaking (whether carried on for profit or not), and the use of land as grazing, meadow or pasture land or orchard or osier land or woodland or for market gardens or nursery grounds", however the list is not exhaustive.

The minimum rates of wages and other terms and conditions of employment are fixed through the Agricultural Wages Order (the Order), which has the force of law and is enforced by the Secretary of State for Environment, Food and Rural Affairs. Work to enforce the Order is undertaken by the Agricultural Wages Team and our Agricultural Wages Inspectors. We are able to help you recover pay owed to you, even if you have left your job, during the last 6 years.

The whole process of helping you to recover pay, even if we have to take the case to an employment tribunal, is free to the worker making the complaint.

This is what we do:

1. Look at your complaint form and make sure that the work you do comes within the definition of agriculture. Some people do a mixture of work, for example, they might work in a nursery, tending the plants, but the nursery might have a shop attached. The nursery work would be agricultural work but the shop work would not. Here we could help you recover any underpayment of the Agricultural minimum wage for the hours spent doing the nursery work and the National Minimum Wage for the shop work
2. The information you provide us, should enable us to look at the hours you spent doing agricultural

/ non-agricultural work and the pay you received for this work and compare it to the minimum rate in force at the time. If your pay appears to fall short of what you should have received, we will proceed with your claim

3. To begin with, we will write to the employer to whom the complaint refers and let them know that we believe you have been underpaid. We will let them know why we think this and ask them to look at the Order and compare the pay you should have received with what you actually received according to the information you provided;
4. we will ask the employer to negotiate with you to pay back this money. We will offer advice if asked as to how much we estimate the arrears to be, but it would be up to your employer to make you a fair offer and for you to decide to accept it or not;
5. we will give the employer a deadline (this is usually 2 to 3 weeks but may be longer), to make an offer and remind them that we have statutory powers to take the matter further. We may also telephone the employer at this point;
6. if this does not produce a response we will write again, with a more strongly worded reminder of our enforcement powers and a much shorter deadline. Again, we may telephone the employer;
7. if the employer feels that you have been paid correctly and provides us with information at this stage to satisfy us that there has been no underpayment of wages, we might decide to not take the matter further;
8. if all offers of help to bring about an informal settlement fail, we will send a letter to the employer informing them that an Agricultural Wages Inspection will take place. This letter might cause the employer to take matters more seriously and a settlement might be made at this stage. The inspection would then be cancelled;

9. when an inspection does take place, an Inspector will visit you (this is usually within four months of your complaint form being received by us, but could be longer, depending on the complexity of your case) and interview you about your employment, duties and pay. The Inspector will also visit the employer to inspect the wage records, which must be kept up to date by law;
10. the Inspector will put together a report of his/her findings, which would include details of both interviews. Photocopies of any additional material you might have in support of your complaint will be taken and included in the report. The employer's wage records will also be copied and any other material they might have that supports their position. The inspector will include an assessment of the validity of your complaint and the employer's case and include this in the report. The inspector will then send the report to us;
11. following the inspection if we are still satisfied that you have a valid complaint, we will start to prepare a Schedule of Arrears, we use all the information available to us (eg your complaint form, the Inspector's report and any documents he or she copied, and any correspondence relating to your complaint). A Schedule of Arrears is an accurate a calculation as possible of the arrears of pay owed to you.
12. we will then serve an Enforcement Notice on the employer. This Notice tells them how much they owe you and includes the Schedule of Arrears, showing how we worked out this amount and the additional documents in support of your complaint. The Notice will set out what sections of the Order they have failed to comply with, that they have 28 days to pay you, what the penalties for non payment are and finally that they may appeal against the Notice by applying to the Employment Tribunal Service. Once an Enforcement Notice is issued a worker's anonymity cannot be preserved since the worker must be named on the Notice;
13. the employer may wish to settle at this stage by making an offer. **Once an Enforcement Notice has been sent we are not be able to negotiate with the employer on your behalf but will pass on letters and other correspondence.** If the worker making the complaint believes that a fair offer has been made he/she can instruct us to halt proceedings;
14. we will keep you informed at all stages of the recovery process and normally, your case will be assigned from the beginning to one Wages Case Officer, who will oversee the work to the point an employer appeals against an Enforcement Notice. If an appeal is made the case officer will liaise with the legal team dealing with your case. If the case goes to Tribunal, you may be required to give evidence.