

Agricultural Wages Board for England and Wales

The Agricultural Wages Order 2009 A Short Guide

Note: this leaflet is only a summary of the main provisions of the AWO 2008. It is not an authoritative statement of the law and does not have the force of law. It is for the Courts and the Employment Tribunals to interpret the law in each individual case.

Important note: The detailed arrangements described in this leaflet apply to England and Wales only. Different arrangements apply in Scotland and Northern Ireland.

This leaflet sets out the principal provisions in the Agricultural Wages Order. In general terms, the Agricultural Wages Order applies to all those employed in dairy farming, rearing animals, including bee-keeping, growing consumable produce, which includes non-edible crops such as bulbs, plants and flowers, forestry, market gardens and maintaining meadow or pasture land and reed beds.

However, the Order does not apply to workers employed:

- in the equine industry, such as in a livery or stable yard,
- in a packhouse on a farm when the produce being packed was not grown on that farm by the same enterprise; or
- in a packhouse away from the farm on which it was grown, unless grown by the same enterprise.

Where there is any doubt about whether a worker is covered by the Order, you are advised to contact the Pay and Work Rights Helpline on 0800 917 2368 for guidance, although it is only the Courts or Employment Tribunals which can give an authoritative interpretation of the law.

The agricultural minimum wage rates are set annually by the Agricultural Wages Board. Payment of these rates is enforced by the Department for Environment, Food and Rural Affairs in England and Wales. It is against the law to pay workers below these rates for agricultural work.

Where workers are employed to undertake a mixture of agricultural and non-agricultural work, the agricultural minimum wage rates in the Agricultural Wages Order apply to every hour of agricultural work. For non-agricultural work workers must be paid at least the National Minimum Wage but an agricultural worker must never be paid less than the National Minimum Wage.

Agricultural Minimum Wage Rates

The principal minimum wage rates for agricultural work, which apply from 1 October 2009, are set out in the tables below.

Minimum Hourly Rates for England and Wales

	Weekly Pay £/week	Hourly Pay £/hour	Overtime Pay £/hour
Grade 1 of compulsory school age	-	2.91	4.37
Grade 1 above compulsory school age	226.59	5.81	8.72
Grade 2	249.60	6.40	9.60
Grade 3	274.56	7.04	10.56
Grade 4	294.45	7.55	11.33
Grade 5	312.00	8.00	12.00
Grade 6	336.96	8.64	12.96

Employers must pay at least the agricultural minimum hourly rate (basic or overtime as appropriate) for every hour of agricultural work their employee does. The basic weekly rate payable is for a 39 hour week. The minimum rate payable depends on such factors as their age, their experience, their qualifications and their responsibility. Any contract that specifies pay rates below the levels in the Agricultural Wages Order is not valid under the provisions of the Agricultural Wages Act 1948.

Grades and Qualifications

Pay rates in the Agricultural Wages Order are linked to the individual grades. Entry to Grade 2 and upwards is dependent on a worker holding the required qualifications for the grade. It is the responsibility of the **worker** to provide documentary evidence to an employer to show that they have the relevant qualifications for entry to the grade concerned.

Initial Grade

An Initial Grade Worker is one who does not fall into any other grade or category specified in the Order. An Initial Grade Worker can undertake any work, provided it does not involve working with animals, driving or working with powered machinery and the worker is generally supervised. Once an Initial Grade Worker has been continuously employed for a total of 30 weeks by the same employer, the worker has a right to training to meet Standard Worker qualifications. Such training will be undertaken at the employer's expense.

Standard Worker

In order to qualify as a Standard Worker (Grade 2) a worker must hold a vocational qualification of at least NVQ Level 2 or a single certificate of competence for the sector in which he works (whether accredited or unaccredited). Alternatively if the worker is unsupervised or works with animals, drives a tractor or uses powered machinery then they are qualified to be treated as a Standard Worker.

Lead Worker

A Lead Worker (Grade 3) is a worker who has obtained a National Certificate in either Agriculture or Horticulture awarded by the NPTC/City&Guilds or four certificates of competence or non-accredited competences in any combination, specified for Grade 3, in the relevant agricultural sector. The relevant agricultural sector is the sector in which the worker is working at the time they become a Lead Worker in their current employment. In addition they must have worked in agriculture for at least two out of the previous five years. The work can have been undertaken in any part of the world and can include time under instruction or training, provided the worker was mainly undertaking practical agricultural work. The work can have been done at any time over the previous five years including any period before obtaining the Lead Worker minimum entry requirements.

A worker also has the right to be treated as a Lead Worker if he/she works as part of a team of workers and is responsible for leading the team of workers in which he or she works. The worker will also be responsible for monitoring the workers (but not authorised to take disciplinary action) in his/her team for compliance with management instructions given by or on behalf of their employer. Such a worker would be designated by his/her employer as a Grade 3 Team Leader and upon being designated as such could be required to satisfactorily complete a trial period of no more than one month. Once a worker is designated as a Grade 3 Team Leader he/she shall be deemed to hold two non-accredited competences, but where such a worker is required to undertake a trial period the competences will be awarded only where it is completed satisfactorily. Following satisfactory completion of the trial period a certificate specified under the Order is to be given to the worker and signed by their employer. The certificate shall state that the worker has achieved two deemed competences under the Order, transferable between employers and which can count towards the minimum number of competences to enter Grades 2-4.

Craft Worker

A Craft Worker (Grade 4) is a worker who holds either a vocational qualification of at least NVQ Level 3 or eight certificates of competence, specified for Grade 4, in the relevant agricultural sector. The relevant agricultural sector is the sector in which the worker is working at the time they become a Craft Grade Worker. The worker must also have been working in agriculture for at least two out of the previous five years. The work can have been undertaken in any part of the world and can include time under instruction or training, provided the worker was mainly undertaking practical agricultural work. The work can have been done at any time over the previous five years including work done before obtaining the minimum entry requirements to the Craft Grade. Alternatively the worker has a right to be treated as a Craft Worker if they have been continuously employed by the same employer for a period of one year or longer since first obtaining the minimum entry requirements for the Grade.

Overtime Rates

Employers must pay all workers at the higher overtime rates when they:

- work more than 39 basic hours in any week or more than 8 hours on any day

- work any hours beyond normal working hours specified in their contract of employment
- work on a public holiday
- work on a day which they would normally have taken as part of their annual holiday

However, workers who were engaged under a contract of employment which started before 1 October 2006 must be paid at the overtime rates when they:

- work on a Sunday
- work on a Monday before the time they normally start work, after they have started working on the Sunday and continued working into the Monday

Holidays and Other Leave

All agricultural workers are entitled to holiday pay. Part of a worker's annual leave entitlement may be bought out by agreement between the employer and the worker, subject to certain conditions. Full details are given in the Agricultural Wages Order.

Where a worker takes leave to which they are entitled they must be paid for each day of leave taken. If a holiday of less than one day is taken the pay should be based on a fraction of the day's holiday pay proportionate to the number of hours of holiday taken.

The amount of holiday pay due to a worker depends on whether the worker's pay is the same from week to week or whether it varies. In the latter case it is calculated by adding the worker's gross pay (excluding voluntary overtime) for the twelve weeks immediately preceding the holiday and dividing that amount by twelve to arrive at a week's pay. In the former case it is calculated by dividing the worker's gross pay by the number of days worked each week. Holiday pay should be paid on the worker's normal pay day before the start of their holiday.

If a worker works on a public holiday they must be paid at the overtime rate appropriate to their grade or category for the actual hours worked.

All workers are entitled to bereavement leave after the death of a member of their family who may be a parent, guardian, child, spouse or other person with whom the worker had a close relationship.

Agricultural Wages Sick Pay

Agricultural Wages Sick Pay (AWSP) is a scheme whereby a worker receives payment of not less than the appropriate minimum wage when he/she is off work sick. This payment includes any statutory sick pay that the worker may be entitled to. To be eligible for AWSP a worker must have been continuously employed by the same employer for the previous twelve months. AWSP entitlement is based on twelve month periods which may be extended in specific circumstances. Entitlement varies according to the length of time a

worker has been continuously employed by the same employer. However, a worker is not eligible for AWSP where an injury occurred when they were not at work or not travelling to and from work or for any time spent recovering from an operation that was a direct consequence of an injury not suffered at work or when travelling to and from work. A worker who is absent from work recovering from an operation resulting from an illness or from a work related injury would be eligible to receive AWSP.

When a worker falls ill they must immediately tell their employer about their sickness and also give their employer written evidence that they are unable to work. The evidence must include a medical certificate (doctor's note) if the illness last for more than eight days or more.

Payment for absence from work due to sickness is generally made for all normal working days up to the maximum number of working days to which the worker is entitled. However, where the period of absence is less than 14 working days, the first three normal working days do not qualify for AWSP.

An employer must pay sick pay weekly during and immediately after the end of the period of absence. Each payment must be for at least the amount that the employer knows is due to the worker for any normal working days in respect of which the worker is entitled to be paid in that period.

Bad Weather Payments

Agricultural workers should be paid for those hours they are required to work under their contract of employment even if bad weather prevents their employer from providing them with work under reasonable conditions.

Deductions from Pay

Subject to the general rules in the Employment Rights Act 1996 on deductions from pay (see below) the Wages Order allows certain "benefits" to count towards minimum agricultural pay. The only benefits that can be counted in lieu of wages in this way are a house or other accommodation provided in accordance with the worker's contract of employment. The maximum amounts that can be deducted from pay are:

House

The deduction which an employer may make from the worker's agricultural minimum wage in respect of a house shall not exceed £1.50 per week.

Other Accommodation

The deduction which an employer may make from the worker's minimum wage in respect of accommodation other than a house shall not exceed £4.51 for each day that the accommodation is provided as long as that worker has worked a minimum of 15 hours that week subject to the consideration of holidays in the calculation of those hours.

Rest Breaks

All agricultural workers are entitled to an uninterrupted break of at least 30 minutes where the working day is more than five and a half hours.

Further Information

If you need more information about any of the provisions of the Agricultural Wages Order telephone the Pay and Work Rights Helpline on 0800 917 2368.