

# Payment of Minimum Wages to Agricultural Workers

## EMPLOYERS OF AGRICULTURAL WORKERS - YOUR OBLIGATIONS AND HOW THEY WILL BE ENFORCED

### WHY YOU SHOULD READ THIS

1. This leaflet tells you how and why we carry out enquiries to check that employers are complying with the agricultural / national minimum wage legislation. It explains how we go about this work and promises you fair treatment under the law. It also gives guidance and information on:

- why we need to make these enquiries
- what you can expect to happen during the enquiry
- what standards you can expect from our officers
- what we expect from you

This leaflet also incorporates the provisions of the Central and Local Government Enforcement Concordat. This commits us to good enforcement policies and procedures.

### WHY WE MAY NEED TO MAKE ENQUIRIES

2. Most employers pay their workers at rates equal to or above the appropriate agricultural / national minimum wage. Some do not, simply because they are unaware of their obligations. Others deliberately try to pay less than is due. We will therefore follow up complaints from workers who believe they are getting less than is due. This may involve a visit by an Agricultural Wages Inspector. Where

we receive complaints from more than one of your workers, we will try to co-ordinate our enquiries.

### MINIMUM WAGE ENTITLEMENT

3. All employers in agriculture must pay at least the minimum rates of pay set out in the Agricultural Wages Order. Your workers are also entitled to be employed in accordance with the terms and conditions of employment set out in the Agricultural Wages Order. If in any individual case application of the Agricultural Wages Order provisions would lead to a payment below that required under the National Minimum Wage (NMW) arrangements, which came into force on 1 April 1999, you must apply the NMW.

4. Copies of the Agricultural Wages Order can be obtained by telephoning the Agricultural Wages Team (AWT) on:

**0845 0000 134 or 01270 754298**

Full details of the amounts you are required to pay under the National Minimum Wage arrangements are shown in the "Detailed Guide to the National Minimum Wage" which can be obtained from the NMW Helpline on 0845 6000 678.

5. The Agricultural Wages Order is made by the Agricultural Wages Board. Before any changes are made

the Board advertises its proposals in the farming and trade union press. If you have any comments on the content or format of the Agricultural Wages Order they should be sent to:

The Agricultural Wages Board  
Secretary  
Area 3A Ergon House  
Horseferry Road  
London  
SW1P 2AL

Telephone: 0207 238 6523

Fax: 0207 238 6553

### **YOUR OBLIGATIONS - WHAT DO YOU NEED TO KNOW?**

6. As an employer:
- you cannot force your worker to accept a wage which is lower than the appropriate minimum wage;
  - you must let your workers see their pay records, which you must hold, if they have a genuine reason to suspect you are not paying them, or have not paid them, the appropriate minimum wage since 1 April 1999;
  - your worker has the right to claim unfair dismissal or victimisation if you sack him / her or if you take some other action against your worker because he / she is trying to enforce their right, to a minimum wage.

**If you require further information ring the Agricultural Wages Team on 0845 0000 134 or 01270 754298.**

### **THE SERVICE YOU CAN EXPECT FROM US**

7. Copies of the Agricultural Wages Order will be sent to all employers and workers who request a copy. A copy will also be published on the Defra web site ([www.defra.gov.uk](http://www.defra.gov.uk)). In addition the Government will publicise details about the National Minimum Wage so that employers are aware of their obligations and workers are aware of their rights.

8. In England Defra enforces the Agricultural Minimum Wage arrangements. Defra also has responsibility for enforcing the National Minimum Wage in agriculture, on behalf of the Department for Trade and Industry. The Agricultural Wages Team will give guidance on minimum wage issues and will respond to any enquiries you may wish to make about payment of the appropriate minimum wage. They will also deal with complaints made by workers.

9. We will advise your worker to read the Agricultural Wages Order and the National Minimum Wage guidance to check whether they have been underpaid before they make a complaint.

### **COMPLAINTS**

10. Where we consider a complaint is justified a member of the Agricultural Wages Team will start off by writing to you. The team will do this to make sure that you understand the minimum pay arrangements and to encourage you to put matters right voluntarily. We will not divulge the name of the complainant if we have been asked not to. We will ask you to start paying your worker the appropriate minimum wage, and to pay any back pay that might be

owed to him for the period 6 years prior to the issue of an Enforcement Notice\*. You will be asked to do this by a specific date. We will then write to your worker telling him / her what we have done and what to expect. If you do not correct their pay and pay any arrears owed, we will ask your worker to let us know.

11. If your worker tells us that you have not put matters right an Agricultural Wages Inspector from your local region will take the case over. The Wages Inspector may visit you to inspect your wage records. The Wages Inspector can take action against any employer who

- does not pay the appropriate minimum wage
- fails to keep records
- refuses to produce records
- deliberately delays producing records.

The Wages Inspector will give you his / her direct telephone number and address for future contacts.

12. We will not as a matter of routine attempt to deal with any underpayments that may have occurred during the six year period up to the date of the Enforcement Notice. Enforcement Notice\* although, we do have the option of taking civil court action on behalf of your worker if we consider it appropriate to do so. If your worker feels that he / she has been underpaid for any periods not covered by the Enforcement Notice they can take their own action through the civil courts to secure payment of any arrears.

## **VISITS BY AGRICULTURAL WAGES INSPECTORS**

13. Normally just one Wages Inspector will visit you. Occasionally, where large numbers of workers are involved or perhaps for training purposes, a visit may include more than one Wages Inspector. Every Wages Inspector carries an ID card and a warrant that you are entitled to see. If the Wages Inspector needs to speak to any of your staff or workers, the Inspector will show their ID card and warrant before doing so.

## **HOW WE ARRANGE VISITS**

14. We will normally telephone you first to arrange a convenient date for a visit and will try to give you at least one weeks notice. Usually we will follow up the telephone call with a letter confirming the date and time agreed. If, subsequently, the agreed appointment date is no longer convenient you should let us know and we will try to arrange another appointment. Very exceptionally, It may not be possible to give advance warning of a visit.

## **WHERE DOES A VISIT TAKE PLACE**

15. It is usually convenient if we see your wage records where they are normally kept, as we will often want to talk to the people responsible for maintaining them. The visit can take place at any location convenient to both of us, providing it allows us to see the records. Please tell us if you want us to visit you at a place other than at your business address.

16. If we cannot agree where the records will be reviewed, the Wages Inspector can specify, in writing, where and when you should produce your records. Where we need to take this course of action, we will give you

reasonable time to comply with the request.

## **PROFESSIONAL REPRESENTATION**

17. You may find it helpful to tell a professional adviser about the visit. As the employer you will always be personally responsible for supplying the information we need and for the accuracy of that information, even if you have authorised your professional adviser or staff to deal with us on your behalf. You should, therefore, make sure they have all the facts.

18. Where a criminal prosecution is being considered you will be cautioned and have the right to be represented by a lawyer before you answer our questions.

## **WHAT WE WILL DO WHEN WE VISIT?**

19. We will discuss the reason for our enquiry with you. Where a complaint has been made we will not identify the person involved unless they have given us their permission to do so. We will ask about your record keeping system and who completes the wages, salary, and payroll records. In addition, we will want to know who completes any records relating to hours worked, expenses payments, allowances and accommodation benefits, if appropriate. We may have other questions at this stage that we would like to ask you. You may want to have your bookkeeper or wages clerk present to explain the details.

20. We will then need to look at your records. You do not have to be present as long as someone is available to answer any queries. We

may want to discuss some matters with you before we can complete our visit. We may need to see actual records of wages or payments to your workers, details of hours worked and any records relating to expenses payments, allowances and accommodation benefits provided, as well as any other records, which are connected with them.

## **RECORDS**

21. You must keep sufficient records to show that you have complied with your obligations under the agricultural / national minimum wage. These records should be kept for at least three years after the pay period following the pay period to which they refer. However as a worker may seek to recover arrears of pay owed over a period that is longer than three years and, as the onus is on you to prove that you have paid the worker correctly, you may wish to keep your records for longer than the legal minimum period. Please make sure your records are up to date as this will save time and will ensure you are complying with the law. If you use any of these records to prepare your business accounts, or returns, you may need to keep them for longer.

22. We may prosecute any employer who fails to keep or refuses, or deliberately delays, to provide records required for review.

## **WHAT RECORDS SHOULD I KEEP?**

23. You must keep sufficient records to show that you have complied with your agricultural / national minimum wage obligations. The agricultural / national minimum wage rules do not state what count as

'sufficient' records as the situation will vary from employer to employer and from worker to worker. However, you should be aware that if one of your workers brings a claim for unpaid agricultural / national minimum wage to a tribunal or court, the burden will be on you to prove that the agricultural / national minimum wage has been paid. You are likely to need records to enable you to provide this proof.

24. For a worker who works a fixed number of hours each week and who is paid well above the agricultural / national minimum wage, your existing pay records may be sufficient to show that the worker is in fact receiving at least the agricultural / national minimum wage; for example, general pay records kept for tax and / or National Insurance purposes. However, it is for you, as the employer, to judge when, for any particular worker, you should keep more detailed records specific to the payment of the agricultural / national minimum wage.

25. Examples of records which it may be necessary to keep are details of:

- gross pay paid to your workers,
- overtime or shift premia,
- any benefits provided to your workers,
- any deductions or payments for accommodation,
- the total number of hours worked,
- any absences, for example, rest breaks, sick leave, holiday,
- any travel or training during work hours and its length,
- length of rest / meal breaks
- bank statements or other commercial documentation.

This list is not intended to be a definitive or comprehensive list as the

details of records to be kept may differ from case to case and according to the type of work being done.

26. You should note that the record keeping requirements also apply to agricultural workers who are employed on a piece work basis.

27. Where relevant you will also need to produce copies of contracts and agreements drawn up between yourself and your workers. We will only ask to look at records that we consider are relevant to demonstrate that you have complied with your agricultural / national minimum wage obligations. The purpose of the visit is to check that you have been paying your workers at least the minimum amount due. We will tell you of any further enquiries we intend to make, as far as we can, once we have seen all the relevant records.

## **HOW LONG WILL THE VISIT TAKE?**

28 It is impossible to say in advance how long a typical visit will take. If you have only a few workers, the visit will usually take a couple of hours. It may take longer if you have a larger work force or your pay structures are complex. It should save time if we can see all your records at one visit.

29. Wages Inspectors will try to complete everything at the first visit, but may need to get more information before calling back another time. If this is necessary, we will agree a convenient time with you. You can remain with the Wages Inspector throughout the visit if you want, but you do not have to be there, provided you are there to answer any questions during the visit.

## **PROVIDING INFORMATION**

30. We will ask questions and explain what further information we need as clearly and simply as possible. We will take up as little of your time as possible by trying to ask early on in our enquiries for everything we need. We will try to avoid asking for information in a piecemeal way, but this is not always possible as one question may lead to another. It may help if you tell us about any special features of your business, which you think may be relevant to any questions we have asked.

31. We will give you every opportunity to give us all the information we need to settle matters and to explain any apparent mistakes in your records or in your compliance with the agricultural / national minimum wage. If we can agree with your explanations we will close that line of enquiry but if we can not we will tell you why. You should respond as promptly as you can when we ask for information. This will help to keep down your time and costs and ours.

32. If you believe that you have provided all the information and explanations necessary to check your compliance with the agricultural /national minimum wage and that we have had adequate time to consider the information and explanations, you should ask us why we are continuing our enquiries. We will reconsider the matter to see whether we can agree or explain what further information we need for checking your records.

33. You should tell us straightaway if you have difficulty obtaining the information we have asked for and we will discuss with you how you might obtain it. You should also tell us if you

think it is not relevant. We will consider your reasons carefully and if we still think we need the information, we will tell you why.

34. We may also need to ask for information about your compliance with the agricultural / national minimum wage from other persons, for example, your workers or staff. If you, or any other person we may ask, do not provide the information, or provide information that is known to be false we may consider prosecution for failure to comply with the law.

## **IF WE FIND NOTHING WRONG**

35. If we find everything is in order and you appear to be complying with the requirements of the agricultural / national minimum wage, we will tell you so and let you know that our enquiries have finished.

## **IF WE FIND SOMETHING WRONG**

36. If the records we examined were not adequate, we will tell you what you need to do to comply and whether we are considering prosecution.

37. If we believe that you have not paid at least the minimum amount due to one or more of your workers, we will consider:

- issuing an Enforcement Notice if the underpayment remains uncorrected after our visit.
- prosecuting you if we consider your refusal to pay the appropriate minimum wage is wilful

In every case we will ensure that you are aware of the legal requirements placed on you and that these are clearly distinguished from best practice advice where appropriate. Where enforcement action that does not involve a criminal prosecution is being considered we will discuss how matters could be resolved with you before initiating formal enforcement action. If you are professionally represented, we may suggest that you seek advice from your professional adviser at this stage.

38. It is a criminal offence to:

- refuse or wilfully neglect to pay the agricultural / national minimum wage
- fail to keep agricultural / national minimum wage records
- keep false records
- produce false records or information
- intentionally obstruct a Wages Inspector
- refuse or neglect to give information to a Wages Inspector

We may take action against any employer who commits any of these offences.

### **ENFORCEMENT NOTICE\***

40. An Enforcement Notice can be issued in respect of any underpayment that has arisen during the six year period up to the date of the Enforcement Notice. If the visit by the Agricultural Wages Inspector reveals that there is an underpayment of wages, and you refuse to pay the money, or there is a dispute about the amount of back pay that is owed to your worker, the Wages Inspector will consider whether it would be

appropriate to issue an Enforcement Notice on behalf of your worker.

41. The Enforcement Notice:

- requires the employer to pay each worker (or workers) at least the appropriate minimum wage from the date it is served; and
- also requires the employer to pay each worker any amounts of wages that are owed as back pay because of past failure to pay the appropriate minimum wage.

You may appeal against the Enforcement Notice and have 28 days in which to do so, however, if you fail to comply with the Enforcement Notice in the first 7 days after you receive it you may be subject to an additional penalty (see Penalty Notice, below).. A leaflet explaining the appeal procedures will be included with the Enforcement Notice. You may wish to seek professional advice before deciding whether to appeal.

### **PENALTY NOTICE**

42. If you ignore the Enforcement Notice in whole or in part, Defra may serve a penalty notice which will impose a financial penalty on you. The Enforcement Notice must still be obeyed (so that your worker will still be entitled to the money owed to him / her), but in addition, you must pay a financial penalty to the Government. The penalty is charged on a daily basis at a rate double the National Minimum Wage in force at the time per worker per day. If you do not obey the Enforcement Notice within 28 days a penalty will be charged for a period beginning on the 8<sup>th</sup> day after it was issued and ending either on the day you pay the worker the arrears owed

or on the day on which the Penalty Notice is issued. This will not be later than 10 days after the 28 day deadline for lodging your appeal against the Enforcement Notice. The way we work out the penalty will be set out in the notes that will be sent to you with the penalty notice, together with details of how and when you must pay the penalty. You have 28 days to lodge an appeal against the penalty notice. A leaflet explaining the appeal procedures will be included with the penalty notice. You may wish to seek professional advice before deciding whether to appeal.

## **APPEALS**

43. All appeals are determined by an employment tribunal. The Agricultural Wages Team can provide you with copies of the leaflets entitled "Understanding Employment Tribunals" if you want to know more about this process.

## **EMPLOYMENT TRIBUNAL / CIVIL COURT ACTION**

44. If you do not comply with the Enforcement Notice, the Wages Inspector will consider whether to lodge a complaint with an employment tribunal or civil court on behalf of your worker, to secure payment of the money which is owed to them. This can only be done after an Enforcement Notice has been issued, and you have ignored all or part of it.

45. If the case is lodged with an employment tribunal a copy of the complaint will be sent to the Advisory, Conciliation and Arbitration Service (ACAS) which is independent of the Government and the tribunal. ACAS will ask the Wages Inspector, on

behalf of your worker, if he / she wants to reach a settlement with you out of court. If your worker wishes to try this the Wages Inspector will not take part in these discussions but will not withdraw the claim from the Tribunal until a settlement is reached. However your worker is not obliged to settle the case but, if the Wages Inspector considers that your worker is acting unreasonably he / she may decide not to continue with the case. Where a tribunal finds in your worker's favour, you will be legally required to pay your worker all the amounts owed.

46. If a claim is brought before a civil court every attempt will be made to reach a settlement prior to a formal court hearing. Whether a settlement is possible will depend on you and your worker. If either of you fails, without good reason, to seek a settlement the court may award costs against the party considered responsible for this failure. Where a court finds in your worker's favour, you will be legally required to pay your worker all the amounts owed. You may also have to pay the legal costs incurred by the Wages Inspector in acting for your worker.

## **OUR QUALITY STANDARDS**

47. As explained in this leaflet, Defra will have responsibility for enforcing payment of the agricultural / National Minimum Wage in agriculture. We are committed to providing a high quality service which is speedy, efficient and easily accessible. Our staff will always be courteous, fair and professional in our dealings with you. If we cannot reply quickly to a letter or telephone query, for instance because of the complexity of the subject, we will tell you the reason for the delay and say when you can expect a full reply.

## KEEPING YOU INFORMED

48. We will explain your legal rights and the reasons for any actions we take as the enquiry proceeds. We will tell you, for example, why we:

- need to see certain records
- need information or explanations from you or your staff
- think we need to see you again
- are not satisfied with any explanation you may have given

You can ask us at any time to explain your rights, or tell you why we have taken a particular action, or explain what you are obliged to do under the law. You may ask for these explanations even if we have already given them to your professional adviser.

## USE OF DATA WHICH YOU PROVIDE

49. Any information obtained from interviewing you or your staff, or obtained from your pay records, may be divulged to a third party as we seek to investigate your worker's, or former worker's complaint. The third party could include your worker or former worker and his / her adviser or union representative, the Employment Tribunals or Courts and the Insolvency Services. This information can also be shared with Inland Revenue national minimum wage compliance officers if appropriate.

50. We will only talk to members of your staff about matters that are relevant to our enquiry.

## YOUR COSTS

51. We know that dealing with our questions may cost you time and money, so we will only ask for information we reasonably require to check that you are complying with the agricultural / national minimum wage. We will complete the enquiry as soon as possible. That is when we are satisfied that there is nothing wrong or that any underpayment of wages has been identified and put right. If you feel we have made a mistake please let us know. We will try to put right our mistakes as soon as possible.

## DISCLOSURE OF INFORMATION

52. Formal requests for information are considered in accordance with the requirements of the Code of Practice on Access to Government Information, the Freedom of Information Act and the Environmental Information Regulations.

## WHAT TO DO IF YOU HAVE A COMPLAINT ABOUT THE SERVICE WE PROVIDE

53. Wherever possible you should try to settle any complaint you have about our service with the officer in charge of the enquiry. Telephone the Agricultural Wages Team on

**0845 0000 134, 01270 754298**

or the number of your contact officer if you have been given one. Most complaints can be sorted out in this way and it is the quickest and most effective way of putting things right.

54. If you have a complaint about the Agricultural Wages Team that you cannot settle in this way, you should contact the Manager of the Agricultural

Wages and Labour Unit, Judith Marsden, at:

Department for Environment Food and Rural Affairs  
Area 3A Ergon House  
Horseferry Road  
London  
SW1P 2AL

Telephone: 0207 238 57548  
Fax: 0207 238 6553  
E-mail:  
Judith.marsden@defra.gsi.gov.uk

Your complaint will be investigated and you will receive a response within 10 working days of receipt.

55. If you have a complaint about the way an Agricultural Wages Inspector has handled your case that you have not been able to resolve with the inspector, you should write to the Agricultural Wages Inspections Manager at the Rural Payments Agency. The Agricultural Wages Team will be able to give you the appropriate name and address.

56. Your complaint will be thoroughly investigated and you will be given a full response within 15 working days. If the 15 day deadline cannot be met, then an explanation will be given.

57. If the matter is still not resolved, then you should write to the Rural Payments Agency's Customer Relations Unit (CRU) based in Reading.

58. Finally, if necessary you should contact your MP and ask for your case to be passed to the relevant Minister or to the Parliamentary Ombudsman.

## SUGGESTIONS

59. We set high standards for the service we provide and are constantly looking for ways to improve those standards. One of the ways in which we can continue to improve is by listening and responding to your views. We would welcome your feedback and comments on the way we do things, and about this Code of Practice, please feel free to write to the Manager of the Agricultural Wages and Labour Unit at the address shown above, or send an e-mail to:

Judith.marsden@defra.gsi.gov.uk

## PERFORMANCE

60. A report on our performance against the standards set out in this leaflet will be included in the "Report on Wages in Agriculture" presented to Parliament annually. This is published by the Stationery Office.

## FURTHER INFORMATION

61. For further information telephone the Agricultural Wages Team on:

**0845 0000 134 or 01270 754298**

## FURTHER COPIES

62. For further copies of this document or copies in large print, electronic format or in Welsh contact the Agricultural Wages Team as above.