



# Enforcing Minimum

# Workplace Rights

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TUC 

# Legal developments

## Making the minimum wage work

*"There are people who would like to get rid of minimum wage. But we have to have it, because if we didn't some people would not get paid money. They would work all week for two loaves of bread and some Spam."*

Chris Rock – US Comedian

The National Minimum Wage (NMW) matters. Every time it is increased about one million workers get a pay rise, and two-thirds of them are women. It's worth remembering that just before the NMW was introduced in 1999, the TUC helpline was taking calls from people who had been paid as little as 95 pence per hour.

The TUC and unions are constantly working to improve the NMW, winning increases to the rates, tougher enforcement and higher penalties. We have continually campaigned for the adult rate to be paid at 18, and even though we are up against the hard truth of record youth unemployment, we have secured two further improvements this year.

First, the adult threshold for the adult rate was reduced from age 22 to 21, giving around

40,000 young minimum wage workers a 22 per cent pay rise.

Second, the government agreed to adopt a new rate for the 60 per cent of apprentices who were previously exempt. Even though the initial rate has been set at a modest £2.50 per hour, this will provide an increase for 14 per cent of UK apprentices.

The UK currently has the fifth highest minimum wage in the world. Of course there is more to be done, including campaigning for a living wage throughout the public and private sector, but we should also make the most of what we have already achieved.

Every year some group of unscrupulous employers try to create a new loophole so constant vigilance is needed just to make sure that the NMW is always paid.

Union reps looking to enforce the NMW for their workers can do so by making a direct complaint to HMRC (phone the Pay and Work Rights Helpline: 0800 917 2368), at an employment tribunal, or by taking a case to



court for unpaid wages under the 1996 Employment Rights Act.

By involving enforcement bodies in your union campaigns you may be able to get a foothold in the workplace, demonstrate trade union effectiveness to non members and gain leverage with the employer to secure better terms and conditions for workers.

### NMW rates from 1 October 2010

Age 21 and above:	£5.93
Age 18–20:	£4.92
Age 16–17:	£3.64
Apprentices under 19 and older workers in 1st year of apprenticeship:	£2.50



# Ask the expert

## The National Training Officer answers reps' employment queries

**Q** We have a load of contract workers in our workplace who we suspect are having their employment rights breached. We want to get them to join the union, so we can stop this happening. How do we go about it?

**A** First you need to ask them to join. Be prepared for their response though: they may feel that as contract employees the union is not relevant to them. They may also think that as the contract is only for a relatively short period of time it's not worth their while. So you really need to think about what their concerns may be (but don't make assumptions) to help them see the benefits of union membership. Obviously the fact that you and your union are there on site is important, as is the ability to demonstrate the collective benefits of union representation to solve any issues they may have on site.

The next most important thing after you have asked them to join is to identify potential reps and work with your union's education team to train them. Once you have the majority in

membership, you will then need to work with them to help develop a plan to campaign on their concerns, which may include obtaining union recognition with the contractor, solving a health and safety issue or more fundamentally sorting out access to statutory rights without them feeling under threat of losing their jobs.



**Q** We keep being asked to go to forums and meetings about 'vulnerable workers'. I work in the education sector and we are all teachers so none of us are vulnerable, this doesn't apply to us does it?  
– *an education rep*

**A** What is your definition of a vulnerable worker? We have many different definitions and that often determines whether we think it applicable or not. In all sectors, employer practices have changed and many workers are now vulnerable through their contractual status. Significant changes have occurred in education – short term and zero hour contracts, teaching agencies and unqualified teacher cover. It's a minefield! If you look at education union websites you will see that there are many ongoing campaigns to try and resolve some of these issues. So before you write off vulnerable workers, have a chat with colleagues to find out whether they perceive themselves as vulnerable and also to make sure that they are in the union!



# Equal treatment for agency workers

## It's on its way...

The TUC and unions have campaigned for equal treatment rights for agency workers for many years. When the Agency Worker Regulations come into effect in October 2011, these rights will at last become a reality.

Agency workers across the UK are often paid less and have worse terms and conditions than directly employed colleagues – even when they work alongside them doing exactly the same job. Young workers and those from ethnic minority groups are overrepresented among agency workers and their numbers have increased over time as employers have tried to minimise their labour costs and responsibilities. This has led to the rise of the two-tier workforce and blatant attempts by employers to divide and rule their staff.

Agency workers do have some rights, including the NMW, holiday pay and working time rights. There are also specific rules that govern employment agencies' conduct and set out the information that they must provide to agency workers and what they can and cannot charge a fee for. If an agency breaks these rules they

can be reported to the Employment Agency Standards Inspectorate, which can investigate and take action. However, crucially, agency workers do not currently have the right to equal pay and the same terms and conditions as directly employed colleagues.

This is due to change on 1 October 2011. From that date, agency workers will be entitled to:

### From day 1 of an assignment

- equal access to facilities in the hirer's workplace, such as childcare facilities, canteens, transport facilities and toilets
- pregnancy and maternity rights – such as time off to attend ante-natal appointments
- the right to be told about relevant job vacancies on offer in the hirer's organisation.

### After 12 weeks continuous service

- the same basic working and employment conditions that they would enjoy if the hirer had employed them directly;

this includes equal treatment on pay, working time, night work, rest periods and breaks and holidays. (Equal treatment on pay includes basic pay, fees, bonuses, commission, holiday pay and performance-related pay and bonuses, where these are based on the amount or quality of the work carried out.)

The new rights are a significant step forward. However there is concern that agencies and employers might try to rotate agency workers to prevent them qualifying for equal treatment. The Regulations include some anti-avoidance measures, but trade unions and workplace reps will have a key role to play in ensuring agency workers benefit from the new rights. Unions may also want to consider ways in which they could build on the new statutory rights, such as by negotiating with employers for day 1 rights for agency workers or a move away from using agency workers towards more secure forms of employment.

The TUC is preparing a bargaining guide on agency workers, which is due out early in 2011.



## About the Union Modernisation Fund Project: supporting unions to tackle vulnerable employment

The project seeks to build on the recommendations of the CoVE report and to fulfill the TUC's strategic goal to tackle vulnerable employment. The TUC aims to:

- provide tailored support to unions seeking to improve engagement with vulnerable workers via training and better information-sharing
- develop new skills in promoting and protecting the rights of vulnerable workers and integrating their needs into negotiations with employers
- develop new resources for unions (specifically regarding informal, agency, younger and casual workers)
- encourage closer working between unions and enforcement agencies
- pilot new ways of supporting unions in the regions.

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