[Low Pay Commission urges action on illegal underpayment of apprentices]

Press release

The LPC's non-compliance and enforcement report looks at why so many apprentices are underpaid and what can be done about it.

The Low Pay Commission (LPC) today publishes its third stand-alone report into compliance with and enforcement of the National Minimum Wage (NMW). The report uses data from 2019 to investigate the nature and extent of underpayment. This dates from prior to the current Covid-19 outbreak and shutdown, which have had significant impacts for many low-paid workers and their employers.

Bryan Sanderson, Chair of the LPC, said:

> The current situation has brought to the attention of all of us the importance of low-paid workers to many of our vital services, including health and social care and the production and distribution of food. The priority is clearly to try to secure the survival of businesses and jobs which are very much at risk. Ultimately, an effective enforcement regime is an essential contributor to the objectives of protecting workers and ensuring a level playing field for businesses too.

> The Government has made progress in recent years but more can still be done to protect the most vulnerable, in particular apprentices.

The report examines underpayment of all groups of low-paid workers, but focuses in particular on apprenticeships, where surveys show around one in five apprentices earn less than their legal entitlement. The LPC's analysis suggests that confusion around the requirement to pay apprentices for their training hours is likely to account for a large proportion of this underpayment. The LPC makes several recommendations to Government to better protect apprentices, by reviewing how it investigates these cases and better communicating the risks they face.

The report also looks at the problems workers face in accessing their payslips and understanding whether or not they are underpaid. Recent changes to the rules have improved workers' rights, but still need to be publicised and enforced.

Overall, the report finds that the amount of measured underpayment fell slightly in 2019 from 2018, with over 423,000 workers recorded as underpaid. But this level remains higher than in many previous years, and the prevalence of underpayment varies significantly by occupation. HM Revenue and Customs' enforcement activity in 2018/19 secured the repayment of more arrears for more workers than ever before. The report considers what HMRC's statistics do and do not tell us about their work, and what more needs to be done to ensure the enforcement regime is as effective as possible in meeting the needs of underpaid workers.

Recommendations

In full, the LPC's recommendations to the Government in its 2020 non-compliance and enforcement report are:

- We recommend the Government evaluates what data are recorded in non-compliance investigations, and considers how this can be used to develop measures of cost-effectiveness.

- We recommend the Government monitors the effects of the increase in the threshold for naming employers found to have underpaid workers.

- We urge the Government to take responsibility for the delivery of the new higher NLW target in the sectors where it is the main source of funding.

- We recommend the Government uses targeted communications to both apprentices and their employers to highlight underpayment risks, and in particular the problem of non-payment of training hours.

- We recommend HMRC review the way they record apprentice underpayment, and to publish the numbers and profile of the apprentices they identify as underpaid.

- We therefore recommend that HMRC review their approach to investigations involving apprentices, to understand whether these investigations would identify non-payment of training hours.

- We join the Director of Labour Market Enforcement in recommending that the Government reviews the regulations on records to be kept by an employer, to set out the minimum requirements needed to keep sufficient records.

Notes for editors

1. The current report follows a similar report in 2019, which also made a series of recommendations to the Government. These covered how the Government communicates with employers and workers; the guidance available to employers; and the resumption of naming rounds for non-compliant employers. In its written evidence on enforcement to the LPC, BEIS announced its acceptance of all of last year's recommendations.

2. The National Living Wage (NLW) is the statutory minimum wage for workers aged 25 and over. Different minimum wage rates apply to 21-24 year olds, 18-20 year olds, 16-17 year olds and apprentices aged under 19 or in the first year of an apprenticeship.

3. The age threshold for the NLW will be reduced from 25 to 23 in 2021, and then further to 21 by 2024. This follows a review of the structure of the National Minimum Wage youth rates and recommendations made by the LPC last autumn.

4. The NLW was introduced in April 2016 and had a target of 60% of median earnings by 2020, subject to sustained economic growth.

5. The Government published its remit to the LPC for 2020 alongside the 11 March Budget. This confirmed a new target for the NLW, to reach two-thirds of median earnings by 2024. In the remit, the Government asks the LPC "to monitor the labour market and the impacts of the National Living Wage closely, advise on any emerging risks and – if the economic evidence warrants it – recommend that the government reviews its target or timeframe. This emergency brake will ensure that the lowest-paid workers continue to see pay rises without significant risks to their employment prospects." The full remit letter is available here.

6. Rates for workers aged under 25, and apprentices, are lower than the NLW in reflection of lower average earnings and higher unemployment rates. International evidence also suggests that younger workers are more exposed to employment risks arising from the pay floor than older workers. Unlike the NLW (where the possibility of some consequences for employment have been accepted by the Government), the LPC's remit requires us to set the rates for younger workers and apprentices as high as possible without causing damage to jobs and hours.

7. The Accommodation Offset is an allowable deduction from wages for accommodation, applicable for each day of the week. In April 2020 it will increase to £8.20 per day, matching a commitment made in 2013 to increase it to the level of the National Minimum Wage.

8. The National Living Wage is different from the UK Living Wage and the London Living Wage calculated by the Living Wage Foundation. Differences include that: the UK Living Wage and the London Living Wage are voluntary pay benchmarks that employers can sign up to if they wish, not legally binding requirements; the hourly rate of the UK Living Wage and London Living Wage is based on an attempt to measure need, whereas the National Living Wage is based on a target relationship between its level and average pay; the UK Living Wage and London Living Wage apply to workers aged 18 and over, the National Living Wage to workers aged 25 and over. The Low Pay Commission has no role in the UK Living Wage or the London Living Wage.

9. The Low Pay Commission is an independent body made up of employers, trade unions and experts whose role is to advise the Government on the minimum wage. The rate recommendations introduced today were agreed unanimously by the Commission.

10. The nine Low Pay Commissioners are: Bryan Sanderson, Professor Sarah Brown, Professor Richard Dickens, Kate Bell, Kay Carberry, Simon Sapper, Neil Carberry, Clare Chapman and Martin McTague.

11. Bryan Sanderson can be contacted via the Low Pay Commission’s press office (0207 211 8132).

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