



Department for Business Innovation & Skills

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Our ref: FOI2016/01551

19th February 2016

Dear JH

Thank you for your email of 21st January where you requested the following information:

- 1. I would like to know whether there is a policy or guidance between BIS and HMRC which states how HMRC should investigate complaints from members of the public regarding employers failing to pay the NMW as a result of failing to regard sleep-in hours as Time Work.*
- 2. Is there an agreed protocol for investigating such complaints?*
- 3. Is there a target time for investigating such complaints?*
- 4. How many such complaints have been made by members of the public since the publication of the Government guidance on Sleep-ins was published in the BIS document Calculating The National Minimum Wage in February 2015?*
- 5. How many investigations into such complaints have been concluded?*
- 6. How many such investigations have resulted in HMRC taking action against employers who have failed to regard sleep-in hours as Time Work which has resulted in them not paying the NMW.*
- 7. Does BIS provide guidance for ACAS on what they should advise members of the public who contact the ACAS Pay Helpline enquiring about how sleep-in hours should be classified. If so what is that guidance?*

Under the Freedom of Information Act 2000 ('the Act'), you have the right to:

- know whether we hold the information you require
- be provided with that information (subject to any exemptions under the Act which may apply).

1. and 2. The Government have a published policy on the enforcement of the National Minimum Wage, which sets out how the civil and criminal enforcement of the NMW operates. A copy of

this policy can be found at

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/429737/bis_15_299_NMW_hm_revenue_and_customs_enforcement_prosecutions_and_naming_employers_who_break_national_minimum_wage_law_May_2015_2.pdf

There is no specific policy in place between the Department for Business, Innovation and Skills (BIS) and HM Revenue and Customs (HMRC) for the treatment of a worker complaint related to the failure to pay the National Minimum Wage (NMW) for sleep-in hours. The same process is in place for the treatment of complaints for NMW underpayment for sleep-in hours as in all other complaints.

HMRC enforcement is initiated either by a complaint from workers or third parties. Cases are referred to NMW compliance teams from HMRC's NMW Risk Unit. On receipt of a case referral, a compliance officer will normally carry out an investigation into the employer's business. This will usually include a review of the employer's payroll and associated records, an interview with the employer and payroll staff, and interviews with workers.

This process is set out in detail in the HMRC National Minimum Wage Manual (NMWM):
<http://www.hmrc.gov.uk/manuals/nmwmanual/Index.htm>

3. BIS does not issue a target time for investigating complaints in relation to sleep in hours.
4. This information is not held within the Department for Business, Innovation and Skills.
5. This information is not held within the Department for Business, Innovation and Skills.
6. This information is not held within the Department for Business, Innovation and Skills.
7. BIS does not provide guidance for ACAS on what they should advise members of the public who contact the ACAS Pay Helpline about sleep in hours. ACAS connect workers to HMRC, who respond to every complaint they receive.

Appeals procedure

If you are dissatisfied with the handling of your request, you have the right to ask for an internal review. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to the Information Rights Unit:

Information Rights Unit
Department for Business, Innovation & Skills
1 Victoria Street
London
SW1H 0ET
Email: FOI.Requests@bis.gsi.gov.uk

Please remember to quote the reference number above in any future communications.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at: Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely,

Labour Markets Directorate