
DRAFT STATUTORY INSTRUMENTS

2015 No.

The National Minimum Wage Regulations 2015

PART 5

Hours Worked for the Purposes of the National Minimum Wage

CHAPTER 2

Salaried hours work

The meaning of salaried hours work

21.—(1) “Salaried hours work” is work which is done under a worker’s contract and which meets the conditions in paragraphs (2) to (5) of this regulation.

(2) The first condition is that the worker is entitled under their contract to be paid an annual salary or an annual salary and performance bonus.

(3) The second condition is that the worker is entitled under their contract to be paid that salary or salary and performance bonus in respect of a number of hours in a year, whether those hours are specified in or ascertained in accordance with their contract (“the basic hours”).

(4) The third condition is that the worker is not entitled under their contract to a payment in respect of the basic hours other than an annual salary or an annual salary and performance bonus.

(5) The fourth condition is that the worker is entitled under their contract to be paid, where practicable and regardless of the number of hours actually worked in a particular week or month—

- (a) in equal weekly or monthly instalments, or
- (b) in monthly instalments that vary but have the result that the worker is entitled to be paid an equal amount in each quarter.

(6) Circumstances where it may not be practicable to pay a worker by equal instalments, or by an equal amount in each quarter, include where—

- (a) a performance bonus is awarded;
- (b) the annual salary is varied;
- (c) a payment is made in respect of hours in addition to basic hours; or
- (d) the employment starts or terminates during a week or month with the result that the worker is paid a proportionate amount of their annual salary for that week or month.

(7) Work may be salaried hours work whether or not—

- (a) all the basic hours are working hours;
- (b) the worker works hours in excess of the basic hours (whether the worker is entitled to be paid for those additional hours or not);
- (c) the annual salary may be reduced due to an absence from work.

(8) A “performance bonus” is a payment paid to a worker on merit attributable to the quality or amount of work done in the course of more than one pay reference period.

Determining hours of salaried hours work in a pay reference period

22.—(1) The hours of salaried hours work in a pay reference period are to be calculated in accordance with the following paragraphs.

(2) Where the pay reference period is a week, the hours of salaried hours work in that period are the basic hours divided by 52.

(3) Where the pay reference period is a month, the hours of salaried hours work in that period are the basic hours divided by 12.

(4) Where the pay reference period is any other period, the hours of salaried hours work in that period are the basic hours divided by the figure obtained by dividing 365 by the number of days in the pay reference period.

(5) The basic hours are to be ascertained in accordance with the worker's contract on the first day of the pay reference period in question unless paragraphs (6) or (7) apply.

(6) The hours of salaried hours work in a pay reference period are to be ascertained in accordance with regulations 24 to 28 if the worker—

- (a) during or before the payment reference period, works additional hours in excess of the basic hours in the calculation year, and
- (b) is not entitled to be paid more than annual salary and a performance bonus for those additional hours.

(7) The hours of salaried hours work in a pay reference period are to be determined in accordance with regulation 29 if the employment terminates before the end of the calculation year or the contract is varied before the end of the calculation year so that it is no longer a contract for salaried hours work.

Absences from work to be reduced from the salaried hours work in a pay reference period

23.—(1) The hours a worker is absent from work are to be subtracted from the hours of salaried hours work in a pay reference period if all of the following conditions are met—

- (a) the employer is entitled under the worker's contract to reduce the annual salary due to the absence;
- (b) the employer pays the worker less than the normal proportion of annual salary in the pay reference period as a result of the absence.

(2) The hours during which a worker takes industrial action are to be subtracted from the hours of salaried hours work in a pay reference period if an annual salary was payable for those hours, or would have been payable but for the industrial action.

The meaning of the calculation year

24.—(1) In this Chapter, “the calculation year” has the meaning given in the following paragraphs.

(2) For a worker who commenced the employment before 1st April 1999, then for so long as the worker continues in that employment the calculation year is a year beginning on an anniversary of the commencement of that employment.

(3) For a worker whose annual salary is payable monthly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment—

- (a) if the worker commenced employment on the first day of a month, the calculation year is—
 - (i) the year beginning with that day;
 - (ii) in each subsequent year, a year beginning on an anniversary of that day;

- (b) if the worker commenced employment on any other day of a month, the calculation year is—
 - (i) the period beginning with that day and ending with the day before the first anniversary of the first day of the next month;
 - (ii) in each subsequent year, a year beginning on an anniversary of the first day of that month.

(4) For a worker whose annual salary is payable weekly and who commenced the employment after 31st March 1999, then for so long as the worker continues in that employment the calculation year is—

- (a) the year beginning with the first day of employment;
- (b) in each subsequent year, a year beginning on an anniversary of that day.

Determining the basic hours in the calculation year

25.—(1) In this Chapter, the basic hours in a calculation year are determined in accordance with the following paragraphs.

(2) The basic hours in the calculation year are the basic hours ascertained in accordance with the contract at the start of the calculation year, unless there is a variation to the basic hours which takes effect in the calculation year.

(3) Where a variation to the basic hours takes effect in the calculation year, the basic hours in the calculation year are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the variation takes effect, and
- (b) the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect until the end of the calculation year.

(4) If more than one contractual variation takes effect in the calculation year, the “basic hours in the calculation year” are determined by adding together—

- (a) the proportion of basic hours in the calculation year in the period starting before the day during which the first variation takes effect, and
- (b) for each variation, the proportion of basic hours in the calculation year in the period after the day during which the variation takes effect and before the day during which the next variation takes effect or, in the case of the final variation, the end of the calculation year.

(5) The proportion of basic hours in the calculation year for each of the periods in paragraphs (3) and (4) is calculated using the formula—

$$\left(\frac{D}{365} \right) \times H$$

where—

“D” means the number of days in the period;

“H” means the basic hours in the calculation year which have effect in that period.

Determining whether the worker works more than the basic hours in the calculation year

26.—(1) For the purposes of this regulation and regulations 22(6) and 28, a worker works more than the basic hours in a calculation year if all of the following hours added together are more than the basic hours in a calculation year—

- (a) hours worked which form part of the basic hours in the calculation year;

- (b) hours when the worker was absent from work which form part of the basic hours in the calculation year;
 - (c) hours worked in the calculation year which do not form part of the basic hours in the calculation year in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus;
 - (d) hours treated as worked in accordance with regulation 27 to the extent that such hours consist of hours in respect of which the worker had no entitlement under their contract to a payment other than annual salary or annual salary and a performance bonus.
- (2) Hours during which the worker was taking part in industrial action are not to be included in sub-paragraphs (a) to (d).

Hours treated as worked for the purpose of determining whether the worker works more than the basic hours in the calculation year and, where the worker does, the number of salaried hours work in that year

27.—(1) The hours listed in sub-paragraphs (a) to (c) are treated as worked for the purposes of determining whether the worker works more than the basic hours in the calculation year (in accordance with regulation 26(1)(d)) and, where the worker does, the number of hours of salaried hours work in that year (in accordance with regulation 28)—

- (a) hours a worker spends training when the worker would otherwise be working;
- (b) hours a worker is available at or near a place of work for the purposes of working, unless the worker is at home;
- (c) hours a worker spends travelling for the purposes of working, when the worker would otherwise be working, unless the travelling is between—
 - (i) the worker's home, or a place where the worker is temporarily residing other than for the purposes of working, and
 - (ii) a place of work or a place where an assignment is carried out.

(2) In paragraph (1)(b), hours when a worker is available only includes hours when the worker is awake for the purposes of working, even if a worker is required to sleep at or near a place of work and the employer provides suitable facilities for sleeping.

(3) In paragraph (1)(c), hours treated as hours when the worker would otherwise be working include—

- (a) hours when the worker is travelling for the purpose of carrying out assignments to be carried out at different places between which the worker is obliged to travel, and which are not places occupied by the employer;
- (b) hours when the worker is travelling where it is uncertain whether the worker would otherwise be working because the worker's hours of work vary either as to their length or in respect of the time at which they are performed.

Determining hours of salaried hours work if the worker works more than the basic hours in the calculation year

28.—(1) If, in a pay reference period, a worker has worked more than the basic hours in the calculation year, the hours of salaried hours work in that pay reference period are calculated by adding together all of the following hours—

- (a) the proportion of basic hours attributable to the part of the pay reference period starting before the day during which the worker worked more than the basic hours in the calculation year;

- (b) the proportion of basic hours attributable to the part of the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;
- (c) the number of hours actually worked in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year;
- (d) the number of hours treated as worked, in accordance with regulation 27, in the pay reference period starting on the day during which the worker worked more than the basic hours in the calculation year.

(2) In paragraph (1)(a) and (b), each proportion of basic hours in the pay reference period is calculated using the formula—

$$\left(\frac{D}{365}\right) \times H$$

where—

“D” means the number of days in the part of the pay reference period referred to in paragraph (1)(a) or (b);

“H” means the basic hours in the calculation year.

(3) Reductions from the basic hours in the calculation year for absences, in accordance with regulation 23, must only be made from the proportion of basic hours determined under paragraph (1) (a).

(4) For each pay reference period in the calculation year after the pay reference period in which the worker worked more than the basic hours, the number of hours of salaried hours work are calculated by adding together all of the following hours—

- (a) the number of hours of salaried hours work in the pay reference period determined in accordance with regulation 22(2) to (4);
- (b) the number of hours actually worked in the pay reference period;
- (c) the number of hours treated as worked in the pay reference period in accordance with regulation 27.

(5) Regulation 23 (absences from work to be reduced from the hours of salaried hours work in a pay reference period) does not apply to the calculation in paragraph (4)(a).

Hours of salaried hours work if the employment terminates before the end of the calculation year (or contract is varied so it is no longer a contract for salaried hours work)

29.—(1) Where the employment terminates before the end of a calculation year the hours of salaried hours work in the final pay reference period are calculated in accordance with the following paragraphs.

(2) Where the worker does not work more than basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours of salaried hours work in the pay reference period calculated in accordance with regulation 22(2) to (4), and
- (b) the number of hours (if any) by which A exceeds B where—
 - “A” is the number of hours determined in accordance with regulation 26; and
 - “B” is the total of the number of hours of salaried hours work determined in accordance with regulation 22(2) to (4) in respect of all pay reference periods (including the final pay reference period) since the beginning of the calculation year.

(3) Where the worker works more than the basic hours in the calculation year, the hours of salaried hours work in the final pay reference period are the sum of the following—

- (a) the number of hours determined in accordance with regulation 28, and
 - (b) the number of hours of salaried hours work calculated in accordance with regulation 22(2) to (4) for the period beginning on the day following the last day of the final pay reference period and ending at the end of the calculation year as if—
 - (i) it was a single pay reference period (containing that number of days), and
 - (ii) the worker had remained employed until the end of the calculation year without any absences.
- (4) If a contract for salaried hours work is varied with the effect that it is no longer a contract for salaried hours work, this regulation is to apply as if the employment of the worker had been terminated and the last day of the worker’s final pay reference period had fallen on the day before the day on which the variation took effect.