



Camberley House
1 Portesbery Road
Camberley, Surrey
GU15 3SZ
Tel: 01276 509306
Fax: 01276 761076

Email: info@labourproviders.org.uk
Website: www.labourproviders.org.uk

September 2012

NATIONAL MINIMUM WAGE AND TRANSPORT TO WORK COSTS RESPONSE BY THE ASSOCIATION OF LABOUR PROVIDERS TO LOW PAY COMMISSION CONSULTATION

Contacts

Mark Boleat, Chairman, Tel: 07803 377343, E-mail: mark.boleat@btinternet.com
David Camp, Director, Tel: 07855 570007, E-mail: David@alliancehr.co.uk

Introduction

Many labour providers provide transport that their workers can choose to use to get to and from their places of work. Prior to 2007, workers were charged through agreed deductions from pay. Since 2007 HMRC has deemed this to be unlawful where the charge takes workers below the minimum wage, and some labour providers have been faced with considerable bills to meet “arrears” of pay.

This paper argues that the HMRC interpretation is at best questionable, and that it is in the interest of workers, business and good regulatory policy for BIS and HMRC to reconsider this interpretation.

History

Labour providers are in the business of providing large numbers of workers to a range of businesses, particularly those that require relatively low skilled workers for processes such as cleaning, picking and packing food. Most of the factories where this work is done are not in town centres but rather on industrial estates or in the countryside. Agricultural work naturally is also carried out in rural areas. There is no public transport. Labour providers therefore typically have provided transport for their workers. This is always optional and labour providers would prefer not to have to provide such transport as it is expensive, requiring them to have PSV licences for their vehicles, and requiring drivers with the appropriate licences. It is also complex to administer.

Most labour providers have no choice but to charge their workers for transport as their margins do not allow them to absorb what would otherwise be a considerable cost. It is a cost competitive market and labour users do not offer charge rates that allow for this – to do so would add typically 80p-£1.10 on to hourly charge rates. Analysis of how these costs are built up is provided in ALP Brief 104 contained at Appendix A.

It is also equitable between workers as those workers who choose not to use the transport provided by their employers have to meet their own transport costs. In all industry sectors it is the norm for workers to meet their own cost of getting to and from work.

The normal practice was for workers to agree in writing prior to using the service to a deduction for transport costs from their wages. This agreement made clear that the service was optional. This is administratively convenient for the worker and for the labour provider. It is auditable as the deduction for transport must, by law, appear on the payslip.

Labour providers had every reason to believe that this was legitimate within the Regulations governing the National Minimum Wage.

- Labour providers that deducted transport costs from pay had HMRC inspections prior to 2007 without the issue being raised; the ALP is not aware of any labour provider that faced enforcement action on this point prior to 2007.
- A compliance inspection report for a labour provider dated October 2003 in which the HMRC Compliance Officer stated under the heading Deduction for Transport. “The deduction appears to count towards National Minimum Wage as it is optional whether the worker uses his own method of transport or the buses provided by the Company. However if at any point this deduction becomes compulsory or workers are required to use your transport, then this deduction will not count towards national minimum wage.”

Until 2007 the interpretation as it was applied by HMRC Compliance Inspectors was that a payment from wages agreed by the worker for an optional service that was not a requirement of the job did not mean that the amount had to be deducted from wages for purposes of calculating whether the national minimum wage had been paid.

The Current Position

There was a clear change in enforcement activity since 2007 on an issue where there is legitimate doubt as to the meaning of the provisions.

A letter received by an ALP member from a National Minimum Wage Compliance Officer included the following: “My understanding of travel and accident cover deductions changed when I received a memoranda dated 12 March 2007. I have been advised that due to confidentiality I cannot provide you with internal memoranda.”

Since 2007 HMRC inspectors have decided that all payments from wages to meet transport costs that take the worker below the minimum wage are unlawful.

They have required labour providers to make substantial payments to workers of “arrears”. In some cases the amounts required to be repaid were so great as to threaten the continued viability of the labour providers. However in all cases of which the ALP is aware, substantially reduced settlements were agreed or the case was dropped by the HMRC.

Why the Position is Unsatisfactory

There are a number of grounds for arguing that the current stance of HMRC is unreasonable in the circumstances.

1. The interpretation is open to question.

Current [Business Link guidance](#) on this matter states:

“Deductions you make which are for your own use or benefit - for example a deduction for meals or transport you are providing - will reduce national minimum wage pay. It does not matter whether the worker can choose to buy the goods or services.

You do not have to make a profit from such deductions for them to be for your own use and benefit. For example, if you provide transport at a loss any deductions you make from wages for providing it help to reduce your loss. The amount you gain by making the deductions is for your own use and benefit.”

While HMRC's current interpretation is understood, it is not accepted. The ALP does not accept that a payment to cover transport costs to an employer or to a service provider retained by an employer counts as a "deduction made by the employer for his own use and benefit".

Further examination of legal arguments is provided at Appendix B.

2. The position is perverse.

The purpose of the National Minimum Wage is to prevent exploitation of workers through them being paid too little. This issue has nothing to do with the exploitation of workers, and is purely a process issue, that is the question of how workers' pay for transport, not whether they pay for it. HMRC's current interpretation perversely regards manageable, auditable deductions from pay as unlawful but separate payments by workers which are not transparent and not auditable as lawful.

It is for example quite legitimate for a labour provider to recover transport costs through a variable direct debit from the worker's bank account, or by making the worker an advance of pay and then recovering it from wages, or by seeking cash payments in advance for transport costs.

It makes no difference at all to a worker whether he pays for transport costs from his wages or by taking it from his bank account. Workers prefer to pay from their wages than to go to the inconvenience of paying by cash.

3. The current HMRC stance is causing labour providers and their workers to incur considerable additional costs.

Payments from wages are the simplest and most cost effective method of securing payment, and moreover are auditable by HMRC or indeed anyone else. Most labour providers have now implemented alternative methods of collecting transport to work fares. Some have moved to a cash system which requires drivers now also to be responsible for collecting and handing over fares. This leads to some wastage and probably also gives more scope to exploit workers either by employers or by their fellow workers. Other alternatives include installing ticket machines. There are even arrangements whereby labour providers advance to the worker a notional amount to cover transport costs, and then deduct the same amount from wages to meet the transport costs. Some have implemented direct debits to collect transport fares but have noted a high level, up to 25%, of failed recovery. (These devices are explained more fully in the ALP Brief at Appendix C.)

These are purely devices which impose significant costs on labour providers. Labour providers have, to some extent, passed these additional costs on to their workers. The impact of the HMRC's interpretation has been to reduce the take home pay of the lowest paid workers.

Alternatively, workers having to find their own way to and from places of work through other workers providing an unofficial taxi service are at risk out of necessity of making a payment that is not transparent and may well exceed the charge the labour provider would make.

4. The HMRC stance is making it more difficult for the poorest workers to obtain work.

The administrative burden of collecting fares imposed by the new HMRC interpretation is such that some labour providers have opted out of providing transport at all, leaving

workers to find their own way to and from places of work. Most labour providers are now actively favouring those workers who can make their own way to work.

Those workers who have no alternative means of finding their way to work are therefore at a significant disadvantage.

5. The HMRC stance is putting the health and safety of workers at risk.

Workers increasingly have to find their own way to and from places of work. This is frequently done by some other workers providing an unofficial taxi service to their fellow workers. So instead of workers being transported in a minibus with a qualified driver and a PSV licence the workers are at risk of being transported in vehicles that may well not be properly maintained or insured.

Most legitimate labour providers have worked hard to remove cash from their businesses in recent years. The new HMRC interpretation has led to some labour providers implementing a cash collection system for daily fares or payment of wages in part cash to facilitate collection of weekly fares. This re-introduction of cash increases the risk of attacks on drivers and administrative staff to steal this money.

Further examples of the impact on labour providers is provided at Appendix D.

7. Differential enforcement.

As HMRC is provided with information by the GLA there is disproportionate enforcement against labour providers. It is worth here quoting the House of Commons Home Affairs Select Committee Report on human trafficking –

“Neither the Minister nor Anti-Slavery International thought there was a need for more legislation to tackle the problem of forced labour. We agree that existing employment law, the National Minimum Wage, regulations on rented accommodation and so on should be sufficient to prevent the sorts of abuses highlighted by the Gangmasters Licensing Authority and UCATT—but only if they are enforced. It seems to us that, outside the Gangmasters Licensing Authority’s sectors, enforcement is at best patchy and at worst non-existent.”

When the issue came to light, the GLA made it clear that it did not regard this issue as exploitation of workers and would make no attempt to regard deductions from pay as a non-compliance with its licensing standards, which require the national minimum wage to be paid taking account of permissible deductions. The minutes of the GLA’s Labour Provider Group Meeting on 27 June 2007 include the following on this point: “DD/NC [GLA officers] confirmed that GLA will not currently enforce LS2.8 in relation to transport deductions.” The GLA, as it is obliged to, has since April 2009 adopted the HMRC position on this matter.

Proposed solutions

The ALP’s proposal is for the substantive issue to be revisited by BIS and HMRC. The ALP believes that the Regulations are open to interpretation and should be interpreted as they were prior to 2007.

Payment for optional transport services with prior written consent, where the payment is made as an authorised payment from wages should not be interpreted as reducing pay for NMW purposes.

I

Appendix A



Camberley House
1 Portesbery Road
Camberley GU15 3SZ
Tel: 01276 509306
Fax: 01276 761076

Email: info@labourproviders.org.uk
Website: www.labourproviders.org.uk

May 2012

Member Brief No 104

The Cost of Transporting Workers

Introduction

This Brief updates and replaces ALP Brief 73 and provides indicative examples of the cost of providing transport to work and guidance on calculating costs.

The cost of transporting workers has risen significantly in recent years due to fuel prices and regulations such as licensing, tachographs and drivers' hours rules.

Transport to work is most often an optional service offered by labour providers, providing a cost effective and convenient solution for workers. Workers are of course free to make their own arrangements for travel to work.

Transport Cost Breakdown Example

LABOUR PROVIDER - OVERHEAD AND TRANSPORT COST ANALYSIS - MAY 2012

N.B. These are example costings. To obtain an accurate cost analysis each labour provider will need to calculate their own actual cost of providing transport in each individual case.

Example 1: 9 seater mini bus (8 passengers); driver works with team; 1 trip per day:

Description	Cost	Per	Per Annum
1. Annual Lease (9 seater)	£ 300	month	£ 3,600
2. Insurance & Tax		year	£ 2,250
3. Maintenance		year	£ 3,500
4. Fuel (average 80 mile round trip; 25 miles/gallon; £1.47 litre)			£ 5,990
6. Driver's wage (2 hours driving day)	£ 17	day	£ 4,335
7. Total			£ 19,675
8. Average 7 passengers + driver; 5.5 days per week; 51 weeks; single shift 8 hours		17,952 hours	
9. Cost to labour provider per day per worker for transport			£ 8.77
10. Cost per hour per worker for transport where provided free of charge			£ 1.10
11. Cost per hour per worker for transport where each worker is charged £6 per day			£ 0.35

Example 2: 17 seater mini bus; dedicated PCV drivers; 2 trips per day:

Description	Cost	Per	Per Annum
1. Annual Lease (17 seater)	£ 380	month	£ 4,560
2. Insurance & Tax		year	£ 2,750
3. Maintenance		year	£ 5,000
4. Fuel (average 2 x 80 mile trips; 20 miles/gallon; £1.47 litre)			£ 14,976
5. PSV/O/PCV Licences and Transport management			£ 2,500
6. Driver's wage (8 hours day - driver does not work with team)	£ 84	day	£ 25,410
7. Total			£ 55,196
8. Average 13 passengers; 5.5 days per week; 51 weeks; two shifts 8 hours		58,344 hours	
9. Cost per day (exc driver) per worker for transport			£ 7.57
10. Cost per hour per worker for transport where provided free of charge			£ 0.95
11. Cost per hour per worker for transport where each worker is charged £6 per day			£ 0.20

Definitions and Explanations

N.B. The numbering below refers to the numbers in the rates tables on the previous page:

1. The Annual Lease cost will vary in each individual case dependent on the price and terms agreed for the vehicle in question. Where vehicles are owned this cost will need to be replaced with depreciation cost.
2. Insurance and Tax will vary with the terms agreed in each individual case.
3. Maintenance cost will vary dependent on cost of garage services, damage sustained, frequency of servicing, age and type of vehicle and other variables.
4. Fuel cost will vary dependent on fuel efficiency of vehicles, number of trips per day, cost of diesel and length of journeys.
5. This is an estimated figure for the cost per vehicle of obtaining the various licences required including: Operator's Licence; Vehicle PSV Licences; Driver PSV Licences and CPC training. Also included is a cost for the management time in obtaining these licences and route planning and managing driver's hours and tachographs. Each labour provider will need to calculate their own costs for these services.
6. Driver's wages will depend on whether the driver works as part of the team or is a dedicated driver, whether a PCV licence is required and the actual rate paid.
7. This is the total annual cost to supply and maintain that vehicle and driver fully licensed.
8. This is the number of chargeable hours across which you can spread the cost of the vehicle. The more utilised the vehicle is, the lower the cost. It goes without saying that a half full bus will cost twice as much per worker than a full bus.

Vehicles not operating at full passenger capacity impacts hugely on the cost.
9. This is the cost per day per worker transported.
10. This is the cost per hour per worker for transport where the transport is provided free of charge.
11. This is the cost per hour per worker for transport where each worker is charged £6 per day for transport.

Appendix B

Optional use of Employer provided Transport

Authorised Deduction from Pay and the Minimum Wage

1. A labour provider operates a voluntary system in regard to the provision of a transport facility for workers, should they choose to use it.
 - a. The employer makes no profit from the transport service it provides; and
 - b. The workers are wholly free to choose to use or not; and
 - c. If the workers do choose to use this service, they would pay, for illustrative purposes, £5 a day.
 - d. The charge, with the prior signed authority of the workers, is deducted from workers' pay in the week following that in which the transport is used.
2. Since 2007 HMRC has been of the view that the above system did not fall within regulation 35(e) of the National Minimum Wage Regulations 1999 (the Regulations) and, as a result, payment deducted in the following week did stand to be deducted from the calculation of the NMW. However, HMRC does accept that, if the workers were paid their remuneration and then charged in cash, or by way of direct debit, for the (optional) transport charge, the sums would not stand to be deducted for the purposes of calculating the NMW.
3. It is asserted that HMRC's current position is an incorrect interpretation of the National Minimum Wage Regulations 1999 (the Regulations).
4. The relevant provisions the Regulations are 31(1)(h), 34(1)(c) and 35(e):

Reductions from payments to be taken into account

31. - (1) The total of reductions required to be subtracted from the total of remuneration shall be calculated by adding together- (h) any payment made by or due from the worker in the pay reference period falling within regulation 34;

Payments made by or due from a worker to be subtracted under regulation 31(1)(h)

34. - (1) The payments made by or due from the worker required to be subtracted from the total of remuneration by regulation 31(1)(h) are- c) any other payment due from the worker to the employer in the pay reference period that the employer retains or is entitled to retain for his own use and benefit except for a payment required to be left out of account by regulation 35.

Payments not to be subtracted under regulation 31(1)(h)

35. The payments excepted from the operation of regulation 34(1)(c) are- (e) any payment in respect of the purchase by the worker of any goods or services from the employer, unless the purchase is made in order to comply with a requirement in the worker's contract or any other requirement imposed on him by the employer in connection with his employment.

5. It is asserted that the payment made by a worker for optional transport to work services by his employer is in fact that, a payment. It is a payment by the worker for a service. The fact that the worker requests that this payment be taken from his wage does not per se convert this payment to a deduction. What is a "payment" and what is a "deduction" is not defined in the Regulations.

6. It is asserted that the system described at paragraph 1 above does not result in any basis for deducting the sum of £5 per day from remuneration for the purposes of the NMW. The reasons are as follows:
 - a. Regulation 34(1)(c) provides that any payment due from the worker to the employer during the pay reference period which the employer is entitled to retain for its own use and benefit stands to be deducted from NMW. However, the terms of regulation 34(1)(c) make clear that its provisions do not apply to payments referred to within regulation 35. Regulation 35(e) exempts from regulation 34(1)(c) any payment in respect of the optional purchase by the worker of any goods or services from the employer.
 - b. Regulation 34(1)(c) exempts from NMW “payments due” from the worker to the employer for the employer’s use and benefit. The provisions of regulation 35(e) should be understood to refer to “payments due” from workers and shall be read in conjunction with regulation 34(1)(c)
7. It follows from the above that the crucial question is whether the relevant sum in connection with travel is a sum due in the week of travel. On balance, the better view is that it is, and the charge for the travel becomes “due” from when it was first incurred. The fact is that optional payments from employees to their employers for transport are indeed to be included within the NMW and do not stand to be deducted from calculation the NMW.
8. Additionally, HMRC accepts that, if the workers were paid their remuneration and then charged in cash, or by way of direct debit, for the (optional) transport charge, the sums would not stand to be deducted for the purposes of calculating the NMW. HMRC are here interpreting the term “any payment” in regulation 35(e) as excluding the worker being able to agree to pay for the transport through a prior signed authority to a deduction from pay in the following pay reference period (a week in most cases) to that in which the transport is used. This (in our view) is a perverse interpretation. The method of payment is not the crucial factor; it is that the goods or service are optional i.e. they are not “a requirement in the worker’s contract or any other requirement imposed on him by the employer in connection with his employment.” The term “any payment” should rightfully include a prior signed authority to a deduction from pay.
9. Hence, on balance, a Court or Tribunal would likely accept that those sums do count towards the NMW, even if deducted from the pay of the worker in the following week.

Appendix C



Camberley House
1 Portesbery Road
Camberley, Surrey
GU15 7JQ

Tel: 01276 509306
Fax: 01276 761076

Email: info@labourproviders.org.uk
Website: www.labourproviders.org.uk

August 2012

Member Brief No 106

Charging for Transport to Work

Introduction

There are many labour providers for whom transporting workers to work is an essential and integral part of their business.

This Brief updates and replaces Brief 63 and provides guidance to enable labour providers to avoid breaching national minimum wage (NMW) rules and to implement systems to collect transport charges that do not reduce pay below NMW levels.

Under current HMRC implementation of NMW legislation, deductions from wages for optional transport to work reduce national minimum wage pay.

The Gangmasters Licensing Authority has, since April 2009, regarded transport deductions that take pay below NMW as a critical non-compliance potentially leading to licence revocation.

The alternatives to deducting from wages are less than perfect and add a further burden onto labour providers and work contrary to the interests of workers.

The Association is seeking to persuade BIS and HMRC to amend the interpretation on this matter. The arguments are summarised in the ALP position paper "National Minimum Wage and Transport to Work Costs".

HM Revenue & Customs (HMRC) Advice

With regard to deductions from wages for the optional provision of transport, HMRC advise that choice is not a factor when considering how deductions affect national minimum wage pay. The NMW deduction legislation applies. So where the employer is providing transport to work and a worker is earning exactly NMW rates, any deduction that is made by the employer either:

- a. In respect of the worker's expenditure in connection with their employment or
- b. for the employer's use and benefit

will reduce the worker's pay below NMW.

However, where the worker is making a payment to purchase goods or services from their employer after they have received their wages, the amount would not reduce NMW pay provided the worker was making the payment by free choice and the payment was not made in order to comply with a requirement in the worker's contract or imposed on the worker in connection with his employment.

NMW arrears will be due to all workers in the past 6 years for whom a deduction for transport has taken pay below the NMW. HMRC state that if employers have made

deductions of this nature which have taken workers' pay below NMW, they should repay the workers their arrears immediately.

Current [Business Link guidance](#) on this matter states:

"Deductions you make which are for your own use or benefit - for example a deduction for meals or transport you are providing - will reduce national minimum wage pay. It does not matter whether the worker can choose to buy the goods or services.

You do not have to make a profit from such deductions for them to be for your own use and benefit. For example, if you provide transport at a loss any deductions you make from wages for providing it help to reduce your loss. The amount you gain by making the deductions is for your own use and benefit."

Where an employer has not paid the NMW, HMRC will require NMW to be paid immediately along with any arrears. Arrears on a notice of underpayment are limited to pay reference periods ending within the 6-year period prior to the service date of the notice of underpayment.

Alternative options for charging for transport that do not reduce NMW pay

There are a number of alternative methods that a worker can choose to pay for home to work transport that do not reduce pay for NMW purposes. In all the options shown in this section:

- The expenditure must not be made in connection with the employment i.e. home to work transport is not in connection with the employment but transport at work e.g. between jobs is in connection with employment, and
- The purchase of the service must not be a contractual requirement nor a requirement imposed by the employer in connection with the employment, and
- The service must be provided by the employer, and
- The use of the transport to work service is optional for the worker, and
- Before the transport service is used by the worker, the employer provides the worker with comprehensive details explaining the service and the cost. This specifies in writing that the transport service is optional (and in reality this is so) and the option to use the transport is the worker's free choice, and
- All arrangements for payment should be clear and comprehensible, and
- The employer keeps accurate records of when the worker uses the transport and charges correctly in accordance with this, and
- The worker must make a payment to purchase the service.

The following methods have been confirmed with HMRC as not reducing pay for NMW purposes:

Option 1 - The worker pays by cash, cheque in advance or arrears to cover employer provided transport charges. Alternatively a payment from the worker's bank account such as via a direct debit can be made.

Option 2 - The worker pays their bus fare in cash to the driver for each journey.

Option 3 - The worker pays for bus tickets or tokens in advance.

Option 4 - The worker chooses to request and is given a monetary advance of pay which he can use as he wishes. The worker freely chooses to use the transport service and makes a payment to the employer to cover transport charges. The employer later deducts the appropriate advance of pay from wages to cover the transport charges. If the employer has provided an advance of wages and subsequently deducts a sum for

repayment of all, or part of the advance of wages, the deduction does not reduce NMW pay provided:

- the worker's expenditure is not expenditure in connection with his employment (e.g. it is genuine home to work transport) nor is it made as a result of a contractual or other requirement imposed upon the worker;
- there is no obligation placed on the worker to request a cash advance from the employer;
- the cash advance must be paid by the employer to the worker prior to the worker choosing to use and pay for the service;
- the worker can freely do as he wishes with the cash advance and does not have to use the money to pay for the transport;
- the employer reflects the advance and the deduction for repayment correctly in his payroll records.

HMRC advise that where this type of arrangement is used, it is likely that NMW Compliance Teams will want to look carefully at the circumstances to determine the effect on NMW pay.

N.B. To be absolutely certain that any solution implemented is NMW compliant, labour providers may wish to seek confirmation from an HMRC Compliance Officer known to them or by email to the [National Minimum Wage query online service](#)

Use of 3rd Party Transport Companies

In a situation where an employer contracts with a 3rd party bus company to provide a transport to work service and the employer deducts a transport charge from the worker this will always reduce the worker's pay for NMW purposes. This is because it is regarded as a deduction for the employer's own use and benefit - even if the employer is making a loss by providing the service.

VAT rating on Workers' fares.

VAT zero rating is allowed for public passenger transport in any vehicle designed or adapted to carry not less than 10 passengers. For vehicles designed or adapted to carry less than 10 passengers VAT is at standard rate. This means that if you charge workers for transport to work in a vehicle designed or adapted to carry less than 10 passengers then you must pay VAT on the charge. The rules on VAT for Passenger Transport are contained in [Public Notice 744](#).

Contact us for more information

Labour providers who wish to explore alternative methods of collecting charges for transport that do not reduce pay for NMW purposes are invited to contact the Association for further discussion.

Labour providers who are subject to a forthcoming HMRC compliance inspection or have received claims for NMW arrears following an inspection should contact the Association for advice and guidance. It may be appropriate to refer you for specific legal or taxation advice to our trusted experts.

Please note that this document is not exhaustive and is not intended to be used as a substitute for legal advice. To the fullest extent permissible by law, ALP and its advisors hereby exclude all liability for any claim, loss, demands or damages of any kind whatsoever (whether such claim, loss, demands or damages were foreseeable, known or otherwise) arising out of or in connection with the use of any of these documents and/or the information, content and/or advice included within these documents.

Appendix D

Submission by: Lionel Sheffield, Director, Rapid Recruitment Ltd, Wisbech, Cambs

RE. -DEDUCTIONS FOR TRANSPORT FROM WORKERS PAY.

I am the director of an employment agency, that supplies workers to a number of factories in the Cambridgeshire / Norfolk area. Like many agencies, we have traditionally supplied transport by minibus for many of our staff. Work is often in rural areas and the majority of workers do not have their own cars.

The 5 minibuses that we have are registered Public Service Vehicles and are driven by drivers with PSV licenses. Workers get to work safely and securely. We charge between £3.50 and £5.50 for a 2 way journey, depending on where they are going. The distances travelled range from 10 to 40 miles. Running the transport operation of the business costs us £5k - £10k p.a.

However, there is a problem. The HMRC have ruled that employers cannot deduct the workers' transport charges from their wages. The HMRC argue that this is because deductions would take workers' pay below the national minimum wage. Instead, we now have to collect the money as cash from the workers and this has become increasingly burdensome. Large amounts of our office staff's time and resources were spent organising and collecting transport charges. It is an example of red tape bureaucracy at its worst.

It is also tiresome for our temps. to have to trek to our offices every week to pay. Inevitably, some transport charges are never paid.

We would rather not provide transport. But, many of our clients are in rural locations and 95% of staff and candidates do not have their own transport. If we were to have stopped providing transport, some staff would probably find a way of getting to work, but probably in old cars, which will be expensive to run, some may be uninsured and driven often by people inexperienced of driving in this country. Whereas with us, they get to work in an insured minibus, driven by an experienced PSV driver, at a cost much cheaper than running their own car; also, there are emissions from only one vehicle as opposed to the 5 or 6 vehicles used to get 15 people to work. Our transport is voluntary and the deductions from wages are clear and transparent for all to see.

As a business, the burden of having to monitor the collection of transport charges, paid by cash, is too great. We don't want to stop providing transport, but we may have to.

We wouldn't stop though if we were allowed to simply collect the wages from deducting the charge from the staff's wages. Travelling in our minibuses is voluntary and by deducting from wages, payment is transparent and clearly shown on workers' payslips.

As they stand, the regulations are bureaucratic, illogical and have unintended consequences. The rule is there because the HMRC argue that deductions take workers' wages below the NMW. Yet, they still have to pay for their transport, but with the current rules, they can only do so once they have received their wages. If they travel in their own car, that costs them money even before they have received their wages. It is nonsensical. They would prefer to have the charge deducted from the wages; it is clearer and more simple. For the business, it is much less bureaucratic and efficient.

Submission by: Kevin McCormick FIRP, KHS Personnel Ltd Bridge Recruitment Ltd, City House Stanford St Nottingham NG1 7BQ

RE. -DEDUCTIONS FOR TRANSPORT FROM WORKERS PAY.

Report on the Ramifications of the HMRC and NMW Restrictions on the Deductions of Travel from the Wages of Temporary Staff

Along with many agencies, KHS provided various forms of transport sometimes based on in-house travel arrangements with mini buses and latterly PSV vehicles, for a nominal and always lesser charge than would have been possible for temporary staff using public transport. Records were maintained and deductions for travel were made from wages at point of payment, thus ensuring that returns due to KHS (although these never covered the costs) were met in full and that there was no inconvenience to temporary members of staff.

Following the HMRC and NMW guidelines, we struggled to find a convenient way of getting staff to contracts and out of consideration for our clients wishes and our own desire to manage our business effectively, we decided to continue hiring contractors to transport staff, so that they provided the PCV, PSV licensing, but this necessitated devising a system for payment.

We know that there are a number of systems utilised by labour providers to effect this, including tickets, notional loans etc. but decided that the only effective way was to continue monitoring the number of trips and to charge the travellers weekly in arrears, in cash. I am sure you can imagine the problems that this creates.

When introducing this process, we had to accept a highly more labour intensive operation and the costs inherent in that. What we failed to appreciate, were the losses through unpaid travel. The methodology that we have adopted is as follows:

1. Travel lists are made up, people are told to report to bus collection points, checked on the bus, taken to the client, checked off at the client site, so there can be no doubt as to who has travelled.
2. From this process we get a list of who has travelled when and how many days travel they owe in each week.
3. Payment is made to the temps by BACS, weekly in arrears, as has always been done. Deductions are not made from these payments, at this stage.
4. Whilst it would be better for temps to call in at the office to make payment, due to the work schedule, a great many find that difficult and we would end up dealing with travel expenses throughout every day of every week. Therefore, on Friday of each week, we have to attend various sites and rely on the integrity of the temps to attend, so that they can pay whatever is owing. I should say that the majority of temps are very good in meeting their obligations.
5. There are many reasons why payment isn't made on time, ranging from having had no time to draw out cash, to having had to buy an extra flagon of beer, tax a car, or pay rent.
6. In view of the above, we give extended time, but after two weeks failure to pay, we tend to make payment by way of cash, which is available from the office, or taken to site and at the point of receipt we then ask if they will please make payment for their travel.
7. The problem arises when somebody works one week and doesn't return, or works two or three weeks with repeated excuses and doesn't return, having already received wages paid by BACS into their account. There is no way we can reclaim this money at that stage of the proceedings and frequently we can end up being owed travel expenses for 3,4 or 5 weeks.

That is the nuts and bolts of the situation. What we failed to appreciate when embarking on this, out of necessity, certainly not choice, was the almost universal objections that were raised by the temps we employ. They could not understand why we weren't deducting travel from their wages as we had done, as it made so much more sense. All temps are aware that they have a choice of using our transport or not. We prefer them to use it, because it gives us greater control, but we cannot enforce it. Fortunately our client appreciates that.

That said, temps also appreciate that by utilising travel provided by us, they are saving money on their potential travel costs if done individually and that generally, buses are there to take them to work and to collect them, shortly after the end of the shift, without having to travel to a bus stop "out in the middle of nowhere and wait for rural services".

Nor did we appreciate the hidden cost. Whilst deductions made from travelling temporary staff have never covered the costs of travel, it used to be easier in the days when we ran our own fleet of mini buses for there was a below the line

cost, which also created a benefit and enabled us to recoup some cash upon selling older vehicles. Unfortunately, having to use contractors means that there is no below the line cost, it is all above the line, as indeed are the losses which therefore have a marked impact upon profitability.

In conclusion, I would say that in my opinion, HMRC and the NMW have failed to put a realistic evaluation on the travel implications of temporary staff and have simply put in a restriction, which I believe is meant to assist the GLA in weeding out those disreputable Gangmasters and Labour Providers, who have historically overcharged workers for anything and everything that they could provide, by way of PPE, accommodation and transport. This has been done to the detriment of the industry as a whole and all those registered GLA "stakeholders", who are trying to run their businesses effectively.

Everybody knows that however little you earn, there is a cost in going to work, be it in shoe leather, bus fares or petrol. Nobody gets a free ride. Therefore any company paying the minimum wage, should if what has been imposed upon agencies is logical, be making a contribution or covering the travel costs of their employees. This is obviously not practical, but this is actually what is being imposed upon honest, labour providers.