

November 2014

## Member Brief No 134

### 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 106 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 pay contributing to NMW..

The Gangmasters Licensing Authority (GLA) has, since April 2009, regarded transport deductions that take pay below NMW as a critical non-compliance potentially leading to licence revocation. The GLA will also examine the reality of the situation and whether any arrangements operate compliantly and agreements reflect what happens in practice, for instance that the choice to use transport is truly optional.

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 in ongoing dialogue with BIS and HMRC on this matter. The ALP position is detailed in the 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 Department of Business, Innovation and Skills guidance on [Calculating the minimum wage](#) states on this matter:

***Deductions for the employer's own use or benefit***

*If you make any deduction from the worker's pay which is for your own use and benefit – for example, a deduction for meals or transport provided by you – the amount deducted will reduce pay for minimum wage purposes. 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 the employer by cash, cheque or direct debit/standing order in advance or arrears to cover employer provided transport charges.

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 3<sup>rd</sup> Party Transport Providers**

In a situation where an employer contracts with a 3rd party bus, taxi or private hire 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.

As detailed above, payments by the worker made directly to the transport provider are not within scope of NMW.

All 3<sup>rd</sup> party providers will fall under either the Passenger Service Vehicle or the Taxi and Private Hire regulations. Employers should exercise due diligence in ensuring the providers they contract with meet the appropriate requirements and are properly insured.

### **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**

If you wish to explore alternative methods of collecting charges for transport that do not reduce pay for NMW purposes please contact the Association for further discussion.

If you are subject to a forthcoming HMRC compliance inspection or have received claims for NMW arrears following an inspection 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 extent permissible by law, ALP and its advisors exclude liability for any claim, loss, demands or damages whether foreseeable, known or otherwise arising out of or in connection with the use of the information within these documents.