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## September 2015

### **SUBMISSION BY THE ASSOCIATION OF LABOUR PROVIDERS TO THE LOW PAY COMMISSION CONSULTATION ON THE APRIL 2016 NATIONAL LIVING WAGE RATE AND THE OCTOBER 2015 NATIONAL MINIMUM WAGE RATES**

#### **Contact**

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#### **Introduction**

The Association of Labour Providers (ALP) is a trade association supporting and representing organisations that supply seasonal, agency and contingent labour into the UK food production, horticultural and agricultural sectors. The ALP has approximately 290 organisations that voluntarily choose to be members of the Association on payment of an annual subscription and commitment to abide by the ALP Constitution. ALP member organisations supply approximately 70% of the temporary workers into the food supply chain. All organisations that supply labour into these sectors are required to be licensed by the Gangmasters Licensing Authority (GLA). The ALP provides a range of services to help labour providers achieve labour standards compliance and good practice.

The ALP's members predominantly provide workers for unskilled work in the agriculture and food packing and processing industries. Labour providers operate in a very competitive market largely resulting from the downward pressure on costs exerted by the supermarkets. It follows that margins are thin, although just adequate to allow viable businesses to continue. Market pressures mean that unskilled work is either at, or very close to, national minimum wage (NMW).

Few British workers are willing to work at or near NMW in such roles. For many years these irregular low-paid jobs have been largely filled by migrant workers, able to earn more than they can in their home country.

#### **ALP Response**

##### **1. The impact of the National Living Wage**

In its 2014 submission to the LPC consultation, the ALP made two key points on the level of the NMW:

- That “increasingly industry is being pushed to pay “The Living Wage” and that this begged the question “Is the national minimum wage not a living wage? If it is not, then what is it?” and;
- “Continued economic growth is reliant on a sufficient supply of labour. Minimum pay rates in comparison to other main EEA migrant employing nations is a factor

LPC should examine to ensure UK business is able to source a reliable and quality workforce to meet its needs.”

The National Living Wage (NLW) has addressed these two points.

Labour providers supply temporary workers (often known as agency workers) to work under the supervision, direction and control of hiring clients (known as labour users) but paid and administered by the labour provider. The pay and terms for temporary agency workers are set by the labour user, not the labour provider. As such, the basic rate of pay for the agency workers be it NMW or NLW is a cost passed on to the labour user.

The initial perception of the impact of the NLW on labour providers is that:

- More A8 and A2 economic migrants will choose to work in the UK for the higher wages, as opposed to remaining at home or migrating to other EEA countries.
- A proportion of “lifestyle” non-workers may re-evaluate the economics of work over claiming benefits.
- Labour users will seek to claw back increased pay costs in tighter margin agreements with labour providers.
- The perceived negative stigma of “minimum wage” work may be reduced.
- Current pay rates between NMW and £7.20 will homogenise at the NLW. Pay differentials for jobs with added responsibility will reduce.
- The Agency Workers Regulations Swedish Derogation model becomes less attractive to labour users as pay differentials are eroded.
- The existing Ethical Trading Initiative Base code requirement for a minimum 25% overtime supplement will drive employers to control overtime working closely.
- Return on investment decisions will become more attractive in replacing manning with technology and putting manual labourers out of work. Examples within agriculture and food processing where automation is replacing include:
  - Planting brassica - This season prototype unmanned planters were trialled with various growers in Scotland and while there were some problems with them, the potential savings to be made in labour will see these overcome.
  - The recent announcement of the world’s first fully automatic parsnip trimming line.
  - Automated chicken deboning robots deboning around 1,000-1,500 carcasses per hour.
- Employers will seek to raise productivity to counter cost increases:
  - Labour providers will be asked to demonstrate how they will supply higher performing workers and measure and increase the productivity of individual workers.
  - Piece rate workers will be closely measured. A higher proportion of workers will fail to meet the NLW rates and require to be replaced.

- The merits of programmes and processes for initial work training; retaining quality workers and encouraging return of seasonal workers will be enhanced.

The NLW also raises questions about potential age discrimination. ALP members have already contacted the ALP for advice regarding:

- Clients which ask a labour provider to favour under 25s in offering them work because of the cost advantage
- Clients which ask a labour provider to stop supplying a temporary worker when he turns 25 on the grounds that he will then cost more than the end user is prepared to pay?

See: <http://recruitingtimes.org/news/5726/supermarkets-could-avoid-hiring-over-25s-to-limit-new-living-wage-impact/> for an example of stories in the media

The ALP has written to the Equality and Human Rights Commission (EHRC) to ask them to provide clear and unequivocal statutory guidance on potential discrimination issues surrounding the National Living Wage. The EHRC has responded as follows: *“We will not be issuing guidance on the national minimum wage or the national living wage as this falls outside our statutory remit. It would be best to take this up with the Low Pay Commission or Department of Business Innovation and Skills directly.”*

The ALP requests that the LPC recommends that the appropriate body, be this BIS or the EHRC, produces this guidance.

In the meantime, the ALP has produced guidance for its members (See Appendix 1).

## **2. National Minimum Wage - Legislation, Guidance and Enforcement**

### **a) Guidance**

NMW rules can be complex. It is wholly unfair, disproportionate and contrary to good regulatory principles that reasonable employers are provided with wholly inadequate guidance and as a consequence put at risk of significant reputational damage by the government’s blunt name and shame policy which makes no difference between reputable companies that may make a technical error and those who deliberately set out to pay workers below the NMW.

GOV.UK generally does a good job in getting the key points of the NMW across. However this guidance is very basic and certain sectors need better direction on the more challenging issues they may have. ALP does not consider that the Government is compliant with Point 5 of the [Regulators Code](#), “Regulators should ensure clear information, guidance and advice is available to help those they regulate meet their responsibilities to comply”.

ALP cites as examples:

- The case of an ALP member who was publicly named and shamed in July 2015 for a technical non-compliance that took place in 2013 regarding small accommodation

deposits that were retained for a few workers and immediately corrected on discovery. There is no reference to the position on deposits in the guidance at <https://www.gov.uk/national-minimum-wage-accommodation>

- The recent European Court of Justice ruling in the Tyco case that for peripatetic workers time spent travelling to and from the first and last customers of the day counted as 'working time' under the European working time directive.

Mobile working is common in a wide range of agricultural contracting and in other sectors such as homecare and the ruling will have significant implications for many employers. However the ruling raises a whole heap of questions as to how to apply the national minimum wage without breaching the regulations as follows:

- What counts as mobile working – for which workers does it apply and which does it not.
- What is travelling time and how is this impacted by means of travel e.g. own vehicle, public transport; cycling.
- What about speed of driving; traffic hold ups; breakdowns

The ALP has written to the Head of NMW Policy requesting a discussion but has yet to receive acknowledgement.

- NMW and Transport to Work Costs - The ALP 2012 and 2013 submissions (see extracts at Appendix 2) to the LPC deal with this matter in considerable detail and hence there is no need to repeat this here. In 2014, the ALP said, "The LPC is kindly requested to facilitate a meeting between the ALP and the appropriate individuals within BIS and HMRC to resolve this matter once and for all." This matter remains unresolved.

As in 2014, the ALP requests that:

- The Government put in place, and maintain, effective, clear and accessible guidance on aspects of the minimum wage, particularly where there is significant evidence of ignorance or infringing practice.
- Trade associations representing businesses operating in low pay sectors should be able to:
  - Access and work with NMW Technical Advisors to develop their own sector relevant guidance and to assist with complex and challenging issues.
  - Access and address policy matters with appropriate individuals within BIS and HMRC

## b) Enforcement

The ALP makes two points:

Firstly, the ALP remains unconvinced about the effectiveness of NMW enforcement.

In its 2014 submission the ALP stated, "the Government may wish to consider an overarching labour inspectorate". On May 21<sup>st</sup> 2015 David Cameron [pledged](#) to:

*“creating a new enforcement agency that cracks down on the worst cases of exploitation. Responsibilities for this are currently split between 4 different departments. They will be brought into one body – so businesses can’t bring in cheap labour that undercuts the wages of local people.”*

The four agencies referred to are the Gangmasters Licensing Authority, HMRC National Minimum Wage Enforcement Unit, Employment Agency Standards Inspectorate and HSE working time enforcement.

This new “labour market enforcement agency” that will enforce NMW compliance should:

- Work in accordance with the [Regulators Code](#)
- Look holistically at worker exploitation and compliance across the entire UK and all jurisdictions.
- Be intelligence led
- Have full investigative powers and powers of arrest.
- Be fully aware of the indicators of forced and compulsory labour and modern slavery.

The Migration Advisory Committee (MAC) report [Migrants in low-skilled work](#) found that, “There is the risk of a continuum of exploitation starting with failure to pay minimum wages and ensure decent working conditions, leading to workers being forced to accept sub-standard accommodation, being forced to pay for things that they do not need through deductions from their wages, having their passport retained, and losing both work and accommodation with no prior notice.

As recommended by MAC:

- Resourcing for enforcement activities needs to be enhanced.
- Incentives to encourage compliance need to be improved. There is little incentive for rogue employers to be compliant given the minimal chance of inspection and even smaller risk of prosecution.

The second point ALP wishes to make is with regard to the Government’s NMW name and shame policy (see <https://www.gov.uk/government/news/national-minimum-wage-offenders-named-and-shamed>). ALP supports a name and shame policy but asserts that the current system is heavy handed and disproportionate. There is a world of difference between reputable companies with a good reputation who inadvertently fall foul of a complex technical breach of NMW where guidance is absent and those who deliberately set out to pay workers below the NMW. It is the latter, not the former to whom enforcement activities should be directed and who should be named and shamed.

The Government should comply with the [Regulators Code](#) in that “Regulators should choose proportionate approaches to those they regulate, based on relevant factors including, for example, business size and capacity.”

### **3. National Minimum Wage and the Accommodation Offset**

For migrant workers coming to Britain their primary priorities are finding somewhere to live and finding a job.

Historically, many labour providers offered a service to their workers to help them settle in the UK which included, in some cases, providing accommodation as an option. Few understood the accommodation offset arrangements and they were rarely enforced.

Enforcement by the Gangmasters Licensing Authority changed this. Almost all labour providers that did provide accommodation ceased to do so. Most labour providers now choose to do nothing, leaving workers to make their own arrangements.

Under the accommodation offset arrangements, employers who provide accommodation to their workers can count up to a specified amount, £37.45 a week from October 2015 as payment towards the minimum wage.

The effect of the accommodation offset level is that employers cannot legally provide accommodation to their own workers paid at or around NMW. The only exceptions to this within the agriculture and food packing and processing industries are:

- growers providing accommodation where there is a direct benefit from the worker being on or close to site.
- growers or labour providers who have invested in purpose built hostel style accommodation with six to eight workers to a room.
- employers or labour providers who house multiple workers in caravans or mobile homes.

In these cases there is no incentive to provide more than the most basic type of accommodation.

The outcome from the 2013 LPC review of the accommodation offset was that:

- there should only be one rate and that it should apply irrespective of whether the worker has a choice over taking the accommodation.
- the provision of accommodation by employers had decreased, a concerning trend in cases where it was beneficial to both employer and employee.
- a higher offset would help encourage mutually beneficial provision of accommodation.

The LPC confirmed that it would continue with its “signalled intention to increase its level when there were real increases in the NMW.” With the introduction of the National Living Wage there has now been a “real” increase in the NMW.

The ALP position is that accommodation offset levels should remain linked to NMW and so allow accommodation charges to move towards market rates for workers on NLW.

This is in line with the LPC’s stated position above.

## Appendix 1

### ALP Member Brief No. 145 – August 2015

## The “National Living Wage” – Dividing the Workforce?

### Introduction

On 8 July 2015 in the government’s Summer budget, George Osborne announced the introduction of a new “National Living Wage” to come into effect from April 2016.

The concept of the “Living Wage” has been in existence since the start of the century, and was initially a movement to increase pay for workers in London who struggled to make ends meet on the National Minimum Wage. Over the course of the following decade support for the Living Wage movement has grown nationally calling for employers to increase minimum pay above the National Minimum Wage to more accurately reflect costs of living.

The government’s National Living Wage is, in practice, a significant increase in the National Minimum Wage from April 2016 – but only for workers aged 25 or over.

#### *Likely National Living Wage and National Minimum Wage Rates from April 2016*

AGE	MINIMUM RATE OF PAY (PER HOUR)
25 and over	£7.20
21 - 24	£6.70
18 - 20	£5.30
Under 18	£3.87
Apprentices aged 16 - 18	£3.30

While there will continue to be annual increases to the National Minimum Wage for workers under the age of 25 it is likely that between 2016 and 2020 a significant gap in pay may develop between workers aged 25 and over and those under the age of 25, even where they carry out the same job.

The National Living Wage raises questions about whether these new rates of pay could create issues of potential age discrimination. The ALP has written to the Equality and Human Rights Commission to ask them to provide clear and unequivocal statutory guidance on potential discrimination issues surrounding the National Living Wage.

In the meantime, the ALP has asked their Legal Partners, Brabners LLP to provide advice on the key issues that the National Living Wage throws up. Members are invited to contact the ALP if they have any other questions with regard to the National Living Wage.

Paul Chamberlain at Brabners may be contacted on 0161 836 8864 or [paul.chamberlain@brabners.com](mailto:paul.chamberlain@brabners.com).

All information and opinions given in this briefing are correct at time of publication to the best of ALP’s knowledge. Please note that this document is not exhaustive and is not intended to be used as a substitute for legal advice and consequently ALP and its advisors exclude all liability for any claim or loss arising out of or in connection with the use of this document.

## **1. Is it lawful to pay workers under 25 less than workers who will receive the National Living Wage?**

For several years employee groups and trade unions have called on the Low Pay Commission to end different National Minimum Wage rates arguing that this difference in pay based on age is discriminatory. The introduction of the new pay bracket for over 25's is likely to further highlight this difference in pay between workers of different ages who carry out similar jobs.

Current discrimination legislation, the Equality Act 2010, protects workers from discrimination, harassment and victimisation on the grounds of an individual's age, or for reasons related to an individual's age. So from April 2016 under the new National Living Wage would it be discriminatory to pay a 25 year old £7.20 per hour but a 24 year old who does the same job (and may have been employed for longer) only £6.70 per hour?

The Equality Act 2010 contains a specific exemption to the usual rules on age discrimination in relation to payments in keeping with the National Minimum Wage and this allows employers to lawfully base their pay structures for young workers on the National Minimum Wage pay bands and pay workers different rates. This is likely to remain the same when the National Living Wage is introduced in 2016.

This exemption allows employers to use exactly the same age brackets and national minimum rates provided that they are paid less than the over 25's rate. For example, it would not be discriminatory to pay only the minimum rates set out in the table above. Alternatively, it is also possible for employers to pay enhanced higher rates of pay if they wish to, provided that these are linked to the same age bands and are lower than the over 25's rate, for example:

- Those under 18 - £4.00
- 18 -20 - £5.50
- 21-24 - £7.00
- 25 and over - £7.20

In these circumstances paying different rates will be lawful and not discriminatory.

## **2. Will it be possible not to recruit workers over 25 years old or to terminate workers when they become more expensive at 25?**

Whilst the National Living Wage is set to increase each year (with the rate expected to rise to £9.00 per hour by 2020) it remains to be seen how much the National Minimum Wage rates will increase in line for workers under the age of 25. It appears inevitable that that the greater the difference between the rates for younger workers and those over 25 the greater the reluctance will be for employers and clients of labour providers to take on or to retain a worker over the age of 25 who will cost significantly more than a 22 year old with similar experience.

This will potentially pose a problem for employers and labour providers who look to recruit younger workers and terminate workers over the age of 25.

Whilst it is acceptable to pay different rates of pay in accordance with the National Minimum Wage brackets there is no exemption to the discrimination rules in the Equality Act 2010 to terminate a workers contract, to stop providing assignments or to refuse to take on workers because they are 25 or over, and this could expose both labour providers and clients to claims of age discrimination.

### ***For Labour Providers***

There are special provisions in the Equality Act 2010 relating to labour providers which carries similar obligations to that of an employer. A labour provider must not discriminate against a worker:

- In the arrangements that it makes for selecting who to offer labour providing services to;
- By the terms offered to them;
- By not offering the labour providing service to them;
- By terminating the labour providing service to them;

- By subjecting them to a detriment.

This includes discriminating against workers because of their age.

By way of example, a labour provider having a policy of only offering to take on workers under the age of 25 would be likely be discriminatory as an arrangement for selecting who to provide labour providing services to. In this example the labour provider is choosing not to provide their services to workers aged 25 or over because of their age.

Alternatively, if a labour provider failed to put forward workers who were over the age of 25 because it was believed that the cost would be unattractive to the client, this would also almost certainly be discriminatory as these workers would be treated less favourably, because they would not be offered the same opportunity as a younger worker, because of their age.

Where a labour provider does treat a worker or prospective worker less favourably because of their age this will normally be an act of discrimination under the Equality Act 2010, and there are only very limited circumstances where some age-based rules and practices are seen as justifiable. This defence to a discrimination claim can only be relied on where the treatment of the worker is a “proportionate means of achieving a legitimate aim” - and this can be a difficult legal threshold to meet. The fact that workers under the age of 25 are likely to be cheaper, and hence more attractive to clients, is unlikely to be considered a valid reason for the less favourable treatment.

Labour providers will therefore need to carefully consider any rules or policies which may treat workers over the age of 25 less favourably than younger workers – including the recruitment of new workers or when offering workers to clients to avoid risk.

### ***On the Request of a Client***

It is highly likely that should workers over the age of 25 become more expensive than younger workers that clients and hirers will request that labour providers only supply workers under the age of 25 or stop supplying over 25's.

Hirers and clients are also subject to the Equality Act and will also need to be careful in refusing to accept an assignment for a worker or in terminating an assignment because of the worker's age without having a valid objective justification. As for labour providers, the additional cost of a worker aged 25 or above is unlikely to be a sufficient justification on its own.

There are limited steps a labour provider can take to influence a decision made by a client, but care should still be taken. Whilst the client's actions may be discriminatory under the Equality Act 2010 if it treats a worker less favourably because of their age – labour providers can in some circumstances also be liable for the actions of the client by acting as the client's “agent”.

By way of example, a client may contact a labour provider and explain that they will refuse to consider any workers over 25 years old because of the cost. If the labour provider agrees to the client's request and agrees not to put forward workers over the age of 25 the labour provider could also be subject to a claim of discrimination brought by a disgruntled worker who has not been put forward for work because of his age as an “agent” of the client. In these circumstances it would be advisable for the labour provider to explain to the client that it cannot discriminate based on age in the workers it hires or offers to clients.

For the reasons set out above, care should be taken if a client requests that a worker's assignment is terminated because they have turned 25. In these circumstances it would be advisable for a labour provider to express concern to the client that its cancellation of the contract because of age may be discriminatory.

The National Living Wage is likely to make the recruitment and engagement of workers over the age of 25 more expensive for employers and hirers. However, labour providers, clients and other employers should be mindful of, and avoid, blanket policies restricting the recruitment or assignment of workers based primarily on their age.

## Appendix 2

### Extracts from 2013 ALP Submission to LPC Consultation

#### 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.

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.