

April 2017

Member Brief No 162 Charge Rate Guidance – April 2017

Introduction

These rates, effective from April 2017, have been prepared by the ALP and will be posted on the GLA website. They replace ALP Brief 157 and take account of the national minimum wage (NMW), national living wage (NLW), Scottish, Welsh and Northern Irish agricultural minimum wages which have now all been aligned to change every April. There is also an allowance for the statutory Apprenticeship Levy.

ALP labour provider members may provide this brief and the tables to current or prospective labour user clients to facilitate discussions towards agreement of fair and legal charge rates.

The rate paid by labour users is a key variable that the GLA monitors. Labour users that pay unrealistically low rates are knowingly or recklessly conniving in illegality as these rates can only be achieved either through worker exploitation or tax evasion or both. These businesses face reputation damaging publicity if this is exposed.

Supermarkets and other wholesale purchasers of food have an ethical responsibility to ensure fair and legal rates are paid to labour providers throughout their supply chain.

Labour providers are encouraged to report confidentially to the GLA on intelligence@gla.gsi.gov.uk or 0800 432 0804 any labour users that are currently paying rates which indicate that legal responsibilities to workers cannot be met. Members may choose to discuss this information with the ALP beforehand.

What the figures mean

Statutory Charge Factors - This includes the appropriate Minimum Wage, employer's national insurance, statutory holiday entitlement, Apprenticeship Levy and pension auto-enrolment costs at 1 % of qualifying earnings.

Labour Provider Overhead and Service Charge Costs – Defra analysis conducted in 2003 estimated labour provider overhead costs as 30% on top of the National Minimum Wage. In reaching this figure Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent / interest charges on office accommodation, which may vary widely from one business to another). It also states that this figure is likely to understate the actual costs for almost all businesses as well as making no allowance for management costs or profit. Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.

The figure for Overhead and Service Charge Costs is indicative only and will vary with each contract depending on the efficiency of a labour provider and the particular circumstances of the client and site to which labour is supplied. For example, contracts where the labour provider is required to provide workwear, where there is volatility of supply, where transport or supervision costs are high, where invoices are factored and so on will all incur a greater overhead cost.

The actual rate charged is ultimately a commercial agreement between the labour provider and user. Any agreed rate should take into account the particular costs of supply. However, charge rates lower than those in the rates tables **plus a sustainable net margin** may indicate illegal activity - unless there is a legitimate and demonstrable explanation.

CHARGE RATE GUIDANCE - APRIL 2017

NATIONAL MINIMUM AND LIVING WAGE	Apprentices	Age 16-17	Age 18-20	Age 21-24	Age 25 plus
1. Minimum wage	£ 3.50	£ 4.05	£ 5.60	£ 7.05	£ 7.50
2. Employers' NI Contributions	£ -	£ -	£ -	£ 0.43	£ 0.49
3. Annual Holiday Pay (5.6 weeks entitlement)	£ 0.42	£ 0.49	£ 0.68	£ 0.90	£ 0.96
4. Apprenticeship Levy (for businesses with over £3m payroll)	£ 0.02	£ 0.02	£ 0.03	£ 0.04	£ 0.04
5. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£ -	£ -	£ -	£ 0.04	£ 0.05
6. Total Wage Costs	£ 3.94	£ 4.56	£ 6.31	£ 8.47	£ 9.05
7. Guideline Statutory Sick/Maternity Pay cost	£ 0.11	£ 0.11	£ 0.11	£ 0.11	£ 0.11
8. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.65	£ 0.65	£ 0.65	£ 0.65	£ 0.65
9. Hourly Cost of Supply (not including Labour Provider Margin)	£ 4.70	£ 5.32	£ 7.07	£ 9.23	£ 9.81

WALES AGRICULTURAL EMPLOYEES TO BE RATIFIED	Grade 1 & Age <25 & < 52 weeks	Grade 1 & Age 25+ & < 52 weeks	Grade 1 & Age <25 & > 52 weeks	Grade 1 & Age 25+ & > 52 weeks	Grade 1 Age <25 Overtime	Grade 1 Age >25 Overtime
1. Minimum wage	£ 7.05	£ 7.50	£ 7.05	£ 7.50	£ 11.25	£ 11.25
2. Employers' NI Contributions	£ 0.42	£ 0.48	£ 0.42	£ 0.48	£ 1.55	£ 1.55
3. Annual Holiday Pay	£ 1.01	£ 1.08	£ 1.01	£ 1.08		
4. Apprenticeship Levy (for businesses with over £3m payroll)	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.06	£ 0.06
5. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£ 0.04	£ 0.05	£ 0.04	£ 0.05	£ 0.11	£ 0.11
6. Total Wage Costs	£ 8.56	£ 9.15	£ 8.56	£ 9.15	£ 12.97	£ 12.97
7. Guideline Statutory Sick/Maternity Pay cost	£ 0.11	£ 0.11	£ 0.32	£ 0.34		
8. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.65	£ 0.65	£ 0.65	£ 0.65	£ 0.65	£ 0.65
9. Hourly Cost of Supply (not including Labour Provider Margin)	£ 9.32	£ 9.91	£ 9.53	£ 10.14	£ 13.62	£ 13.62

SCOTLAND AGRICULTURAL EMPLOYEES	All Ages	Overtime
1. Minimum wage	£ 7.50	£ 11.25
2. Employers' NI Contributions	£ 0.48	£ 1.55
3. Annual Holiday Pay	£ 0.96	
3a. Special Holiday Pay	£ 0.07	
4. Apprenticeship Levy (for businesses with over £3m payroll)	£ 0.04	£ 0.06
5. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£ 0.05	£ 0.11
6. Total Wage Costs	£ 9.10	£ 12.97
7. Guideline Statutory Sick/Maternity Pay cost	£ 0.11	
8. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.65	£ 0.65
9. Hourly Cost of Supply (not including Labour Provider Margin)	£ 9.86	£ 13.62

In addition, workers who have been with the same employer for more than 26 weeks and who hold a relevant qualification are entitled to be paid an additional sum of at least £1.14 per hour.

NORTHERN IRELAND AGRICULTURAL EMPLOYEES TO BE RATIFIED	Age <25 & <40 weeks Service	Age <25 & 40+ weeks Service	Age 25+ and < 52 weeks Service	Age 25+ & 52+ weeks Service	Age <25 & <40 weeks Overtime	Age 25+ & < 52 weeks Overtime
1. Minimum wage	£ 7.05	£ 7.17	£ 7.50	£ 7.50	£ 11.25	£ 11.25
2. Employers' NI Contributions	£ 0.42	£ 0.43	£ 0.48	£ 0.48	£ 1.55	£ 1.55
3. Annual Holiday Pay	£ 0.90	£ 0.92	£ 0.96	£ 1.00		
4. Apprenticeship Levy (for businesses with over £3m payroll)	£ 0.04	£ 0.04	£ 0.04	£ 0.04	£ 0.06	£ 0.06
5. Pensions Auto-Enrolment Cost (1% of qualifying earnings)	£ 0.04	£ 0.04	£ 0.05	£ 0.05	£ 0.11	£ 0.11
6. Total Wage Costs	£ 8.45	£ 8.61	£ 9.03	£ 9.07	£ 12.97	£ 12.97
7. Guideline Statutory Sick/Maternity Pay cost	£ 0.11	£ 0.11	£ 0.11	£ 0.30		
8. Guideline Minimum Labour Provider Overhead & Service Cost	£ 0.65	£ 0.65	£ 0.65	£ 0.65	£ 0.65	£ 0.65
9. Hourly Cost of Supply (not including Labour Provider Margin)	£ 9.21	£ 9.37	£ 9.79	£ 10.02	£ 13.62	£ 13.62

- **Total Wage Costs include charge items numbers 1-5 shown in red covering statutory legal requirements**
- **Labour Provider Overhead Costs** – DEFRA analysis has estimated overhead costs as 30% on top of the National Minimum Wage, but state that this figure is likely to understate the **actual** costs of almost all businesses as well as making **no** allowance for management costs or profit.
In reaching this figure of 30% Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent/interest charges on office accommodation, which may vary widely from one business to another). **It also makes no allowance for any management cost or business profit.** Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.
- The Charge Rates tables should be read in conjunction with the Definitions and Explanations on the following page.

Definitions and Explanations

N.B. The numbering below refers to the numbered charge elements in the rates tables:

1. The hourly minimum rate represents the National Minimum/Living Wage/Agricultural Minimum Wage for Grade 1 workers. The rate increases in Northern Ireland after 40 weeks' service for workers aged under 25.
Workers employed in agriculture in Scotland, Wales and Northern Ireland have a statutory entitlement to overtime after 39 hours (after 48 hours during the first 26 weeks of employment in Scotland) in accordance with the appropriate Agricultural Wages Order. N.B. There is no protection from age discrimination for rates above the NMW, hence the ALP has also used the overtime rate for over 25s for workers aged under 25.
2. Employer's National Insurance (NI) must be paid at 13.8% on earnings above the secondary threshold of £157 per week for workers aged above 21. The first £157 is NI free (NI free up to the Upper Secondary Threshold for workers below 21). The NI figures for non-overtime rates are based on 40 hours worked in non-agriculture and 39 hours in agriculture.
For temporary agricultural employees working overtime, the £157 NI free amount will generally already have been used so employer's NI has been calculated at the full 13.8%.
3. Holiday Pay
 - a. Calculations of holiday pay to be charged are based on the hourly rate plus Employers' NI as when holiday pay is paid to the worker, employers' NI is paid on this and therefore must be accrued from the charge rate.
 - b. Non-Agricultural Workers - are entitled to 5.6 weeks' holiday (calculated pro rata as 12.07% of the hourly rate and NI = 5.6 weeks / (52 weeks - 5.6 weeks).
Agricultural Employees in Wales - Workers are entitled to a variable amount of "total annual holiday entitlement" depending on how many days per week they have retrospectively worked. Based on a 5-day week workers are entitled to 31 days paid annual holiday from the first day of work equivalent to 13.54% of the hourly rate and NI.
Agricultural Employees in Scotland - are entitled to 5.6 weeks' holiday plus 2 special days per year. A week is equivalent to the number of days that an employee would be expected to work in a regular working week. This is equivalent to 13.04% of the relevant hourly rate and NI.
Agricultural Employees in Northern Ireland - are entitled to 5.6 weeks' holiday equivalent to 12.07% of the hourly rate and NI. After the completion of 12 months' continuous employment with the same employer the annual holiday entitlement increases to 5.8 weeks paid annual holiday equivalent to 12.55% of the relevant hourly rate and NI.
 - c. How holiday pay should be calculated varies dependent on worker's contracts and working patterns.
Pay used to calculate holiday pay should include any payments intrinsically linked to the work done such as shift pay; performance related bonuses; guaranteed and non-guaranteed compulsory overtime. Currently this does not include non-compulsory optional overtime until case law determines otherwise.
 - i. Where remuneration for normal working hours does not vary i.e. workers on a fixed wage - holiday pay is based on contractual pay i.e. includes guaranteed overtime and pay intrinsically linked to the work done.
 - ii. Where a worker's working hours are not specified by the contract and that worker works irregular hours and is not entitled to overtime pay when employed for more than a fixed number of hours in a week holiday pay is calculated by reference to the worker's average remuneration over the previous 12 weeks (replacing weeks in which no pay was received with previous weeks) for all hours worked and including payments "intrinsically linked" to the performance of tasks.
 - iii. Where a worker works irregular hours, and receives an enhanced overtime rate after a fixed number of hours (such as workers covered by Agricultural Wages Orders) and where these "normal working hours" on assignment are specified in the Worker Assignment Sheet which forms part of the contract with that worker. Holiday pay is based on the average hourly rate over the previous 12 weeks (replacing weeks in which no pay was received with previous weeks) for "normal working hours" and including payments "intrinsically linked" to the performance of tasks.
4. The Apprenticeship Levy applies to all employers with a payroll of over £3 million (including agency workers on contracts for services) and is a statutory charge of 0.5% on all pay elements subject to employer's NI.
5. Pension auto-enrolment is currently a statutory minimum of 1% of qualifying earnings for eligible workers who have not opted out. This rises to 2% in April 2018 and 3% in April 2019.
6. This figure shows the actual minimum unavoidable Total Wage Costs to meet minimum legal requirements.
7. Provision for statutory sick pay absence, in line with the Defra estimate of 2 weeks at £89.35 per week accrued on normal time only, not on overtime. This figure also covers the 8% of statutory maternity, paternity, adoption and statutory shared parental pay payments that must be met by the labour provider.
Agricultural wages sick pay is payable in Wales and Northern Ireland after 52 weeks' employment. In Scotland agricultural employees continuously employed by the same employer for at least 52 weeks are entitled to sick pay at normal rates for normal hours worked for a period of 13 weeks after which SSP applies.
8. Guideline Minimum Labour Provider Overhead & Service Cost - Indicative figure. 2003 DEFRA analysis estimated overhead costs as 30% on top of the National Minimum Wage, but state that this figure is likely to understate the actual costs of almost all businesses as well as making no allowance for management costs or profit.
In reaching this figure of 30% Defra state that the result is not intended to be a realistic description of the costs of any particular labour provider business (e.g. it makes no attempt to allow for the costs of rent/interest charges on office accommodation, which may vary widely from one business to another). It also makes no allowance for any management cost or business profit. Rather this is intended to be an illustration of the minimum unavoidable costs that flow from observing the law on basic employment matters such as the minimum wage, national insurance, employers' liability insurance, and maintaining and insuring roadworthy vehicles.
9. This is the total hourly cost of supply but **does not include any margin to cover labour provider profit.**