

## A-Z Guide

# MINIMUM WAGE ACT 1983



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# Introduction

The Minimum Wage Act 1983 (the Act) provides for minimum wages in New Zealand and provides for their annual review. The application of the Act was changed in 2003. It applies to all workers who fall within the meaning of “employee” as defined by the Employment Relations Act 2000 (the Employment Relations Act); trainees who are employed under contracts of services (employment agreements) must receive the minimum wage as provided by this Act from 17 June 2003.

The Act provides for minimum wage rates and a maximum working week (to which the minimum wage rate applies); only the latter may be varied expressly by agreement. The minimum wage rate is changed year to year by the Governor General by Order in Council.

The Act provides that the maximum number of hours worked in any one week (exclusive of overtime) be set at not more than 40 except where the parties to an employment agreement agree to a greater number of ordinary hours. Accordingly, it is possible to negotiate the ordinary hours to be more or less than 40.

An employee who satisfies a Labour Inspector that he or she is incapable of earning wages at the rate prescribed by the Act may be permitted to accept wages at lower rates, as specified in an under-rate workers’ (employee’s) permit.

The failure to pay the minimum wage rate without a lawful justification is liable to a penalty imposed by the Employment Relations Authority. The Act provides for deductions for:

- The cash value of board or lodging, where the board or lodging is provided by the employer. The deduction from an employee’s wages for board may not exceed 15% of the employee’s gross earnings and the deduction from an employee’s wages for lodging may not exceed 5% of the employee’s gross earnings.
- The time lost by reason of the default of the employee. The employee is in default when the employee is responsible for the failure to work.
- The time lost by reason of the employee’s illness or injury.

The Employment Relations Act require employers to keep wages and time records in the case of each employee.

A wages and time record under the Employment Relations Act must record in respect of each employee:

- The name of the employee; and
- the employee’s age, if under 20 years of age; and
- the employee’s postal address;
- the kind of work on which the employee is usually employed;
- whether the employee is employed under an individual employment agreement or a collective agreement;
- in the case of an employee employed under a collective agreement, the title and expiry date of the agreement, and the employee’s classification under it:
  - the number of hours worked each day in a pay period and the pay for those hours;
  - the wages paid to the employee each pay period and the method of calculation;
  - details of any employment relations education leave taken under Part 7;
  - such other particulars as may be prescribed.
- The wages and time record must be kept—
  - in written form; or
  - in a form or in a manner that allows the information in the record to be easily accessed and converted into written form.



- If an employee's number of hours worked each day in a pay period and the pay for those hours are agreed and the employee works those hours (the usual hours), it is sufficient compliance with subsection (1)(g) if those usual hours and pay are stated in—
  - the wages and time record; or
  - the employment agreement; or
  - a roster or any other document or record used in the normal course of the employee's employment.
- Only a Labour Inspector may seek a penalty for a breach of this Act in the Authority. The penalties for a breach of this Act are prescribed by the Employment Relations Act 2000. A penalty can be up to \$20,000 against a company and up to \$10,000 against an individual.

Compliance orders may be sought in the Authority where this Act is not observed or complied with.

Actions for arrears of wages may be commenced in the Authority up to 6 years after the wages being due. Such actions can include all under-payments notwithstanding an acceptance by an employee of any rate of payment, which is provided for in the employee's employment agreement, which is lower than the rate of payment that is prescribed by this Act. The Authority has the power to award interest on any outstanding sum.

Where, in any recovery action, an employer fails to produce wages and time record the Authority may accept as proven all claims made by the employee with respect to wages paid and hours, days and times of employment.

## Minimum Wage rate

The minimum wage rate from 1st April 2024 is \$23.15 per hour.

There is no minimum wage for persons working who are under 16 years of age.

The minimum wage rates are reviewed annually by the Minister of Workplace Relations and Safety.

## Minimum training wage rate

Training wage rates apply to an employee, aged 20 years and above, who is required by their contract of service to undertake at least 60 credits a year of an industry training program for the purposes of becoming qualified for the occupation to which the contract of service relates.

The training rate from 1 April 2024 is \$18.52 per hour.





## Minimum wage & Starting-out Wage rate

The Minimum Wage (Starting-out Wage) applies to a worker who has not completed 6 months of continuous employment with any employer and is not involved in supervising or training other workers.

The starting-out wage is an option for employers considering taking on young workers. Three groups are eligible unless they are training or supervising others:

- 16- and 17-year-old employees who haven't done six months of continuous employment service with their current employer. After six months with one employer they are not starting-out workers and must be paid the adult minimum wage.
- 18 and 19 year olds who have been paid a benefit for six months or longer, and who have not completed six months of continuous work with any employer since starting on a benefit. After six months the employer and any future employers must pay the young person at least the adult minimum wage even if they should return to further time on benefit.
- 16 to 19 year old workers in a recognised industry training course involving at least 40 credits per year. Once the young person stops doing at least 40 credits a year they must be paid at least the adult minimum wage, provided they do not meet other criteria for a starting-out wage.
- The starting-out wage is set at 80 per cent of the adult minimum wage.
- From 1st April 2024, the starting out wage is \$18.52 per hour.

## Home and Community Support (Payment for Travel Between Clients) Settlement Act 2016

In 2014, the Ministry of Health entered negotiations to find a solution that would lead to home support workers getting paid for the time they spend travelling between clients. This is referred to as in-between travel (IBT). On March 1 2016 the legislation commenced.

The Act describes the Home and Community Support (HCS) services as those funded by the Ministry of Health or a DHB that are performed in a client's home for the purpose of assisting the client to continue to live in their own home; and services funded by ACC that are performed in a client's home for the purposes of supporting a client's rehabilitation from an injury covered by the ACC Act and to achieve and sustain the client's maximum level of participation in everyday life.

It does not include services that are performed for the purpose of preparing an intellectually disabled client to live independently in the community; or services purchased by a disabled client (or by a disabled client's caregiver on the client's behalf) using funding from the Ministry of Health to allow the client (or the client's caregiver) to directly manage the resources allocated for the client's disability support.

The Act also describes the payment for travel between clients, the amendments to other legislation that has been necessitated by the introduction of this new Act and then provides Schedules which list former HCS employers, current HCS employers and Schedule 4 which describes the mileage rate, qualifying distance, qualifying travel time and maximum travel distance. The legislation is a "one stop shop" where employers can check their obligations and employees can check their entitlements. It also extinguishes retrospective and future claims, amends the Minimum Wage Act and limits the liability of employers to specific travel payments.



**Part 2** of the Act provides the details for calculations for both payment for time spent in travel between clients, and for costs relating to travel between clients.

**Schedules 2 and 3** of the Act lists the individual employers which the settlement covers. The employers include any entity that provides home and community-based support services on behalf of an entity listed, including any subsidiary or subcontractor.



# Sleepover Wages Settlement Act 2011

This Act applies to situations where employees are required to be on-site overnight but available to work as necessary.

A **'sleepover'**, as defined by the Act, means a period of time spent by an employee overnight during which the employee, under the terms of their employment agreement, is:

- a. required to be at the employee's workplace
- b. allowed to sleep at the workplace while on duty
- c. required to be available to attend to their duties during the course of the night as necessary

The two key things are:

1. Employers need to pay their employees at least the current adult minimum wage for *every hour worked* and for *every hour slept*.
2. Employers need to be mindful of the implications of *'sleepovers'*, and understand whether or not in the particular circumstances, the employee is actually undertaking work.

## Other payment arrangement

If you are paying your employees by method of commission only or piece rate, you will still be required to meet minimum wage requirements. This means that if employees do not earn at least the minimum wage per hour worked, you will be required to top this amount up to meet your minimum wage obligations. Averaging out an employees pay can only be done for a maximum of a fortnight, therefore you could not average out the pay for the month, quarter or year.

## Remember

- Always call AdviceLine on 0800 300 362 to check you have the latest guide.
- Never hesitate to ask AdviceLine for help in interpreting and applying this guide to your situation.
- Use our AdviceLine employment advisors as a sounding board to test your views.
- Get one of our consultants to draft an agreement template that's tailor-made for your business.

This guide is not comprehensive and should not be used as a substitute for professional advice.

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Published: March 2024

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