

News

High street firms' minimum wage breaches may be 'tip of iceberg'

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By Annie Makoff-Clark

Confusion over uniforms and other expenses blamed as 179 employers accused of underpayment



Many more employers may face fines and demands for back payment of wages in the coming months, unions and legal experts have warned – as policy around uniforms, improper reimbursement of expenses and 'genuine mistakes' were blamed for almost 200 employers failing to pay the minimum wage.

Restaurant chains Wagamama, TGI Fridays and high-street retailer Karen Millen – along with hotel group Marriott – were among the 179 UK employers the government said had failed to pay nearly 10,000 workers the correct minimum.

The Department for Business, Energy and Industrial Strategy (BEIS) released figures last week revealing that hospitality, hairdressing and retail were the worst offending sectors. Wagamama topped the list of individual employers, underpaying a total of £133,212 to 2,630 employees, while TGI Fridays failed to pay £59,348 to

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Wagamama said there had been a 'misunderstanding' on staff uniform rules and admitted that by stipulating specific uniform colours, it was inadvertently expecting staff to pay for their own uniforms.

The employers were collectively required to compensate workers a total of £1.1m in back pay and pay government fines of £1.3m.

The BEIS fines come ahead of the national minimum wage increase next month, following recommendations from the Low Pay Commission.

From April, the national living wage will increase from £7.50 to £7.83 for workers aged 25 and up, and from £7.05 to £7.38 for 21- to 25-year-olds.

Since the practice of naming employers which breach this law began in October 2013, the government has published 13 lists of transgressors.

"The number of high profile employers included in this latest 'naming and shaming' report shows the scope of the government's investigatory powers, and the inevitability of negative publicity that now comes with being found to be in breach," Tim Goodwin, solicitor at Winckworth Sherwood, told People Management.

"The government's compliance officers can commence an investigation and remove information from an employer's premises with little, if any, warning.

"Businesses that circumnavigate the regulations, whether by simply paying below the minimum wage, improperly offsetting other costs or by understating hours worked will get found out."

"Employers who pay staff close to minimum wage need to be particularly careful they don't inadvertently breach the law," said Julia Kermode, chief executive of the Freelancer & Contractor Services Association.

"In Wagamama's case, the breach came about because the company did not provide a uniform: Wagamama's gave staff T-shirts that they expected to be worn with a black skirt or trousers. However, by not paying for the additional items, the restaurant breached minimum wage regulations."

Unpaid breaks, requiring staff to arrive early for their shift and time spent in meetings could all lead to underpayment of wages, Kermode added.

Euan Lawrence, employment law expert at Blacks Solicitors LLP, warned that employers making deductions from staff for the cost of the Christmas party could also fall foul of the law if these lowered employees' wages to less than the minimum wage.

"Moreover, additional payments such as tips, service charges and premiums for working at unsociable times should not count towards wages. BEIS makes that absolutely clear," he said.

In 2017, **Argos topped the BEIS list** for paying below the minimum wage because staff were expected to attend unpaid briefings and undergo lengthy security checks outside working hours.

In December last year, *People Management* reported that **Primark and Sports Direct were among 260 UK employers** who had been named and shamed by the government for failing to pay the national minimum wage and national living wage. As with Wagamama, Primark paid below the minimum because of its uniform policy, which did not reimburse staff for the cost of their required uniforms.

Andrew Eagan, senior associate solicitor in the employment team at Coffin Mew, told People Management there was 'no excuse' for failing to pay staff less than minimum wage. "Ignorance of the law is not good enough," he added.

“Penalties for non-compliance can be harsh. Offending employers can suffer enormous reputational damage and face potentially dire consequences through large retrospective payments to staff, as well as statutory fines. Employment tribunals also take a dim view of such underpayments.”

But Liz Cotton, head of employment at law firm JMW, warned that due to the complexity of the national minimum wage and the way HMRC determines working time, some employers could make ‘genuine mistakes’.

Employers should therefore conduct reviews of their systems and working practices, seek to identify areas where they may be exposed and take appropriate steps to ensure compliance, she recommended.

Meanwhile, Shainaz Firfiray, associate professor of organisation and human resources management at Warwick Business School, urged the government to take a ‘closer look’ at the industries with widespread instances of breaching minimum wage regulations and invest more resources to prevent exploitation.

A spokesperson for the CBI said it fully supported strong enforcement where businesses have failed to pay the minimum wage or ‘knowingly flouted’ employment law.

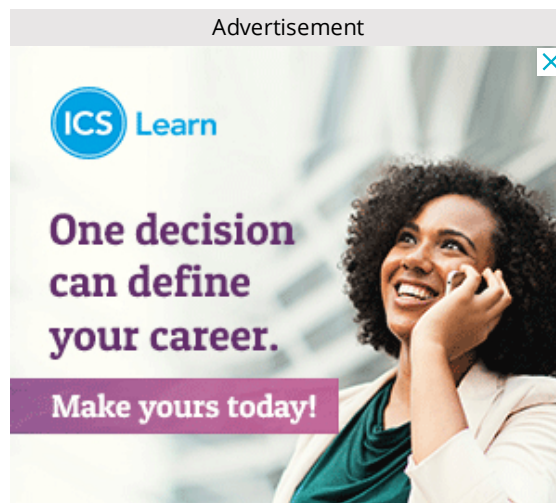
Unite regional officer Dave Turnbull said the recent naming and shaming of employers was “the tip of the iceberg. We’re investigating claims that workers at one American restaurant chain are not paid for training they’re required to undertake as part of their job,” he said.

“The hospitality industry appears to be rife with dubious business practices”, Turnbull alleged.

“Some members report being made to take extended unpaid breaks of up to three hours during quiet periods or to come in later than their scheduled start time.” He said a “big issue for workers in restaurants and hotels” is that they regularly missed out on the statutory right to rest breaks and were unpaid for this time.

Turnbull said minimum-waged workers losing up to three hours at a time or not getting paid for untaken breaks had a “serious knock-on effect” which took them below the minimum wage.

He added that naming and shaming was not enough to deter some employers from not paying minimum wages, and that “only by giving HMRC the power to impose hefty fines will bad bosses sit up and take notice.”





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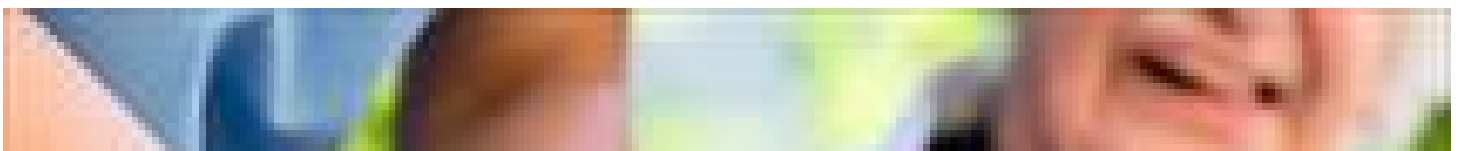
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