



Department
for Environment
Food & Rural Affairs



Department for
Business, Energy
& Industrial Strategy

Piece rates: guidance for employers and workers in the agriculture sector

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The government recognises that we are facing unprecedented challenges due to the impact of coronavirus (COVID-19) and some employers of agricultural seasonal workers may be looking to use piece rates (or output work) for the first time. To ensure they adhere to National Minimum Wage legislation, the government has produced supplementary guidance to help them apply piece rates, and to help make sure workers are protected.

The information and examples provided in this guide are illustrative only and may not be suitable for every business. Employers should also be aware that different rules apply across the United Kingdom and the Devolved Administrations when it comes to pay for seasonal agriculture work, and it is up to each individual employer to ensure they are complying with all the relevant legislation applicable to their location.

This is of particular importance to employers in Scotland, Wales and Northern Ireland where agricultural workers must not be paid less than the agricultural minimum wage detailed in their respective Agricultural Wages Orders/Regulations, including where piece rates have been set by employers. Further detail on Agricultural Wage Orders/Regulations in Scotland, Wales and Northern Ireland can be found at the end of this guidance.

In England, employers must pay agricultural workers either at least the national minimum wage for every hour worked, or if they choose to use output work, pay a 'fair rate' for each task or piece of work they do. This 'fair rate' (as exemplified and calculated below) ensures workers still receive at least the National Minimum / Living Wage (the fair rate in effect sees the average worker earning 20 percent more than the minimum wage based on assessment of average productivity), and offers a degree of protection for workers that are less productive than average, as may be the case with new workers.

National Minimum Wage and National Living Wage

The National Minimum Wage is the minimum hourly rate of pay due to eligible workers. The National Living Wage was introduced in April 2016 and applies to workers aged 25 and over. For ease of reference, the term 'minimum wage' is used in this guide to cover both National Minimum Wage and National Living Wage.

The hourly rate for the minimum wage depends on the worker's age. [Details of the current rates.](#)

The hours for which you must pay a worker the minimum wage depend on the type of work they perform and therefore whether they are paid:

- an annual salary, under a contract for a basic number of hours each year (known as '**salaried-hours work**')
- by the hour (known as '**time work**')

- by the piece - the number of things they make or the tasks they complete (known as **'output work'**)
- in any other ways (known as **'unmeasured work'**)

The rules regarding what counts as “working time” for which the minimum wage is payable apply differently for each type of work. You must therefore correctly determine the type of work that your workers perform as this affects how the rules are applied.

It is possible that the same individual could transition from one type of work to another. For example, an individual initially engaged as an ‘output worker’ with freedom to choose their own hours, could later become engaged as a ‘time paid’ worker if the employer wished to set more formal working hours.

Output work

If a worker is paid for each piece of work they do - or task they complete - they are considered to be performing **'output work'** for minimum wage purposes.

They must be paid at least either:

- The minimum wage for every hour worked; or
- A ‘fair rate’ for each task or piece of work they do.

Using a ‘fair rate’ means employers can calculate the number of hours worked – based on an average output across the workforce – for which the minimum wage is payable.

To note, that where an ‘average’ is referred to in this guidance, it corresponds to the ‘mean’.

If an employer sets the period of time for which the worker is required to work – like their start and finish times or how many hours they will work within a pay period - this counts as [time work](#), not as output work.

However, if the time the worker spends working is not controlled by the employer, they may be classified as performing ‘output work’.

For example, a farmer could open his field during the safe period permitted by daylight (say from 6am to 8pm), and invite workers to work during that time, paying them per kilogram of fruit they pick.

The workers would be performing output work as long as the farmer does not control the hours to work, such as setting minimum or maximum hours, so the workers are free to work when they want.

They could then be paid based on a measure of their output, such as the number of kilograms of fruit picked.

Average rate per worker

To work out the rate to pay workers, employers must carry out a fair test to see what the average (mean) rate of work is.

- Test some - or all - of the workers. The group you test must be representative of the whole workforce - not just the most efficient or fastest ones. **So, if there are a range of ages in the workforce, you would have someone from a range of ages represented in the sample.**
- Work out how many pieces of work have been completed in a normal, average working hour.
- Divide this by the number of workers to calculate the average rate.
- If the work changes significantly, do another test to work out the new average rate.

In some circumstances the average rate may be estimated based on a test carried out in different physical conditions from those in which the work itself will be carried out. However, this is unlikely to be necessary in the agricultural sector, where it is likely that the test can be carried out in the same or similar conditions to those of the work.

Fair rate

The 'fair rate' is the amount that ensures an average worker is paid the minimum wage per hour when performing output work.

Employers should calculate the 'fair rate' per piece or task in the following way:

1. Take the average rate of work per hour (tasks or pieces completed), see above for how this is done.
2. Divide it by 1.2 (this means workers slightly slower than average, such as new workers, will not be disadvantaged).
3. Divide the [hourly minimum wage rate](#) for a worker of the relevant age by that number to work out the 'fair rate' for each piece of work completed.

Example

Workers are paid for each kilogram of strawberries they pick. They can pick on average 30kg of strawberries per hour. This average of 30kg is divided by 1.2 ($30 \div 1.2 = 25$ kg).

- Andy is 40 years old and is eligible for the [National Living Wage rate](#) of £8.72
- The 'fair rate' must result in a worker being paid their applicable minimum wage - Andy must be paid at least £0.349 per kilogram he picks (£8.72 divided by 25)

- A worker working at average speed of 30kg per hour would get £10.47 ($£0.349 \times 30 = £10.47$; this is above the National Living Wage). But a slower worker, for example one that picks 25kg per hour, will still get the National Living Wage ($25 \times £0.349 = £8.72$). Anyone working slower than 25kg per hour would get less.

For example:

- Laura works for the same employer
- Laura is 20 years old, and is eligible for the 18-20 year old National Minimum Wage rate of £6.45
- Based on the information above, she must be paid a fair rate of £0.258 per kilogram she picks ($£6.45$ divided by 25)

Paying NMW using a Fair Rate

For an employer to pay a fair rate they must provide each worker a notice explaining the position to them. If you do not provide a worker with a written notice that complies with the conditions outlined below you will have to pay the worker for each hour they work.

The notice must:

- be issued before the start of the pay reference period you intend to pay them by a fair piece rate - if the terms of the notice have not changed, there is no need for a new notice before every pay reference period
- explain that for the purposes of compliance with minimum wage law, the worker will be treated as working for a certain period of time to produce a piece or perform a task
- state that for the purposes of determining this period of time, you have conducted a test or made an estimate (see the last paragraph above under the heading “Average rate per worker”) of the average speed at which the piece/task in question is produced/performed – the average hourly output rate
- state what the average hourly output rate for the piece or task is
- state the rate or sum to be paid to the worker for the production of the piece or performance of the task in question
- give the telephone number of the Acas Helpline on Tel 0300 123 1100

Further information

Employers

In applying piece rates, employers must remember their continuing obligations under the Equality Act 2010, including towards workers with disabilities. Compliance with National Minimum Wage law does not relieve employers of other obligations towards workers with disabilities.

Care should also be taken in relation to the use of 'volunteers' (persons who are not contractually bound to perform work or services and receive no payment). A contract may be oral or implied by conduct, which creates the possibility that volunteers may unexpectedly fall within the definition of a worker and therefore minimum wage entitlement. For example, an arrangement where a picker is not paid in cash, but is allowed to keep some of the produce they pick is likely to constitute a contract to perform work.

For further information relating to the minimum wage:

- call the [Acas helpline](#) on 0300 123 1100 for free and confidential advice
- visit GOV.UK and search 'employers and the national minimum wage'
- visit GOV.UK and search for the 'Calculating the Minimum Wage' guide for employers

Workers

If you think you have been underpaid the minimum wage, you should talk to your employer first. If this does not solve the problem, either:

- call the [Acas helpline](#) on 0300 123 1100 for help solving a payment dispute
- make a complaint about your employer direct to HMRC via an online [complaint form](#)

You can make a complaint about a current or previous employer or complain on behalf of someone else.

Minimum Agricultural Wage Rates in Scotland, Wales, Northern Ireland and England

Scotland

All agricultural workers in Scotland, irrespective of age or duties performed, must be paid in accordance with the terms and conditions agreed by the Scottish Agricultural Wages Board and set in the Agricultural Wages (Scotland) Order 2020. The Wages Order in Scotland sets out the minimum rates of pay and other terms and conditions of employment. Where piece rates have been set by employers, agricultural workers must not be paid less than the agricultural minimum wage detailed in the Wages Order.

Guidance in Scotland can be found at: www.gov.scot/publications/agricultural-wages-scotland-twenty-fourth-edition-guide-workers-employers/

Wales

In Wales, agricultural workers must be paid in accordance with the Agricultural Wages (Wales) Order 2020. The Order sets out the minimum rates of pay and allowances, as well as other terms and conditions of employment, including output work. Where agricultural workers are paid by output, they must not be paid less than the agricultural minimum wage applicable to their grade.

Guidance in Wales can be found at: <https://gov.wales/agricultural-wages-guidance>

Northern Ireland

In Northern Ireland, minimum agricultural wage rates are set each year by the Agricultural Wages Board for Northern Ireland (AWB), a non-departmental public body. Through the Agricultural Wages (Regulation) (Northern Ireland) Order 1977 the AWB has the authority to set minimum wage rates for agricultural piece rate workers, however they have always chosen not to do so. In the absence of any piece rate, any resulting pay calculated for agricultural piece workers should not be less than the appropriate minimum rates for time workers, as set out in the Agricultural Wages Order for that year.

Guidance in Northern Ireland can be found at: www.daera-ni.gov.uk/articles/agricultural-wages-board-northern-ireland-awb

England

The Agricultural Wages Board for England was abolished in 2013. From 1 October 2013 the national minimum wage has applied to agricultural workers in England in the same way

as it applies to other workers (although there are transitional provisions for workers who have been employed in agriculture since before 1 October 2013): see the Enterprise and Regulatory Reform Act 2013 (Commencement No 1, Transitional Provisions and Savings) Order 2013, article 4 and Schedule 3.

Guidance in England can be found at: www.gov.uk/government/publications/calculating-the-minimum-wage