

The Minimum Wage Act 1983: A Summary

In 2019, the Minimum Wage Act 1983 (the Act) and Minimum Wage Order 2019 ensure that employees are paid an average of at least \$17.70 per hour worked.¹ Kiwisaver must be paid on top of this amount.²

For the purposes of the Act, the amount employees are paid per hour is calculated on (at most) a fortnightly basis.³ This means that each fortnight, the amount employees are paid (before tax/deductions) must be equal to or greater than the minimum wage for each hour worked. It cannot be averaged over a longer period, even if employees are paid monthly or budgets are based on hours billed per month.

“Hours worked” includes:

- hours spent on billable and non-billable work;
- time spent waiting for work;
- lunch breaks if the employee works through lunch; and
- two paid ten-minute rest breaks (assuming that the employee is working a seven to ten-hour day).

An employer who does not comply with the Act is liable for a penalty of up to \$20,000 for each breach of the Act.⁴

Most salaried positions in the legal profession are not in danger of breaching the Act where employees work 40 hours per week. However, many employers do not check that employees are always paid more than the minimum wage when working longer hours.

Helpful calculations:

There are three steps to calculate whether you are working for less than the minimum wage:

Step 1: Fortnightly pay is annual salary divided by 26.

Step 2: Actual hourly rate is fortnightly pay divided by the number of hours worked in any given fortnight.

Step 3: If actual hourly rate is less than \$17.70 per hour, the employee is being paid less than the minimum wage.

Example:

Sam is employed by the law firm Belson TripVay and is on a salary of \$47,000 per year. This averages to \$1,807.69 per fortnight.

¹ Minimum Wage Act 1983, s 4; and Minimum Wage Order 2019, cl 4.

² *Terranova Homes and Care Ltd v Faitala* [2013] NZCA 435 at [34]–[35].

³ *Idea Services Ltd v Dickson* [2011] NZCA 14, [2011] 2 NZLR 522; *Law v Board of Trustees of Woodford House* [2014] NZEmpC 25, [2014] ERNZ 576 at [210]; and Minimum Wage Order, cl 6(d).

⁴ Employment Relations Act 2000, s 135(2)(b).

When Sam works 40 hours per week (80 hours per fortnight), Sam is being paid \$22.60 per hour. In these circumstances, Belson TripVay is complying with the Act.

One month, Sam has a busy couple of weeks at work. Sam works 52 hours each week (104 hours that fortnight). If Sam is not paid any extra, he will be working for \$17.38 per hour. The amount Sam has been paid is in breach of the Act and Belson TripVay needs to pay Sam an additional \$32.32 for that fortnight. Sam shrugs it off because he thinks this is because he is not working fast enough. This is not an excuse for Belson TripVay not to pay Sam the extra \$32.32.

Sam looks at the bill that went to the client at the end of his busy fortnight. Despite Sam spending 83 hours on the file, the client was only billed for 25 hours of his time. This does not change anything: Belson TripVay still owes Sam \$32.32 for that fortnight.

Sam's colleague Kim (also on \$47,000) has an even bigger fortnight helping with some urgent litigation. Kim works for 80 hours one week and 65 hours the next (145 hours that fortnight). If Kim is not paid any extra, Kim will be working for \$12.47 per hour. That is less than the minimum wage from eight years ago! Belson TripVay needs to pay Kim an additional \$758.35 to comply with the Act.

Belson TripVay has a time in lieu policy and Kim is offered a day in lieu at the end of the fortnight so that she can re-establish contact with her family and friends and get some sleep. This does not satisfy the Act's requirements. Belson TripVay still needs to pay Kim an additional \$758.35 as well as that day in lieu (since that day is part of its policy).

What can you do?

Fill out ALWU's survey at <https://alwu.org.nz/minimum-wage/>. Survey responses will provide ALWU with data for its minimum wage campaign.

Inform your employer. Employers may not realise that their employees are working for under the minimum wage and will correct this as soon as they know. It will help if you have carefully recorded your time. You can speak with a partner or a member of the HR team.

Join ALWU and ask ALWU to inform your employer. It can be easier to let someone else do the explaining. Please note that if you ask ALWU to get in touch with your employer on your behalf, you will not be able to remain anonymous. If you have been paid under the minimum wage and want to stay anonymous, we can speak to the labour inspectorate and ask them to investigate your employer.

File a Statement of Problem in the Employment Relations Authority (ERA) to seek a penalty for non-compliance and for arrears of wages at the minimum wage (or ask ALWU to do so on your behalf). We only recommend this option after you have tried at least two of the options above with no success. Filing in the ERA is expensive and will escalate the matter significantly.