



September 2026 Update

Welcome to this month's update - where we discuss the latest guidance and legislation.

In this Edition we report on:

- Can employers provide accommodation instead of paying the NMW?
- Consultation response and updated draft code on tipping
- Right for Trade Unions to access workplaces

Can employers provide accommodation instead of paying the NMW?

Employees are legally entitled to be paid at least the national minimum wage (NMW) Tesco and B&Q have been in the news for failing to pay it properly.

However, a narrow exception under the National Minimum Wage Act 1998 can apply to certain workers employed by charities and other qualifying organisations who receive no monetary payment and only reasonable subsistence or accommodation.

A recent tribunal involving Camden Community Football and Sports Association has highlighted how the exemption works after two charity workers who received accommodation instead of wages were found to be employees rather than volunteers.

Despite their employee status, the tribunal found that the section 44 exemption applied, meaning they were not entitled to NMW. Although the charity workers received

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accommodation rather than wages, the judge found the arrangement amounted to an employment relationship, rather than being volunteers.

The key question was whether the accommodation was “reasonable in the circumstances of the employment”. The charity did not have to prove the pair could not perform their duties without living there.

Small employers should not read this as a green light to offer accommodation instead of wages. The NMW rules are “strict”, and accommodation is the only benefit in kind that has “special treatment” under the legislation.

Employers: getting the calculation wrong can still lead to substantial liabilities

Contact us: for further advice.

Consultation response and updated draft Code on tipping

The government has published its response to public consultation on the rules dealing with the allocation of tips. This sits alongside an updated draft Code of Practice, setting out the additional employer obligations introduced by the Employment Rights Act 2025.

Section 14 ERA 2025 requires employers to:

- consult trade union or elected employee representatives (or, if none, employees directly) when developing a tipping policy;
- consult whenever the policy is reviewed (at least every three years); and
- provide all workers at the place of business with an anonymised consultation summary.

The draft Code explains that:

- consultation should be genuine, proportionate, inclusive and transparent;
- employers do not have to accept every suggestion made;
- employers should aim for broad agreement that tip allocation is fair, reasonable and clear;
- consultation may include meetings, group discussions and surveys;
- employers should consider all views and regularly review tip allocation; and
- employers should keep a written record of the consultation, the process, views expressed and outcomes.

Employers: if relevant make sure you have a tipping policy and this is reviewed regularly.

Contact us: we can advise on relevant policies.

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Right for Trade Union to access workplaces

One of the government's main objectives under its Make Work Pay plan is to enhance collective voice in the workplace.

This is mainly through strengthened trade union rights. The major change coming next month - from 30 October 2026, trade unions will have a new statutory right to seek access (digital and/or physical) to workplaces.

Almost all employers could be affected as a union will be able to request access even if it is not recognised by the employer and has little or no existing membership or presence within the workforce.

Employers: make sure you are prepared in case you get a request by a union to access your workplace.

Contact us: we can support your business with this.



Caroline has a wealth of experience supporting business clients with practical hands on HR and Employment Law advice. Caroline's pragmatic approach helps businesses of all sizes deal with complex HR situations. She qualified as a Solicitor in 1999 and now acts as a specialist Human Resource / employment Law Consultant to business.

Caroline Robertson, Director



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