

Unpaid Britain: wage default in the British labour market

UNPAID WAGES - DEFINITION

Our working definition is non-payment or delay of all or some of the promised wage (or legal minimum, where higher) for work which has been done (including time during which the worker was exclusively available to work). The wage includes all wages, fees for work, holiday pay and statutory pay (such as sick pay or maternity pay). For the purposes of this study, we will not be investigating work for which no payment has been promised (even if it ought to have been) such as unpaid internships or volunteering. We have, however, included freelance or self-employed earnings where there is an identifiable employer.

Executive Summary

There has been a recent surge in policy and media interest in the employment relationship. Some is focussed on the extremes, such as ‘modern slavery’; some on distinguishing the worker from the ‘self-employed’; some on the so-called gig economy and zero hours contracts. The Unpaid Britain project, based at Middlesex University and co-funded with Trust for London, was established to examine the key element of the employment relationship: being paid. Despite its importance, this has not previously been the specific subject of research.

Key Findings

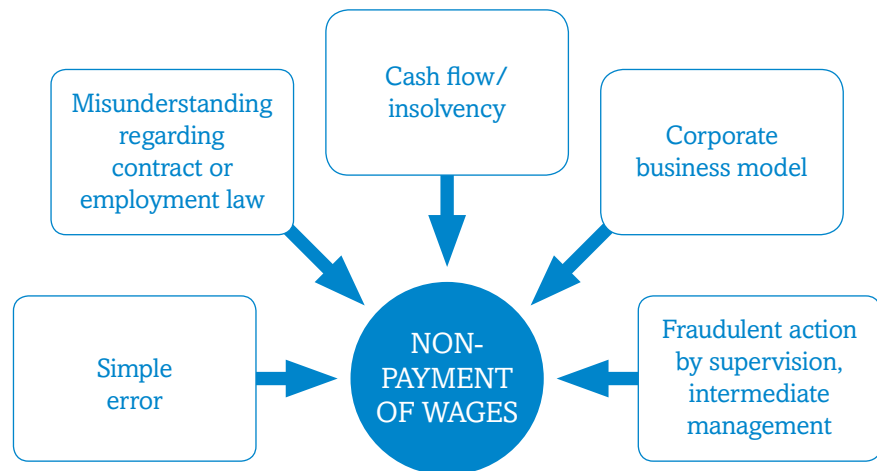
- Although errors may occur often, responsible employers have mechanisms in place to avoid serious consequences for workers in the event that they are under or un-paid, and seek to avoid problems recurring.
- Unpaid wages amount to at least £1.3bn each year.
- Unpaid holiday pay amounts to at least £1.8bn each year.
- At least 2 million workers face underpayment each year.
- Even where detected, National Minimum Wage (NMW) arrears may take years to be paid – if at all - with a similar story for Employment Tribunal (ET) cases, where only 52% of awards won by workers are paid in full.
- 1 in 12 workers receive no payslip, and there has also been a major growth in the provision of electronic ones, giving rise to complications, with the biggest implications in London where only 70% of workers now receive a physical payslip.
- There are high levels of unpaid overtime in some sectors, which may be leading to Minimum Wage offences amongst salaried staff (40% of underpayment is estimated to be to workers on salaries).
- Employers deploy differing strategies at ETs: where the worker has a good claim some will settle at the last moment, but those who do not plan to pay awards either do not defend or lose the case, wind up the company and start again with another identity.
- Owners and directors rarely face investigation, and it seems they can repeat offences with impunity. There appears to be some correlation between abuse of workers and offshore company ownership and debt (although this needs further research).

Methodology

Data from the Labour Force and Family Resource Surveys has been analysed for evidence of practices indicating the abuse of workers' rights (including non-payment of holidays or overtime). Over 700 judgements from Employment Tribunals involving workers in London who claimed that wages were owed have been analysed, and the Companies House records for over 400 of the employers examined. Data from HM Courts and Tribunals Service, ACAS, National Minimum Wage offenders' lists, the Insolvency Service, the 2013 Survey of Employment Tribunal Applicants, and Citizens Advice employment advice service, have also been used.

This has been supported by a literature search and a series of 44 semi structured interviews with Key Informants, workers, employers and third parties who have been involved in cases of unpaid wages. Case studies based on the interviews have also examined other relevant documents including media reports, court records and insolvency practitioners' reports.

Strategies for non-payment



A range of methods and strategies to deprive workers of their earned pay, and to evade any penalty for doing so are deployed, including:

- Unpaid time, from small, regular amounts of as little as 20 minutes per shift, up to all time travelled between assignments.
- Misclassification of work or work relationships (labelling work as unpaid training, volunteering, profit share, or self-employment).
- There is a spread of contracts designed to mislead workers and deny them rights, by not paying holiday pay, employer National Insurance contributions or NMW dating back at least to 2010, with employers' savings said to be between 28% and 40% of the wage bill.
- Withholding holiday pay, and only paying it when specifically asked.
- Cessation of pay, which may be deliberate or inadvertent around impending insolvency, or absconding.
- Deductions from pay, such as fines for lateness, or for work clothes.
- Pretended ignorance of regulations (on NMW for example).

Case study: Company L (a temporary labour agency) was found by the Gangmasters and Labour Abuse Authority to have systematically underpaid workers, and attempted to hide the offence. A former member of staff described the means by which holiday pay was withheld, and workers denied copies of their own contracts. The scale of underpayments was estimated to be in the 100s of thousands of pounds (Full case study in pages 29-30 on the main report).

- Misfortune and error certainly led to underpayment on occasion, but were usually dealt with, and rarely generated formal complaints. In some cases, though, this occurs so often as to become negligence, resulting in repeated failures to pay on time.
- The underlying causes identified included punishment (for turning up late, or for leaving the job); labour hoarding (underpaying staff so that they fear to leave in case outstanding sums become beyond recovery); reduction of costs (not paying holidays can save up to 12% of the wage bill); meeting targets (local supervisors or managers may cut corners to keep to centrally-set targets for wage costs); and incompetence or lack of understanding.
- There is a widespread lack of knowledge of basic rights. For example, 15% of workers do not know their holiday entitlement; while 5% receive none at all. This is concentrated amongst part time workers, where over 13% receive no paid holidays. It is also particularly notable amongst full time students who work during their studies.
- Young workers in particular were faced with demands for unpaid work in order to get their foot in the door of chosen careers, which the authors described as ‘Modern Truck’: *“In place of wages, young workers are offered the ‘three Ex-s’, experience, exposure and exploitation.”*
- Reluctance to act against abuse may be caused by workers’ fear of damaging their career prospects, or of losing their job or suffering other forms of retribution.

Case study: the effectiveness of National Minimum Wage recovery was measured by considering two named employers where it had been determined by HMRC that the NMW was not being paid. In one case (Total Security Services) it seems that it took at least two years before most workers were paid, and even then hundreds of thousands still appeared to be outstanding three years after the underpayment was detected (Full case study in pages 35-36 of the main report).

- Workers had used a variety of methods to obtain advice and support. Some had considered, or turned to unions, with a variety of outcomes. Others had made use of ACAS, and some reported that this had resulted in rights being recognised. CABs were used, again with a mixed picture of perceived outcomes. Only a minority had gone as far as attempting to use the tribunal system, but time limits seemed to be the biggest barrier to progress. Those who had used the County Court system regarded it as having been successful for them.
- Where local managers had taken complaints seriously it was well regarded by workers, but in some sectors (cleaning, agency work), managers were distant figures, rarely seen. Others had found that making formal (written) requests was effective, but would be most likely to do this after having left the job. Some collective actions (with or without unions) were reported, and had mostly succeeded in recovering the owed sums.

Conclusions

The problems they [workers] face are not primarily to do with clarity regarding their employment status. It is about the capacity to enforce their rights. Most importantly, this means recovering the owed money, in good time.

RECOMMENDATIONS FOR FURTHER CONSIDERATION

- Making HMRC responsible for paying workers identified NMW arrears, and then for collecting them from the employer.
- Improving the availability of free legal advice and assistance on employment matters, perhaps through support from local and regional government.
- Developing systems for informing student workers of their rights, and assisting them in their enforcement.
- Requiring employers to deposit a financial bond or take out insurance to guarantee workers' wages.
- Introducing deterrent penalties for employers' failure to provide paid holidays or payslips.
- Stronger sanctions against directors considered to have deliberately failed to pay.
- Empower unions to take up cases on behalf of groups of workers (for example challenging sham self-employed contracts), thus removing the individual's risk of retribution and blacklisting.

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The full report can be downloaded from http://www.mdx.ac.uk/__data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=22583719

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The full report, news and future updates to the research are available from http://www.mdx.ac.uk/__data/assets/pdf_file/0017/440531/Final-Unpaid-Britain-report.pdf?bustCache=22583719

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