

Source: [BEIS: NATIONAL MINIMUM WAGE AND NATIONAL LIVING WAGE Calculating the minimum wage](#) pages 17 & 18

Whether a work trial results in a contract requiring the minimum wage to be paid will depend on the circumstances of the case. There are currently no definitive rules or tests; however, a court or tribunal is, in the government's view, likely to take account of the following factors:

- whether a “work trial” is genuinely for recruitment purposes (if it is not, it will generally be considered to be work and the individual will be eligible to be paid the minimum wage);
- whether the trial length exceeds the time that the employer would reasonably need to test the individual's ability to carry out the job offered (in the government's view an individual conducting work in a trial lasting longer than one day is likely to be entitled to the minimum wage in all but very exceptional circumstances);
- the extent to which the individual is observed while carrying out the tasks;
- the nature of the tasks carried out by the individual and how closely these relate to the job offered (where the tasks are different from those which the job would involve, this may indicate that the employer is not genuinely looking to test the individual's ability, but rather to get the tasks carried out);
- whether the tasks carried out have a value to the employer beyond testing the individual (where the tasks are carried out in a simulated rather than real environment, this will normally indicate that they do not have such a value and that the individual is not “working”);
- whether trial periods are important (aside from recruiting) to the way the employer runs its business (for example, where trial periods are being used by the employer as a means to reduce labour costs, this is likely to indicate that the individual is “working”).

There are reports of some unpaid trial work periods extending across more than one full shift or several days. Unpaid trials of this sort of length in a real (not simulated) work environment are likely to create an entitlement to minimum wage in all but very exceptional circumstances - especially in sectors where workers are paid at or close to the minimum wage. This is because what is done by the individual would almost certainly have substantial value to the employer rather than testing the individual's ability. This could mean that there is a contract under which the individual would be a worker entitled to the minimum wage.

However, in some cases an unpaid trial work period lasting a few hours may be reasonable and not create an entitlement to minimum wage. This is because the main purpose would likely be to test the individual, and what is done would probably have little or no other value to the employer: the substance of the arrangement would therefore concern recruitment rather than providing work. The individual would therefore probably not be entitled to the minimum wage.

A key consideration is that the longer a trial period continues, the more likely it is that it results in a contract to provide work and that the minimum wage becomes due.