

Who is an 'employee' for the purposes of PAYE and Class 1 NICs?

In this guide, 'employee' means anyone who is gainfully employed in the UK and is:

- engaged under a 'contract of service'. Where you pay somebody to work for you, that arrangement will normally amount to either a contract of service (employment) or a contract for services (self-employment). Almost everyone who works for an employer will be employed under a contract of service, including full-time, part-time, casual or temporary employment. A contract need not be written, but can be a verbal or implied working agreement, or
- an office holder with earnings chargeable to tax. An office holder is someone appointed to hold a titled office (including an elective office), for example, a company director, or
- engaged through an agency or some other third party. For further information, see 'Workers supplied by agencies' on page 67.

For PAYE purposes

In addition, 'employee' includes, for most PAYE purposes, many pensioners and others who get PAYE income (for example, ex-employees).

Similarly 'employer' includes, for most PAYE purposes, agencies, pension-payers and others who make payments of PAYE income.

For NICs purposes

In addition to the above, if certain conditions are met, a person in any of the following occupations is treated as being an employee. The conditions are set out in the Social Security (Categorisation of Earners) Regulations 1978, as amended. The occupations are:

- lecturers, teachers or instructors
- office cleaners
- ministers of religion
- people employed by their husband or wife or civil partner for the purpose of his or her employment
- theatrical performers/artists within the entertainment industry.

If you are not sure if someone is an 'employee' or if you are an 'employer' for PAYE or NICs purposes you can:

- obtain an opinion using the Employment Status Indicator (ESI) tool at www.hmrc.gov.uk/calcs/esi.htm
- contact the Employer Helpline

- go to the HM Revenue & Customs website at www.hmrc.gov.uk/employment-status/index.htm

National Insurance numbers

1 What is a National Insurance number?

A National Insurance number is the unique reference number used by HM Revenue & Customs and the Department for Work and Pensions to identify an individual's NICs record. It ensures that contributions paid by, and credited to, an individual are put on the right record so that whenever a claim to benefit is made, the correct amount can be paid.

You are required to record an employee's National Insurance number on form P11 *Deductions Working Sheet* and form P14 *End of Year Summary*. It is important, therefore, that you ask employees for their National Insurance number as soon as possible after they start working for you.

Your employees are required by law to give their National Insurance number to you.

It would be helpful if, for each employee, you:

- record their date of birth and address including postcode, on form P14
- arrange for them to let you know of any change of name and/or address.

Temporary National Insurance numbers

Since 6 April 2004 we no longer accept, on Employer Annual Returns, 'temporary' National Insurance numbers based on the employee's date of birth and gender (for example, TN220157M for a male born on 22 January 1957). This applies no matter which method you use to submit your Returns. In all cases you should try to obtain the National Insurance number and enter it on the P14.

If you are unable to obtain the National Insurance number you **must**:

- leave the National Insurance number box on the P14 blank, and
- enter the date of birth and gender in the appropriate boxes. (If you do not know the date of birth enter the default date of 01/01/1901 in the date of birth box.)

2 When the National Insurance number used by HM Revenue & Customs differs from the one you already hold

If the National Insurance number used by HM Revenue & Customs for an employee differs from the one you already hold, ask HM Revenue & Customs National Insurance Contributions Office to check the number for you.

You can do this by using form CA6855 available from the Employer Orderline, your Employer CD-ROM or HM Revenue & Customs office or the HM Revenue & Customs website at www.hmrc.gov.uk/employers/emp-form.htm

3 National Insurance number and identity

The National Insurance number card is a permanent, durable reminder of a person's National Insurance number but should not be accepted by anyone as proof of identity. The fact that a person has a National Insurance number does not mean that the person has the right to work or live in the UK. It is not a passport to employment. Enquiries regarding a person's right to work in the UK should be directed to the Home Office on **0845 010 6677** or www.homeoffice.gov.uk

4 How to get an employee's National Insurance number

For details on how to get an employee's National Insurance number see the Employer Helpbook E13 *Day-to-day payroll*.

When to work out NICs and PAYE

As a general rule both NICs and PAYE are operated when a payment of earnings is made to an employee.

For PAYE purposes

If the employee is **not** a director, operate PAYE on the **earlier** of:

- when you actually make the payment
- when the employee is entitled to be paid, even if the pay is not drawn until later.

If the employee is a director, operate PAYE on the **earlier** of:

- when you actually make the payment
- when the director becomes entitled to be paid
- when the payment is credited in the company accounts or records, even if
 - the director cannot draw the money straightaway because there is a block on the right to payment
 - the credit is not specifically in an account in the director's name
- when the remuneration is fixed or determined
 - if the amount for a particular accounting

period is determined before the end of that period, take the date as being when the period ends

- if the amount is determined after the period ends, take the date as being when the amount is determined.

For NICs purposes

The point of payment is that at which the earnings are placed unreservedly at the disposal of the employee. If the employee is a director, see CA44 *National Insurance for Company Directors*.

You can seek advice on what to do for PAYE and NICs purposes by phoning the Employer Helpline on **08457 143 143**.

Late notification of marginal items of pay

Occasionally, employers' payroll sections do not get to know about certain marginal items of pay, for example expenses, until some time after they have been paid. So some calculate the NICs due on these payments in a later earnings period because it is time-consuming to have to revisit the correct earnings period and recalculate the NICs due. We accept that it is sensible to allow employers to use the later earnings period to calculate the NICs due.

Similarly, we accept that on the very rare occasion when such payments are notified so late that the most convenient earnings period falls within the next tax year, it is sensible to allow employers to use the later earnings period to calculate the NICs due.

Our employer compliance officers will only ask the employer to recalculate the Class 1 NICs and allocate the payment to the correct earnings period where:

- it appears to the employer compliance officer that the employer is deferring the calculation in order to avoid or reduce NICs
- the deferred calculation has had a material effect on an individual's benefit entitlement. So employers should take particular care to ensure payments to employees earning around the Lower Earnings Limit (LEL) or to employees with variable earnings are assessed for Class 1 NICs as soon as possible.

Class 1A NICs on taxable benefits

Class 1A NICs are due on most taxable benefits in kind. Details of when liability for Class 1A NICs arises and how they are calculated, reported and paid are included in CWG5(2009) *Class 1A National Insurance contributions on benefits in kind*.

For further help and advice contact the Employer Helpline on **08457 143 143**.

You should also read CA33 *Class 1A National Insurance contributions on Car and Fuel benefits* if you provide car and fuel benefits in addition to other benefits.

How to work out NICs and PAYE for various pay intervals

The following charts will help you work out NICs and PAYE for most pay intervals. The calculators on your Employer CD-ROM will calculate tax and NICs for those intervals marked * below. If you are not sure what to do contact the Employer Helpline on **08457 143 143**. Please see Employer Helpbook E13 *Day-to-day payroll* for examples of how to calculate NICs using the exact percentage method.

Pay intervals	To work out NICs
Weekly*	<p>Earnings period is weekly Use either the appropriate weekly table or the exact percentage method to calculate NICs.</p>
Fortnightly*	<p>Earnings period is two weekly Use either the appropriate weekly table or the exact percentage method to calculate NICs. If you use the tables:</p> <ul style="list-style-type: none"> • divide the earnings on which NICs are payable by 2 • look up this figure in the appropriate weekly table • multiply the NICs shown in the table by 2. This is the amount of NICs due.
Four weekly*	<p>Earnings period is four weekly Use either the appropriate weekly table or the exact percentage method to calculate NICs. If you use the tables:</p> <ul style="list-style-type: none"> • divide the earnings on which NICs are payable by 4 • look this figure up in the appropriate weekly table • multiply the NICs shown in the table by 4. This is the amount of NICs due.
Monthly*	<p>Earnings period is monthly Use either the appropriate monthly table or the exact percentage method to calculate NICs.</p>
Quarterly	<p>Earnings period is quarterly Use either the appropriate monthly table or the exact percentage method to calculate NICs. If you use the tables:</p> <ul style="list-style-type: none"> • divide the earnings on which NICs are payable by 3 • look this figure up in the appropriate monthly table • multiply the NICs shown in the table by 3. This is the amount of NICs due.
Half-yearly	<p>Earnings period is half-yearly Use either the appropriate monthly table or the exact percentage method to calculate NICs. If you use the tables:</p> <ul style="list-style-type: none"> • divide the earnings on which NICs are payable by 6 • look this figure up in the appropriate monthly table • multiply the NICs shown in the table by 6. This is the amount of NICs due.
Yearly	<p>Earnings period is yearly Use either the appropriate monthly table or the exact percentage method to calculate NICs. If you use the tables:</p> <ul style="list-style-type: none"> • divide the earnings on which NICs are payable by 12 • look this figure up in the appropriate monthly table • multiply the NICs shown in the table by 12. This is the amount of NICs due.

Working out PAYE using Tax Tables A – The Pay Adjustment Tables

Using a code on a cumulative basis

Use the table for the tax week that includes the date of payment. If a pay day is in week 53, use the table for week 1 again on a non-cumulative basis.

Using a code on Week 1/Month 1 basis

Use the table for week 1 on each pay day.

Use the table for week 2 for the first payment after 5 April, even if the payment is made in the first week of the tax year. Use the table for week 4 for the second payment and so on up to week 52. If there is a 27th pay day in the tax year use the table for week 2 again on a non-cumulative basis.

Use the table for week 2 on each pay day.

Use the table for week 4 for the first payment after 5 April, even if the payment is made in the first, second or third week of the tax year. Use the table for week 8 for the second payment and so on up to week 52. If there is a 14th pay day in the tax year use the table for week 4 again on a non-cumulative basis.

Use the table for week 4 on each pay day.

Use the table for the month that includes the date of payment.

Use the table for month 1 on each pay day.

Use the table for month 3 for the first payment after 5 April, even if the payment is made in an earlier month. Use the table for month 6 for the second payment and so on.

Use the table for month 3 on each pay day.

Use the table for month 6 for the first payment in the tax year, and the table for month 12 for the second payment.

Use the table for month 6 on each pay day.

Use the table for month 12.

Use the table for month 12.

Pay intervals	To work out NICs
<p>Intervals of less than a week</p>	<p>Earnings period is one week Add together all the payments made in an Income Tax week and if the total goes over the weekly lower earnings limit and the earnings threshold, NICs are due. Use either the appropriate weekly table or the exact percentage method to calculate NICs.</p>
<p>Intervals of more than a week but not multiples of weeks or months</p>	<p>Earnings period is the interval the payment covers You must use the exact percentage method to work out the NICs due. To do this:</p> <ul style="list-style-type: none"> • work out the daily lower earnings limits and Upper Accrual Point by dividing the weekly limits by 7 • multiply the answers by the number of calendar days in the period which the payment covers • work out the daily earnings threshold and upper earnings limit by dividing the annual figures by 365 • multiply the answers for the earnings threshold and upper earnings limit by the number of calendar days in the period which the payment covers. <p>In all cases the resulting figures should be calculated to the nearest penny. Amounts of £0.005p or less should be disregarded.</p> <p>NICs are due on earnings in each interval if the earnings exceed the earnings threshold.</p>
<p>Employees paid once only</p>	<p>Earnings period is the length of time you employ them or one week whichever is longer Follow whichever rule above applies.</p>

Working out PAYE using Tax Tables A – The Pay Adjustment Tables

Using a code on a cumulative basis

Use the table for the tax week that includes the date of payment. If a payment is in week 53, use the table for week 52 again.

Using a code on Week 1/Month 1 basis

Use the table for week 1 for each payment.
Add to each payment any payments made earlier in the same Income Tax week when working out the tax to be deducted.

Use the table for the week that includes the date of the payment. If a payment is made in week 53, use the table for week 52, unless you are given written instructions by us.

Use the table for the week that includes the date of payment. (Where employment started after 5 April, deduct from that the number at the date of commencement.) After that, take into account the time elapsed between payments to the employee to work out the correct basis to use.

For example, if the first payment is in week 4, use the table for week 4. If the next payment is made in week 10, use the table for week 6 (10 minus 4), or

if the next payment is in week 10 but the employment started in week 6, use the table for week 4 (10 minus 6). If the next payment is made in week 16, use the table for week 6 (16 minus 10).

If you employ them for less than a week follow the rule in the first row above for intervals of less than a week.

If you employ them for more than a week use the table for the week the employment ends.

Use the table for the week the employment ends if the employment started before the start of the tax year.

If the employment started after the end of the tax year use the table for the length of the employment.

For example, if the employment starts in week 5 and ends in week 9 use the table for week 4 (9 minus 5).

Operation of PAYE and Class 1 NICs when the regular date for payment is a non-banking day

When a regular pay day falls on a non-banking day (Saturday, Sunday or Bank Holiday) and because of this payment is made on the:

- last working day before the regular pay day, or
- the next working day after the regular pay day.

For PAYE purposes the payment may be treated as having been made on the regular pay day.

For NICs purposes the payment **must** be treated as if it had been made at its regular time, if the actual and regular payment days are in the same tax year. The payment **may** also be treated as having been made at its regular time when the payment dates cross a tax year.

Example – regular pay day and actual pay day cross a tax month

Pay due on Saturday 6 June 2009 (tax month 3) but paid on Friday 5 June 2009 (tax month 2) **may** be treated for PAYE purposes as being paid on 6 June 2009. For NICs purposes the payment **must** be treated as having been paid on 6 June 2009.

Example – regular pay day and actual pay day cross a tax year

Pay due on Sunday 6 April 2008 (tax year 2008–09) but paid on Friday 4 April 2008 (tax year 2007–08) **may** be treated for both PAYE and NICs purposes as being paid on 6 April 2008.

(See page 37 for further NICs information and examples.)

Change of pay interval to a shorter interval

If the interval between the payment of an employee's earnings changes to a shorter interval, for example, monthly paid to weekly paid, take the following action.

For NICs purposes

Work out NICs from the first payment after the change based on the new earnings period. Do this even if the first weekly pay day falls within the same tax month as the previous monthly pay day.

Example

A monthly paid employee changes to being weekly paid on the first day of the month, after receiving a monthly salary the day before. The first weekly pay day is the 5th. Although this payment is in the same tax month as the monthly salary, treat it completely separately and work out NICs on the payment using a weekly earnings period.

For PAYE purposes

Work out PAYE using the weekly table on the first payment after the change if you **have not already paid** the employee in the month.

If you have already paid the employee in the month of change, use the same monthly table for the rest of that month and then use the weekly table from the beginning of the next tax month.

For both PAYE and NICs purposes use the same form P11 as before.

Change of pay interval to a longer interval

If the interval between the payment of an employee's earnings changes to a longer interval, for example, weekly paid to monthly paid, take the following action.

For NICs purposes

Work out NICs from the first payment after the change based on the new earnings period.

If you have already made a payment using the old shorter earnings period in the first of the new longer periods, the payment you have made, and NICs worked out on it, should be taken into account when working out NICs for the new period as a whole.

Example 1

A weekly paid employee changes to being monthly paid on 8 June 2009 and receives their last two weekly payments on 30 May and 6 June.

The new earnings period is a month and will coincide with the tax month which always starts on the sixth of every month. The first monthly pay day is 30 June.

Work out NICs due on the first monthly pay taking into account the earnings and NICs worked out on the payment made on 6 June.

The total NICs payable must not exceed that which would have been payable had the two payments been added together and monthly NICs worked out on the total.

Amend the form Deductions Working Sheet P11.

The weekly payment made on 30 May is not in the new earnings period and is not included in the calculation.

However, where, at the time of the change of pay interval, the employee also joins your contracted-out occupational pension scheme and is covered by your contracting-out certificate, NICs are payable at the new appropriate contracted-out rate(s) and limits on the total payments made in the new earnings period.

Example 2

Using the same dates as in *Example 1*, add the weekly earnings paid on 6 June to the monthly earnings paid 30 June and work out NICs on the total at the appropriate contracted-out rate(s), using the new monthly NICs thresholds.

Deduct the NICs previously paid on the 6th to determine the amount of NICs now due on the 30th. Amend the form P11 to reflect the changes to the NICs category letter and NICs thresholds.

In both examples, where, exceptionally, it is not practicable for you to aggregate the earnings in the first new earnings period, calculate the NICs due on payments made before and after the change separately, in the normal way. This means that, where the date of change coincides with the date on which your employee joins the company pension scheme, you should leave the weekly not contracted-out NICs unchanged and work out NICs at the contracted-out rate, using the new monthly thresholds, only on those payments made after the date of change.

For PAYE purposes

Work out PAYE using the appropriate monthly table on the first payment after the change.

For both PAYE and NICs purposes use the same form P11 as before.

Employees' pay day changed but same pay interval kept

Take the following action if you change your employees' pay day but keep the same pay interval. For example, you change from making monthly salary payments on the 15th of the month to the 1st of the month.

For PAYE purposes

To find out the correct tax week/month look up the table in Part 5 of the Employer Helpbook E13 *Day-to-day payroll*.

If the month or week number:

- follows on from the tax month or week of the previous payment, complete form P11 and operate PAYE in the normal way
- is the same as the tax month or week of the previous payment
 - treat the first 'new date' payment as an extra payment for the month or week
 - as only one amount of free pay can be given in a pay period, the free pay due is the figure used when the previous payment was made.

For pay days after the first 'new date' payment, complete form P11 and operate PAYE in the normal way.

For NICs purposes

Work out NICs using the normal earnings period on each of the pay days.

Extra payments made on a separate pay day from normal pay

Where you make extra payments (such as overtime, commission, bonuses, and so on) on a **separate** pay day from other pay, take the following action.

For NICs purposes

Treat extra payments as part of the total pay at the time they are paid, no matter when they were earned.

If you have paid an employee and then make another payment to them in the same earnings period, NICs have to be worked out again on the total payment.

Example

An employee who is normally paid on a Friday receives a payment of £120 on Tuesday 8 September 2009 and NICs have been worked out on that sum.

On Friday 11 September 2009 the employee is paid a normal weekly wage of £265 making a total of £385 paid in that week.

NICs must be re-calculated based on £385.

If the form P11 for that employee has already been completed:

- write in the extra amount of pay in column 2 and bracket the two amounts together to the left of the column
- draw a line through the figures already entered in columns 1a – 1f, so that they can still be read
- put in the right figures.

For PAYE purposes

It is important to remember that only one amount of free pay can be given (or in a K code case one amount of additional pay can be added) in any pay period.

If PAYE was operated in the normal way at the time any additional payment is made it could result in an employee receiving a tax refund and then (in effect) repaying that refund on the normal pay day.

To prevent this, there are special rules if you:

- normally pay an employee weekly or at longer regular intervals, and
- make an extra payment before the normal pay for the week, month or other pay period, and
- use the employee's code on the cumulative basis

- **for cumulative suffix codes: extra payment**
 - enter the extra payment, on form P11, in the 'pay for the week or month' column next to the week in which you pay it
 - calculate the tax in the usual way using the tables you would use for the next normal payment
 - if there is tax to be deducted, then deduct it from the payment as usual, but
 - if there is tax to be repaid
 - do not repay it when you make the extra payment (and cross out the figure in column 7 of the Deductions Working Sheet)
 - add the repayment to the total tax due (in column 6 on the Deductions Working Sheet) and use that figure as your starting point when you next pay the employee.
- **for cumulative suffix codes: main payment**
 - enter the main payment on form P11 in the 'pay for the week or month column' next to the week/month in which you pay it
 - calculate the tax in the normal way but using the same figure of 'free pay' used for the extra payment.
- **for K codes**
 - enter the extra payment in the 'pay for the week or month' column of form P11 next to the week in which you pay it
 - the 'additional pay' should be added and tax worked out on this payment, taking account of the Regulatory limit for the payment if necessary
 - when you pay the employee the normal main pay do not add the 'additional pay' for the week or month. Add the normal pay to the total taxable pay you used when the previous payment was made and enter that amount in column 5 of form P11. Work out the tax on this amount using Calculator Tables or Tables SR+B to D and complete form P11 in the normal way.
If the K code is being operated on a week 1/month 1 basis you should subtract the tax already deducted on the extra payment from the figure you have just entered in column 6a.

Payments made in week 53

Where you pay an employee weekly, fortnightly or four weekly, there will be some tax years when you have either 53 weekly pay days, 27 fortnightly pay days, or 14 four weekly pay days instead of the usual 52, 26 or 13. This extra pay day is called:

- Week 53 for weekly paid employees
- Week 54 for fortnightly paid employees, or
- Week 56 for four weekly paid employees.

When completing a form P14 for an employee who has been paid a week 53, 54, or 56 payment, in the box headed 'Payment in Week 53' enter:

- '53' if there were 53 weekly pay days in the year
- '54' if there were 27 fortnightly pay days in the year
- '56' if there were 14 four-weekly pay days in the year.

5 Week 53 and suffix codes

For employees on a Week 1 coding, simply treat the extra pay day as another Week 1 payment. For employees on a cumulative code, take the following action.

If the total free pay to date at week 52 is:

- equal to or more than the total pay for the year (that is the week 52 total plus the extra pay day amount)
 - do not deduct any PAYE from the payment to the employee
- less than the total pay for the year
 - work out how much PAYE to deduct by reference to the pay for week 53, 54 or 56 less the amount of pay adjustment (that is, free pay) shown in Tax Tables A using the table for
 - Week 1 if the employee is weekly paid
 - Week 2 if the employee is fortnightly paid
 - Week 4 if the employee is four weekly paid.

On the form P11, fill in the figure of PAYE due in column 7, add it to the figure in column 6 for week 52 and then fill in the total in column 6.

6 Week 53 and K codes

Work out how much tax to deduct by reference to the pay for week 53, 54 or 56 plus the amount of pay adjustment (that is 'additional pay') shown in Tax Tables A using the table for:

- Week 1 if the employee is weekly paid
- Week 2 if the employee is fortnightly paid
- Week 4 if the employee is four weekly paid.

On the form P11, fill in the figure of tax due in column 6a and make the appropriate entries in columns 6b to 8. Add up the figures in column 7 and enter the total tax paid in the year in the totals box below column 6 (as directed on the P11 *Deductions Working Sheet*).

Standard payments made when, or after, an employee leaves

For the purposes of this guidance, 'standard' payments mean such items as the final payment of salary or wages, holiday pay, week in hand payments, bonuses, arrears of pay and so on. It does not mean additional one-off payments such as retirement, redundancy, lump sums and so on – these payments are dealt with on page 94.

PAYE and NICs are due in the normal way on any standard payments you make to employees when they leave or after they have left. The payments should be recorded as normal on the employee's form P11.

If the payment is made in a later tax year to the one in which the employee left, make out a new form P11 for the employee and record the payments accordingly.

For PAYE purposes

If you have already given an employee a form P45 you should deduct PAYE at the basic rate (non-cumulatively) at the time you make the payment. Write code 'BR' as the amended code on form P11 and enter details of the payment and PAYE deducted.

In such cases, you should provide the employee with documentary confirmation of the payment (for example by letter, payslip or other printed/printable document) giving the following details:

- the date of the payment(s)
- the gross amount of each payment
- the amount of PAYE deducted from each payment
- confirmation that the payment is a post leaving payment.

You must not give the employee another form P45.

You do not need to notify us at the time of making the extra payment, although you must ensure that it is recorded on form P14 at the end of the tax year.

For NICs purposes

Payment made when an employee leaves

If the payment is made when the employee leaves, work out NICs using:

- the usual earnings period
- the contributions rates and limits current at the time of payment
- the usual contribution Table letter.

Payment made after an employee leaves

If the payment is made after the employee has left, that is after their contract has ended, the earnings period to use is dependent on whether the payment is:

- a final payment of salary or wage, or
- an irregular sum, such as
 - accrued holiday pay
 - an unexpected bonus
 - arrears of pay following a backdated pay award.

If the payment is the final payment of salary or wage, work out NICs using:

- the usual earnings period
- the contributions rates and limits current at the time of payment
- the usual contribution Table letter.

Example

The final salary to a monthly paid employee leaving in the middle of the month is paid at the usual time at the end of the month. Work out NICs using a monthly earnings period even though the payment is only for part of the month.

If the payment is an irregular sum, work out NICs using:

- a weekly earnings period
- the contributions rates and limits current at the time of payment
- the usual contribution Table letter.

In either situation, if the employee was in contracted-out employment and the payment is made more than six weeks after they left, work out NICs using the equivalent not contracted-out rate.

Example

If during the employment NICs were due under contribution Table letter D, use contribution Table letter A to work out NICs.

Two or more payments together

If an employee gets two or more payments together after leaving, the earnings period is dependent on what those payments are.

If all the payments are salary or wages (including one which may be a 'week in hand' payment) work out NICs on each payment separately using the usual earnings period.

If some payments are salary and others are irregular sums, add the payments together and work out NICs on the total using the usual earnings period for the payment of salary.

If all payments are irregular sums, add them together and work out NICs using a weekly earnings period.

Payments made when an employee has died

For NICs purposes

No NICs are due on the earnings of an employee who dies before payment is made.

For PAYE purposes

7 Death of employee

When you learn of the death of an employee you should:

- complete a form P45 as usual
- write 'D' in the box at the bottom of the form
- send all four parts of the form to us.

Form P45 should be sent to us:

- on the day you learn of your employee's death, or
- without unreasonable delay.

PAYE should be deducted using the employee's code, from any payments which were due to the deceased employee after the date the employee died but before you have completed form P45, if they are paid in the tax year the employee died.

PAYE should be deducted using code BR (non-cumulatively) from any payments of earnings made to the personal representative of the deceased employee after you have completed form P45. Record details of the payments on the employee's form P11.

If such payments are made in a later tax year to the one in which the employee died, deduct PAYE using code BR (non-cumulatively) and record details on a new form P11 in the name of the deceased employee.

8 Death of pensioner

When you learn of the death of a pensioner you should:

- complete a form P45 as usual
- write 'D' in the box at the bottom of the form
- send all four parts of the form to us.

Form P45 should be sent to us:

- on the day you learn of your pensioner's death, or
- without unreasonable delay.

PAYE should be deducted using the pensioner's code, from any payments which were due to the deceased pensioner, that are made either before or

after you have completed form P45, if they are made in the tax year the pensioner died. Record details of the payments on the pensioner's form P11.

If such payments are made in a later tax year to the one in which the pensioner died, and after completion of form P45, deduct PAYE using code BR (non-cumulatively) and record details on a new form P11 in the name of the deceased pensioner.

Joint wages to spouses and civil partners

Where you pay a joint wage to spouses or civil partners, you should:

- prepare separate forms P11 for each spouse or civil partner
- divide the wage between them for both PAYE and NICs purposes
- ask us to let you have individual tax codes.

Change of gender

From 4 April 2005 transsexual people can legally change their recorded gender and benefit from any rights and responsibilities associated with their acquired gender.

Where the employee presents you with a **Full** Gender Recognition Certificate you will need to take a copy of the certificate and:

- update your records to show the employee's acquired gender and the title by which they want to be known
- operate NICs and PAYE to reflect the acquired gender.

(For example, a transsexual female with a **Full** Gender Recognition Certificate will pay NICs up to the State Pension age for women, which is currently age 60.)

Do not update records or review the NICs and PAYE position of the employee where you are presented with an **Interim** Gender Recognition Certificate. It is only following the issue of the **Full** Gender Recognition Certificate that the person is accepted as having satisfied the criteria for legal recognition in their acquired gender.

More detailed guidance on how a change in gender may affect the operation of NICs and PAYE, including a list of frequently asked questions can be found at www.hmrc.gov.uk/employers/gender.htm

Mistake in the amount of NICs or PAYE deducted

9 Mistake discovered after the tax year has ended

If, after the tax year has ended, you discover that a mistake has been made in the amount of NICs or PAYE deducted and you need advice, contact the Employer Helpline by phoning **08457 143 143**.

10 Mistake discovered during the tax year

If, during the tax year, you discover that a mistake has been made in the amount of NICs or PAYE deducted, take the following action.

- Try to correct the mistake in the week or month you discover it.
- Where you have wrongly recorded the payment made in the week or month, draw a line through the wrong figure (but so it can still be read) and put in the right figure.
- Do not change any of the original figures, but instead put a mark beside them to show that a mistake has been discovered and put right at a later week.

Any overpayment of PAYE or employee's share of NICs should be refunded to the employee on the next pay day.

If an under deduction of PAYE or NICs arises:

- seek advice from us at once over any large under deduction of tax
- note the guidance below about recovering underpayments.

11 Recovering underpayments from your employees

The position on recovering underpayments from your employees is as follows.

For NICs purposes

As a general rule, you as the employer have to pay any underpayment of NICs arising from an error.

If the error was made, for example, in the current tax year you must:

- correct any wrong entry on the employee's P11 *Deduction Working Sheet* (or equivalent)
- record on form P14 *End of Year Summary*, the contributions that are actually due, not those wrongly deducted
- pay the amount actually due.

However, there are special rules which allow you to recover underpayments from your employees where the error was made in good faith.

This is done by making extra deductions from any later earnings you pay that employee. There are two conditions that apply to these recoveries.

The extra deduction you can make from any further payment of earnings can be no greater than the employee's contribution due on that further payment of earnings.

Example

An employee is due to pay primary contributions of £20 on his next payment of earnings. The maximum extra deduction that can be made is £20, making a total deduction on those earnings of £40.

The extra deduction can be made during the remainder of the tax year in which the error occurred and the whole of the following tax year.

Example

An error occurred and was made in good faith on 31 May 2008. The employer may make extra deductions from any earnings paid to the employee during the period 1 June 2008 to 5 April 2010 until the underpayment is recovered.

If at the end of the second tax year you have been unable to recover the full amount under-deducted, then you may not recover any more from the employee and you must bear the cost of the loss yourself. If the employee leaves your employment after the error occurred you must bear the cost of the loss yourself.

For further information and examples of good faith errors go to

www.hmrc.gov.uk/employers/recovery.htm

Guidance on how to amend your payroll records is available in Employer Helpbook E13(2009)

Day-to-day payroll.

For PAYE purposes

As a general rule, you as the employer have to pay any underpayment of PAYE arising from a mistake in deductions. However, a direction can be made for your employee to pay an underpayment if we are satisfied that you took reasonable care and that the underpayment arose from an error made in good faith.

12 Deliberate deduction failures

In certain circumstances where we consider an employee has received pay knowing that the employer has deliberately failed to deduct tax from the pay, a direction can be made for the employee to pay the underpayment. Where we also believe that an employee received pay knowing that the primary contributions had not been deducted or paid over, a decision can be made for the employee to pay those contributions.

Unintentional overpayment of salary/pension

If, by mistake, you pay an employee too much and are unsure how to rectify the NICs/PAYE position, contact us for advice.

Arrears of pay for closed years

Where you are obliged to pay arrears of pay to employees in respect of closed tax years (for example, where a court orders an employer to pay arrears under equal pay legislation) you should:

- proceed as below
- or, where large numbers of employees are involved you may:
- contact your Employer Compliance Office* with a view to making a special arrangement to deal with PAYE in a way that will ease matters for you.

For NICs purposes

Enter the full amount of the arrears paid on the current year P11 at the time of payment and work out NICs in the normal way.

For PAYE purposes (where the special arrangement referred to above does not apply)

You are not required to complete forms P11, P14 and P35. Allocate the arrears of pay between the tax years in which the payment should have been made and:

- calculate and deduct tax for each closed year as if the additional pay had been paid at week 53 for that year (see page 14)
- use the employee's tax code for that year. We will supply the appropriate tax codes for each of the closed years if you no longer have them.

To pay over the tax deductions you should:

- contact your local Employer Compliance Office* and explain the situation, quoting this guidance
- ask to pay the tax under an 'Employer Amendment Class 6 Settlement'.

The due date of the tax will be thirty days from the date of payment of the arrears of pay to the employees. Interest will be chargeable on late paid tax from the due date.

You must send us a list showing for each employee:

- their name
- their National Insurance number
- the pay and tax for each year.

Give each employee a letter showing the gross arrears of pay for each year and the tax deducted. Each letter should also contain the following message:

If you think that you have overpaid tax for any of the years concerned you should contact your HM Revenue & Customs office.

**To find your local Employer Compliance Office phone the Employer Helpline on 08457 143 143*

Different Employer PAYE references for separate groups of your employees

You may choose to have different Employer PAYE references for separate groups of your employees, for example, for wages and salaries or for separate branches of your organisation. To do this you make an election which:

- has to be made in writing
- can be made at any time before the beginning of the tax year, for example, election received May 2009 to take effect from 6 April 2010.

Making the election results in each Employer PAYE reference being treated separately for all PAYE/NICs purposes with separate forms P35/P14 being required. But, when you are calculating your NICs liability for recovery of Statutory Sick Pay, Statutory Maternity Pay, Statutory Adoption Pay or Statutory Paternity Pay purposes, you must add together your total gross NICs liability for all of your separate Employer PAYE references.

If you wish to make an election ask us for a form P350 *Election – Employer Annual Return* which gives further information and incorporates an election for you to complete.

Completing your Employer Annual Return

You must make a full and complete Employer Annual Return by 19 May consisting of the P14s and one P35 for each PAYE reference, either as a complete submission or in parts (providing your software allows you to file in parts).

You will avoid the penalties for late filing and for non-online filing, (if you are required to file your Return online) if you send your complete Return online by 19 May. Take care to ensure your Return is accurate and complete. There are also penalties for careless and deliberate inaccuracies.

13 Part Returns

A part can be made up of a batch of P14s or just the P35. Parts can be sent from different places and in various ways. For example a payroll bureau could send the P14s online by Electronic Data Interchange, whilst you send the P35 online over the Internet, or on paper. Whoever sends the P35 **must** indicate how many batches of P14s are being sent. It is for this reason we recommend you send the P35 last.

Each part must include a Unique Identifier that is not used on any other part that you send. Using the same Unique Identifier on different parts could cause information to be lost.

Returns that are sent in parts are held until the complete Return, including the P35 has been received. See the *Guide to filing PAYE forms online and paying electronically* at

www.hmrc.gov.uk/payeeonline/p14-p35-separately.htm or look on your Employer CD-ROM for more advice on sending your Return in parts.

14 Correcting a part Return

If you make a mistake, you can replace a part sent over the Internet or by Electronic Data Interchange as long as the replacement has the same unique identifier as the part that it replaces. A replacement part can only be sent if you have **not** received an online filing acceptance message for the whole Return (including the P35). Any changes or additions made after you have received this acceptance message must be made as an amendment.

15 Making amendments

Exceptionally, you may need to send us extra or amended information because, for example:

- you have updated your payroll information for 2008–09
- we ask you to send an amendment because we have found errors in your paper or magnetic media Returns.

We will only accept this information on a P14 and P35. We will not accept it in any other format.

You must show us only the amount of any amendment. For example, if your original P14 showed £100 too much tax, your amended P14 must show – (minus) £100. If you amend any P14s you must send an amended P35. If you only need to change the P35 details you must just send an amended P35 but again you must only show the amount of the amendment and not revised totals.

You must give your employee details of the amendment. You can give them a letter showing the amendment or a new P60 marked 'REPLACEMENT'.

16 Sending amendments

You can make amendments online either from your software, if it will allow you to, or by using the HM Revenue & Customs' Online Return and Forms – PAYE product. Alternatively you may send amendments on paper using approved stationery, but in all cases you must also send a letter to us explaining the reason for the amendment. Employers that must file online will not attract the non-filing penalty if an amendment is sent on paper. **Please do not send your amendment on the same day as your original Return.**

17 – 19 not used – reserved for future use