HM Revenue & Customs

National Insurance Contributions and Statutory Payments Toolkit

2017-18 Employers' end of year forms and record keeping for 2018-19

Published April 2018

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Introduction

Tax agents and advisers play an important role in helping their clients to get their tax forms correct. This toolkit is aimed at helping and supporting tax agents and advisers who operate payroll functions for National Insurance contributions (NICs) and statutory payments on behalf of their clients and for completing employers' end of year forms. It may also be of use to tax agents and advisors who do not operate payroll functions or complete their clients' end of year employer forms but who wish to use the toolkit as a source of reference when advising their clients on NICs and statutory payment matters. It may also be helpful to employers or anyone operating payroll functions.

It provides guidance on the NICs and statutory payments errors that commonly occur, and the steps that you can take to reduce the risk of those errors.

The content of this toolkit is based on our view of how NICs and statutory payment law should be applied. Its application to specific cases will depend on the law at the relevant time and on the precise facts.

This version of the Toolkit was published in April 2017. For further information on using this toolkit and reasonable care under our penalty system see **Tax agents toolkits**.

From 6 April 2013 most employers have been required to use the Real Time Information (RTI) system to send HMRC details about NICs and statutory payments. The details previously reported on End of Year Returns (forms P14 and P35), are now required on Full Payment Submissions (FPS) and Employer Payment Summaries (EPS). However, RTI has not replaced the need to complete forms P11D (unless an employer is registered to payroll benefits) and P11D(b).

For more information about RTI see **PAYE and payroll for employers**.

Self-employed people normally pay a fixed rate of Class 2 NICs and a separate Class 4 NIC payment based on the level of business profits. There are also occasions where individuals can pay voluntary Class 3 NICs. Class 2, Class 4 and voluntary Class 3 NICs are not covered within this toolkit.

For further guidance see **National Insurance Manual (NIM) NIM00002+**.

For guidance on matters not dealt with in this toolkit you should refer to the National Insurance Manual. For guidance on Statutory Payments you should refer to the statutory payment pages on GOV.UK:

www.gov.uk/hmrc-internal-manuals/national-insurance-manual/nim00002
www.gov.uk/government/collections/statutory-pay

Areas of risk within National Insurance contributions and statutory payments

In general, liability to pay NICs is limited to persons who fulfil prescribed conditions of residence or presence. However, there are some special rules that apply to people who are temporarily working abroad. For further guidance see **National Insurance if you go abroad**.

The toolkit does not provide guidance on the employment status of workers, which may affect the class of NICs payable. In most cases employment status is straightforward however if further information is required see **Employment status: employed or self-employed**.
The areas of risk within Class 1, Class 1A and Class 1B NICs and statutory payments fall broadly into the following categories:

Record keeping

Good record keeping is essential and accurate records will help to ensure that the correct amount of NICs is paid at the correct time.

For employers, accurate records will ensure that employers NICs paid, employees NICs deducted or statutory payments made to employees are correct. This will also help to ensure that the correct data about NICs and statutory payments are sent to HMRC by the due dates, and the correct amount of statutory payments and NICs compensation are recovered.

Where an individual has more than one employment, or is both employed and self-employed, accurate records will also help to identify whether NICs in excess of the annual maximum have been paid.

For further information on keeping records see **Keeping records for business: what you need to know** and **PAYE and payroll for employees: 4 Keeping records**.

Class 1 NICs

Class 1 NICs are earnings-related and comprise of two parts, a primary contribution payable by employees and a secondary contribution usually payable by employers. Unlike primary contributions, secondary contributions continue to be payable even where the employed earner has reached state pension age and continues in employment beyond state pension age as an employed earner.

It is important to identify the correct earnings and earnings period for NICs purposes. The earnings for NICs purposes can differ from the amount used to calculate other employment taxes. Earnings periods normally relate to the intervals that payments are made. However, there are special rules for certain employees such as company directors. For more information about directors see **CA44 National Insurance for Company Directors**.

NICs are due on directors' and employees' gross pay plus certain payments and benefits which are usually reportable on forms P11D. For more information see **Chapter 5 Pay, expenses and benefits of the CWG2 Employer Further Guide to PAYE and NICs**.

Dividends are not normally included as earnings for NICs purposes. However, this can be a complex area as there are circumstances when arrangements that provide shares and dividend payments to directors and employees from the employment will be liable for NICs.

Employment Allowance

The Employment allowance is an allowance of up to £3,000 set against an employer's secondary Class 1 NICs liability every year. It is available to eligible businesses, charities and Community Amateur Sports Clubs.

For further information see the guidance on **Employment Allowance**.

Employer NICs holiday - scheme now ended

New businesses in qualifying regions starting up during the period 22 June 2010 to 5 September 2013, who met certain conditions, may have qualified for a NICs holiday of up to £50,000. Although the period covered by the scheme has now ended a business can still make a claim.

All employer NICs due on earnings for periods after 5 September 2013 are payable to HMRC in full and without deduction in respect of this scheme

For further information see **Regional employer NICs holiday**.

Class 1A and Class 1B NICs

Class 1A NICs are calculated as a percentage on the cash equivalent of certain expenses and benefits provided. Class 1A NICs are not payable where the expenses or benefits are not chargeable to tax or where the employment is lower paid employment as a minister of religion.

For further information on the NIC treatment of common expenses and benefits see:

- **Appendix 1 of CWG5 Class 1A NICs on benefits in kind (2015)** or **CWG5 (2016)**
- **CA33 Class 1A NICs on Car and Fuel benefits (2015)** or **CA33 (2016)**

Class 1B NICs are calculated as a fixed percentage of the total value of the items in a PAYE Settlement Agreement (PSA) and is payable at the same time as any tax due. A PSA is a flexible scheme for expenses and benefits of a minor or irregular nature or where it is impractical to operate PAYE and NICs. NICs are also payable on the tax liability that is also being met for the employee as part of the overall calculation.

For further information on PSAs see **PAYE Settlement Agreements**.

Employees under the age of 21

Abolition of National Insurance contributions for under 21s - From 6 April 2015 employers are no longer required to pay Class 1 secondary National Insurance contributions on earnings paid up to the Upper Secondary Threshold (UST) for any employee under the age of 21. Normal Class 1 secondary National Insurance contributions are paid once payments exceed the UST. Class 1 primary contributions for employees are not affected.

Apprentices under the age of 25

Zero rate of secondary NICs for relevant apprentices under the age of 25 – From 6 April 2016 employers can benefit from a zero rate of Class 1 secondary National Insurance contributions on earnings paid up to the Apprentice Upper Secondary Threshold (AUST) for any apprentice who is following an approved apprenticeship and is under the age of 25. Normal Class 1 secondary National Insurance contributions are paid once payments exceed the AUST. Class 1 primary contributions for employees are not affected.

For further information on the zero rate of secondary NICs for relevant apprentices under the age of 25 see **Employer National Insurance contributions for apprentices under 25**.

Statutory payments

There are several statutory payments an employer can make which are Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Statutory Adoption Pay (SAP), Statutory Paternity Pay (SPP) and Statutory Shared Parental Pay (ShPP). If the conditions to make the relevant payment have not been met or the payment is for the wrong period of time, errors can arise. If a statutory payment is entered into the incorrect column on the relevant forms, such as entering SAP instead of SMP or vice versa this can create an error. Errors can also arise if the amount recoverable by the employer for the particular statutory payment is not correctly established.

Using links within this document

Blue underlined text are links within this document.

Green bold text are hyperlinks to external documents on the internet (access to the internet is necessary to view these).

We have a range of services for people with disabilities, including guidance in Braille, audio and large print. Most of our forms are also available in large print. Please contact any of our helplines if you need these services.

Dealing with HMRC if you have additional needs

Giving HMRC feedback on toolkits

HMRC would like to hear about your experience of using the toolkits to help develop and prioritise future changes and improvements. HMRC is also interested in your views of any recent interactions you may have had with the department.

Send HMRC your feedback

Client Name:	Period Ended:

Checklist for National Insurance contributions and statutory payments

	Yes	No	N/A	N/K

General

1 Has the appropriate class and rate of NICs been operated

☐ ☐ ☐ ☐

2 Has the correct National Insurance number been provided?

☐ ☐ ☐ ☐

Class 1 NICs

3 Have Class 1 NICs for directors been calculated using the annual or pro-rata annual earnings period?

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4 Have all relevant earnings of the directors been identified for Class 1 NICs purposes?

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5 Has the correct earnings period for calculating employees Class 1 NICs been used?

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6 Have any personal bills incurred by directors or employees and paid by the employer been included as earnings for NIC purposes appropriately?

☐ ☐ ☐ ☐

Class 1 NICs continued

7 If a director or employee has more than one employment either with the same employer or with two or more employers carrying on business in association with each other, have their earnings been aggregated for NIC purposes?

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8 If payment of an employee's primary contributions has been deferred has the employer received the appropriate authorisation?

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9 Have NICs been operated on any released or written off employment related loans made to directors or employees?

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10 Have all relevant tips, gratuities or service charges been appropriately included as earnings for the purposes of calculating Class 1 NICs liability?

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11 If NICs have not been operated on payments to harvest workers have all necessary conditions been satisfied?

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12 Have Class 1 NICs been correctly calculated for employees leaving the employment?

☐ ☐ ☐ ☐

Class 1A and Class 1B NICs

13 Have Class 1A NICs been calculated and paid on all expenses and benefits provided to directors or employees appropriately?

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14 Have Class 1A NICs been applied to any beneficial loans made to directors or employees appropriately?

☐ ☐ ☐ ☐

15 Has the Roll-over Relief claimed been restricted where all of the disposal proceeds have not been reinvested in new qualifying assets?

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Statutory payments

16 Have all of the qualifying conditions been met for any statutory payments made?

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17 Has the correct amount of statutory payments been recovered from HMRC?

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18 Have the correct dates and rates been used when calculating Statutory Maternity Pay?

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19 When an employee is off work with a pregnancy related illness has her Statutory Maternity Pay and leave started at the correct time?

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Statistical payments continued

20 Has any recovery from HMRC been correctly calculated when the business operates an Occupational Maternity Pay scheme?

	☐	☐	☐	☐

21 Has any pay increase been taken into account when calculating the employees average weekly earnings?

	☐	☐	☐	☐

22 Have directors' earnings been treated correctly for the purposes of calculating their average weekly earnings for statutory payment purposes?

	☐	☐	☐	☐

Explanation and mitigation of risks

General

1. Has the appropriate class and rate of NICs been operated?

Risk
There are a number of different classes of NICs each calculated and collected differently. Each class has its own rules that can affect an individual's entitlement to State Pension and certain state benefits. There are also rules that affect the rate of NICs due. See explanation below for further information on the main classes of NICs and the basic rules.

For example, employees over the age of sixteen and who have not reached State Pension age (SPA) pay primary Class 1 NICs on their earnings and their employer pays secondary Class 1 NICs. On reaching SPA, employees no longer pay primary Class 1 NICs, although their employer must continue to pay secondary Class 1 NICs.

Mitigation
Ensure that the correct class of NICs is paid by those liable for NICs. Ensure only the appropriate contributions have been paid for employees over State Pension age.

Explanation
The class of NICs an individual pays can affect their entitlement to state benefits. There are a number of special cases for NICs purposes, for example aircrew, mariners, workers going to or coming from abroad, women married before 6 April 1977 who have elected to pay a reduced rate etc. For further guidance on special cases for NICs see **NIM27000CO+**.

See the table below for the main classes of NICs, how they are calculated and collected.

NIC type	**Who pays it?**	**Basic Explanation**
Class 1 primary contributions	Employees earning over the Primary Threshold (PT)	Deducted at source by employer from the employee's earnings and paid to HMRC - see **NIM01001+**.
Class 1 secondary contributions	Employers, on earnings of employees who earn over the Secondary Threshold (ST)	Employers pay secondary contributions for all employees earning above the ST - see **NIM01001+**.
Class 1A contributions	Employers	Payable by employers on benefits in kind given to employees - see **NIM13001+**.
Class 1B contributions	Employers	Payable by employers on the total value of items included in a Pay As You Earn Settlement Agreement (PSA) - see **NIM18010+**.
Class 2 contributions	Self-employed	Payable at a flat rate by self-employed earners with profits above, from 6 April 2015, the Small Profits Threshold - see **NIM70001+**.
Class 3 contributions	Voluntary contributions paid by the individual	Payable at a flat rate by those who have not paid enough NICs to qualify for certain benefits, subject to certain conditions - see **NIM25001+**.

Class 4 contributions	Self-employed	Based on the profits included on the Self Assessment Tax Return and paid in addition to Class 2 contributions - see **NIM24001+**.

For further information see **National Insurance**.

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2. Has the correct National Insurance number been provided?

Risk
It is important to establish the correct National Insurance (NI) number. Not having a NI number or using an incorrect number could result in NICs not reaching the correct NI account. If contributions are not credited to the correct NI account the individual contributor may lose their entitlement to certain state benefits.

For example computerised payroll systems may automatically allocate a pseudo NI number when the actual NI number is not entered. If the pseudo NI number is used in the employer's RTI returns, the employee's NI account may not be credited with the correct amount of contributions paid.

Mitigation
Confirm that all NI numbers are correct by ensuring these have been checked against appropriate documents, for example forms P45, National Insurance cards etc. Where pseudo NI numbers have been allocated ensure the correct NI numbers are reported on all relevant returns to HMRC.

Employers may ask HMRC to trace a NI number by submitting a NINO Verification Request via the employer's payroll software. See **Using Basic PAYE Tools with other software: check a National Insurance number**.

If an individual does not have a NI number see **Applying for a National Insurance number**.

For further information see **Tell HMRC about a new employee**.

Explanation
A NI number is a unique reference number used by HMRC and the Department for Work and Pensions to identify an individual's National Insurance 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 by the individual, the correct amount can be paid. The NI number remains the same throughout an individual's life and will never be allocated to anyone else. It consists of two letters, followed by six numbers, followed by one letter, A, B, C or D. No other format is acceptable.

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Class 1 NICs

3. Have Class 1 NICs for directors been calculated using the annual or pro-rata annual earnings period?

Risk
The earnings period for directors, unlike other employees, is normally the year in which the earnings are paid, an annual earnings period, which means the Lower and Upper Earnings Limits and Primary and Secondary Thresholds apply on an annual basis. For directors who receive a regular monthly salary the employer can pay earnings-related contributions on account using the same earnings periods as for other employees. However there must be a calculation made at the end of the year using the annual earnings period that includes all salary,

bonuses, fees, personal bills paid by the company, payments by way of gains from securities or options over securities, etc. The calculation will determine the correct amount of employee's Class 1 NICs the director was liable to pay that year and the director's contributions paid to date should then be adjusted accordingly (see example).

If the director was appointed part way through a tax year, use a pro-rata annual earnings period. The pro-rata earnings period is the number of weeks left in the tax year from and including the week of appointment.

Mitigation
Ensure an annual or pro-rata annual earnings period has been used to calculate NICs on all directors' earnings including salaries, bonuses, fees etc.

HMRC has published a calculator for Director's NICs, see **How to manually check your payroll calculations**.

For further guidance on Class 1 NICs for directors see **NIM12000+**.

A person who is a director at the start of a tax year or ceases to be a director during the tax year has an annual earnings period for that tax year.

For further guidance see **NIM12022** and **Booklet CA44 National Insurance for Company Directors (2015)** or **Booklet CA44 (2016)**.

Non-resident directors may be specifically exempt from liability to Class 1 NICs on earnings received for further guidance see **NIM12013**.

Example
In the 2017-18 tax year Director A receives a monthly salary of £1,160. An annual earnings period applies but as he is paid monthly, a monthly earnings period can be used to calculate NICs on a regular basis during the tax year as follows:

The relevant thresholds are:

Monthly Lower Earnings Limit (LEL)	£490
Monthly Secondary Threshold (ST)	£680
Monthly Primary Threshold (PT)	£680
Monthly Upper Earnings Limit (UEL)	£3,750

Month 1

Earnings	Class 1 primary NICs	Class 1 secondary NICs	Monthly total
£1,160	£57.60	£66.24	£123.84

Month 11 cumulative totals

Earnings	Class 1 primary NICs	Class 1 secondary NICs	Cumulative total
£12,760	£633.60	£728.64	£1,362.24

In month 12 a bonus of £10,000 was voted to the director and included in the final payment of earnings in the tax year. The director was paid £11,160 in month 12. The NICs should be reassessed by reference to an annual basis and the final remittance adjusted accordingly.

Month 12

Director

Annual LEL £5,876

Annual PT £8,164

Annual UEL £45,000

Total payment £23,920 - £8,164 = £15,756 × 12% = £1,890.72

Company

Annual LEL £5,876
Annual ST £8,164

Total payment £23,920 - £8,164 = £15,756 × 13.8% = £2,174.33

The month 12 (final) FPS entries will then read:

Data Item	Description	Payroll ID 1
79a	Gross earnings for NICs year to date	£23,920
79b	Gross earnings for NICs pay period	£11,160
82	Earnings at the LEL year to date	£5,876
82a	Earnings at LEL to PT year to date	£2,288
84	Earnings from PT to UEL year to date	£15,756
86A	Employer NI this pay period	£1,445.69
86Aa	Employer NI year to date	£2,174.33
86B	Employee NI this pay period	£1,257.12
86Ba	Employee NI year to date	£1,890.72

Total employee and employer NI of £4,065.05 due in month 12 following an annual reconciliation, less month 11 cumulative totals already paid of £1,362.24 leaves a balance of £2,702.81 to pay.

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4. Have all relevant earnings of the directors been identified for Class 1 NICs purposes?

Risk
Directors' fees and bonuses should be included as earnings in addition to their regular salary. NICs are payable at the rate relevant to the tax year in which the bonuses are voted.

Directors may also have a loan or current account which they use for items that may not be readily identified as earnings such as loan account withdrawals in anticipation of earnings. It is always a question of fact based on all of the evidence available whether a withdrawal is a loan, earnings or a payment on account of earnings. Where the withdrawal is in anticipation of an earnings payment NICs are applicable when the withdrawal is made.

Dividends are paid to directors as shareholders and are therefore not normally earnings for NICs purposes.

Mitigation
Identify all directors' earnings for NIC purposes including salary, fees, bonuses, etc. Consider whether loan account withdrawals are loans, earnings or anticipated earnings for NICs purposes. Ensure the annual earnings period has been applied to all relevant earnings, for details of the calculation see Q3.

For further guidance on identifying whether loan account withdrawals are loans or earnings see **NIM12018**.

For further information on common errors in Directors Loan Accounts see **Directors' Loan Accounts Toolkit**.

Explanation
If a director has a loan or current account with the company to use for such things as remuneration, personal expenditure or to withdraw cash from the company, Class 1 NICs are:

- due when the fees or bonuses are voted and the account credited
- not due when the director draws his own money and the account remains in credit

When an account is overdrawn or there is an increase in the amount overdrawn, Class 1 NICs are:

- due if the withdrawal is made in anticipation of fees or bonuses when the withdrawal was made
- not due on the overdrawn amount if the withdrawal is made on the anticipation of an introduction of funds such as dividends, matured insurance policy or other personal income

There could be liability to Class 1A NICs if a beneficial loan is provided see **CWG5 Class 1A NICs on benefits in kind (2015)** or **CWG5 (2016)**.

For further guidance see

- **NIM12014**
- **booklet CA44 National Insurance for Company Directors (2015)** or **CA44 (2016)**
- **NIM12021**
- **National Insurance Calculator - Directors Annual Earning Period (2016-17)**

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5. Has the correct earnings period for calculating employees Class 1 NICs been used?

Risk
Class 1 NICs are calculated on a payment by payment basis, unlike PAYE tax which is calculated on a cumulative basis. The amount of NICs payable will depend on the earnings paid in each period, normally weekly or monthly. If Class 1 NICs are not calculated correctly the employer may pay or deduct the incorrect amount of NICs which can affect the employee's entitlement to State Pension and certain state benefits.

The most common earnings periods are weekly and monthly. However when an employee commences employment, or if they receive irregular payments, the calculation of NICs can be more complex (see explanation below).

Mitigation
Consider what pay intervals exist within the employment and ensure NICs are calculated on each earnings period accordingly.

Explanation
If earnings are paid at irregular intervals, the earnings period is determined by the interval between each payment. For example if the interval between one particular payment and the next is ten days, the earnings period is ten days.

To arrive at the Lower and Upper Earnings Limits the employer should divide each weekly limit by seven and multiply the results by the number of days (Sundays included) in the period. To arrive at the Primary and Secondary Threshold the employer should divide the yearly figure by 365 and multiply the result by the number of days in the period. Contributions are then payable, or treated as payable, on the earnings in each interval if they exceed the appropriate Lower Earnings Limit (LEL)/Primary and Secondary Threshold (PT/ST).

For further guidance see **NIM08020+** and **paragraph 64 of CWG2 Chapter 3 National Insurance only procedures (2015)** or **CWG2 (2016)**.

Where there are various pay arrangements, it is necessary to assign each employee an earnings period in relation to each employment held to assess the NIC liability.

For further guidance see **NIM08100**, **NIM01000** and **page 7+ of CWG2 Chapter 1 general procedures (2015)** or **page 5+ of CWG2 Chapter 1 general procedures (2016)**.

There are special rules for calculating NICs for company directors, see Q3, **NIM12000** and **booklet CA44 National Insurance for Company Directors (2015)** or **CA44 (2016)**.

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6. Have any personal bills incurred by directors or employees and paid by the employer been included as earnings for NICs purposes appropriately?

Risk
Personal bills incurred by a director or employee, for example personal credit card or utility bills, that are paid by the employer, will normally be liable for NICs. The treatment depends on who the contract is with and how and to whom the employer makes the payment. This area can be complex, for example where there is both business and personal elements. If the correct treatment is not established NICs and any appropriate employment tax may be incorrect, see explanation below.

Mitigation
Identify the correct treatment, as detailed below, and ensure the relevant employment taxes are operated or appropriate forms returned.

Where:

- a contract is between the employer and supplier, report the amount on form P11D (or on an FPS (Full Payment Submission) if the employer is registered to payroll benefits and expenses and apply Class1A NICs
- a contract is between the director or employee and supplier but the employer pays the supplier, report the amount on form P11D (or on an FPS if the employer is registered to payroll benefits and expenses) and operate Class 1 NICs
- a contract is between the director or employee and supplier but the employer reimburses the employee, treat as earnings and operate PAYE and Class 1 NICs

For further guidance on expenses and allowances for NICs purposes see **NIM05000+**.

For further guidance on Class 1A NICs see **NIM13000+**.

For further information on common errors in expenses and benefits see **Expenses and Benefits from Employment Toolkit**.

Explanation
For expenses that are partly for business and partly personal and the employer is unable to determine how much of the payment is business-related, for example where there is a mixed purpose, Class 1 NICs are due on the entire payment and the amount paid by the employer should be added to the earnings for NICs purposes in the period in which the payment was made. The full amount of the payment should also be subject to PAYE or reported on form P11D as appropriate.

A payment must be 'remuneration or profit derived from an employment' in order to be considered earnings for the purposes of NICs, and the earnings must be paid to or for the benefit of the employee and must exceed a particular level (the earnings threshold).

For further guidance on Class 1 NICs expenses and allowances see **NIM05000+** and **CWG2 Chapter 5 Pay, expenses and benefits (2015)** or **CWG2 (2016)**.

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7. If a director or employee has more than one employment either with the same employer or with two or more employers carrying on business in association with each other, have their earnings been aggregated for NIC purposes?

Risk
Generally when someone has more than one employment, NICs are calculated separately on the earnings from each employment. The exceptions to this are:

- where there is more than one employment with the same employer
- where an employee has different employments with different employers who are carrying on business in association with each other

Where either of the above exceptions apply earnings should be aggregated for NICs purposes.

Mitigation
Consider whether a director or employee has more than one employment with the same employer or associated businesses. Ensure that any relevant earnings have been aggregated for NICs purposes.

Where an employee has more than one employment resulting in NICs exceeding the annual maximum the employee can apply for a deferment of NICs. Applications should be made using form CA72A as soon as possible before the start of the tax year although applications will be accepted during the relevant tax year (until 14 February). For further information and the application form see **CA72A - Application for deferment of payment of Class 1 National Insurance contributions (NICs)**.

For further guidance see **NIM01180+**.

Explanation
An employee with two separate jobs such as a cleaner and a messenger with the same employer must have their earnings added together and NICs calculated on the total unless it is not reasonably practicable to do so. There is no definition of the phrase ‘not reasonably practicable' in NICs legislation. For further guidance see **NIM10009**.

Employers are considered to be carrying on a business in association, for example if they share staff, premises and equipment and if their respective businesses serve a common purpose; this can include foreign employers. The test applied is not the same as grouped or associated companies for tax purposes.

For further guidance see **NIM10010** and **NIM10058**.

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8. If payment of any employee's primary contributions has been deferred has the employer received the appropriate authorisation?

Risk
Employees with more than one employment who anticipate earning in excess of the annual maximum in one employment can apply to defer some of their primary contributions in the other employment. If an application is allowed, form CA2700 is sent to the employer(s) concerned authorising them to deduct primary contributions at a rate of 2 per cent on all earnings above the Primary Threshold. A new application for deferment is required annually.

Employers should operate primary contributions at the normal rate unless a form CA2700 has been received for the current year. If employee's primary contributions have already been deducted at the normal rate for the period of deferment these should be recalculated and the difference between the NICs paid and the amount due refunded to the employee.

Any deferment will not affect the employer's secondary contributions which should be operated at the applicable standard rate.

Mitigation
Ensure that a valid form CA2700 is held where any employee's primary contributions have been deferred.

For further information on deferment of the payment of employee's contributions see **CWG2 Chapter 3 Employer Further Guide to PAYE and NICs (2015)** or **CWG2 (2016)**.
For examples of calculating the annual maximum for individuals with differing employment patterns see **NIM01171**.

Explanation
Where an employee has **more than one employment** and expects to earn more than the Upper Earnings Limit (UEL) in one of them the employee can apply for deferment of NICs in the other(s). Applications should be made using form CA72A as soon as possible before the start of the tax year although applications will be accepted during the relevant tax year (until 14 February).
For further information and the application form see **CA72A - Application for deferment of payment of Class 1 National Insurance contributions (NICs)**.

When an individual has income from **employment and self-employment** resulting in NICs in excess of the annual maximum the employee can no longer apply for a deferment of Self Employed NICs. Deferment of Class 2 and Class 4 NICs was abolished by the National

Insurance Act 2015. Their correct self-employed NICs liability will be assessed when they file their self-assessment return.

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9. Have NICs been operated on any released or written off employment related loans made to directors or employees?

Risk
When an employment related loan, or any part of it, does not have to be repaid by a director or employee this may be earnings for NIC purposes. It does not matter what the loan was for or whether it was a cheap or interest free loan, the amount waived or written off should normally be treated as earnings. Any amounts written off after a director or employee has ceased employment will still be treated as their earnings.

Mitigation
Consider whether any loans etc have been released or written off and the reason for doing so. Ensure Class 1 NICs have been applied to the amount released or written off and consider whether the sums involved are also earnings for employment tax purposes. Whether the sums have been treated as earnings for tax purposes or whether S415 Income Tax (Trading and Other Income) Act 2005 imposes a charge on the director/participator as dividend income, Class 1 NICs should be applied. For information about the income tax position see **EIM21746**.

For further guidance on the NICs treatment of any loans released or written off see **NIM02210** and **NIM12020**.

Where the director is not a participator the treatment can be complex, a charge to tax will arise under S62 Income Tax (Earnings and Pensions) Act 2003 as earnings or S188 Income Tax (Earnings and Pensions) Act 2003.

For further guidance see **Employment Income Manual (EIM) EIM01490**, **EIM26116** and **EIM21740+**.

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10. Have all relevant tips, gratuities or service charges been appropriately included as earnings for the purposes of calculating Class 1 NICs liability?

Risk
The treatment for NICs purposes will depend on the specific arrangements regarding the distribution of tips, gratuities or service charges operated by individual employers. In general tax and NICs should be deducted from tips, gratuities or service charges shared out by an employer; this includes such payments made by credit or debit card.

Mitigation
Establish how tips, gratuities or service charges are distributed and by whom. For service charges or where there is any involvement by the employer in distributing tips or gratuities, for example credit card tips, ensure tax and NIC has been operated appropriately.

Explanation
Where an employee receives payments of tips or gratuities direct from a customer and the employer is not involved in making the payments, there will be no tax or NIC liability for the employer and it is up to the employee to return the tips or gratuities on their Self Assessment tax return.

Where an employer passes tips, gratuities or service charges to an employee these are earnings from the employment that are liable for Class 1 NICs.

Payments of tips and gratuities do not attract NICs if the following apply:

- a troncmaster allocates money that originally was not paid to the employer and the employer does not pay the money directly or indirectly to their employees
- the employer does not determine, directly or indirectly, the allocation of those tips It should be noted that the troncmaster is liable to operate PAYE as appropriate

For further information on tips, gratuities, service charges and troncs see **Running payroll**.

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11. If NICs have not been operated on payments to harvest workers have all necessary conditions been satisfied?

Risk
Special rules apply to certain casual workers engaged in harvesting outdoor crops. Where all of the conditions are satisfied the farmer is relieved of responsibility for operating NICs in respect of irregular harvest workers. Whether the basis of employment can be regarded as irregular will be a matter of fact.

The special rules will not apply to any other agricultural workers including casuals employed on a regular basis, members of the farmer's family, if the individual's identity is known or where the necessary conditions are not satisfied.

Mitigation
Where NICs have not been operated on payments to harvest workers consider whether all of the necessary conditions below have been met. Where the conditions are not met ensure NICs are operated on all relevant payments and included on the appropriate returns.

Explanation
Farmers are relieved of responsibility to operate NICs where all the necessary conditions are met:

- the casual's identity is not known
- the casual worker is engaged on an irregular basis
- the work is outdoors harvesting perishable crops
- the casual worker is paid off at the end of each engagement, for example at the end of the day and has no contract for further employment

An irregular earnings period will not apply to regular casuals who are normally employed to undertake specific tasks at various times during the year, including harvesting. This includes regular casuals who are engaged on a regular basis even though they may be paid on a daily basis.

For further guidance see **NIM09910** and **paragraph 112 of CWG2 Chapter 4 Special types of employee (2015)** or **CWG2 (2016)** and **Paying harvest casuals and casual beaters**.

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12. Have Class 1 NICs been correctly calculated for employees leaving the employment?

Risk
When an employee leaves an employment they may receive a package of pay and benefits. This package may be made up of a number of components or items. Some of these components such as unpaid salary or holiday pay may be taxable and liable to NICs as earnings. However redundancy payments for employees are not liable for NICs.

Mitigation
Consider the different components that make up any final salary payments to employees including any statutory payments; see the explanation below. Ensure the appropriate tax and NICs rules have been applied to each component in particular where the treatment for tax and NICs differ.

It is possible that there will be some instances where the redundancy payment exceeds £30,000 and the excess is treated as taxable. For NICs purposes any genuine redundancy payment will be free from liability and this will apply to the whole sum and not just to the £30,000 which would not be taxable. This is one instance where the tax and NICs treatment of a payment would differ.

Also check that the correct NI category letter and earnings period has been applied to payments included in gross pay which are paid after an employee leaves an employment.

For further guidance see **NIM02580+** and **Standard payments made when, or after, an employee leave in Chapter 1 of the CWG2 'Employer Further Guide to PAYE and NICs**.

Explanation
Redundancy payments are payments which are made when an employee's contract terminates by reason of redundancy. This is different to the situation when the employee has been dismissed for other reasons. See **NIM02590** regarding the definition of 'redundancy'. See also **NIM02600** for information regarding statutory and non-statutory redundancy payments.
To check the correct tax and NICs treatment on common irregular payments made when an employee leaves see **paragraphs 148 - 150 of CWG2 Chapter 5 Pay, expenses and benefits (2015) or CWG2 (2016)**.

If a regular or irregular payment is made and the employee was in a contracted-out employment and the payment was made more than six weeks after they left, the equivalent not contracted out rate of NICs should be used.

For further information see **CWG2 Chapter 3 National Insurance only procedures (2015)** or **CWG2 (2016)**.

Example
A monthly paid employee leaves on 20 June and receives their final salary on 30 June. The following payday (31 July) the former employee receives £450 for accrued holidays not taken and overtime. NICs should be calculated on the £450 accrued holiday pay using a weekly earnings period and applying the appropriate NICs rates and weekly limits.

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Class 1A and Class 1B NICs

13. Have Class 1A NICs been calculated and paid on all expenses and benefits provided to directors or employees appropriately?

Risk
Expenses and benefits provided to a director, employee or a member of their family or household, that are included on a form P11D (or on an FPS if the employer is registered to payroll benefits and expenses), are broadly liable to Class 1A NICs.

Class 1A NICs are payable by the employer only where the benefit provided is chargeable to income tax. This normally applies for directors and employees and is normally reported on a form P11D (or on an FPS if the employer is registered to payroll benefits and expenses)

Mitigation
Consider any benefits provided to directors and employees and returned on a form P11D (or on an FPS if the employer is registered to payroll benefits and expenses). Ensure Class 1A NICs are calculated on all relevant benefits and form **P11D(b)** has been completed showing the total amount of Class 1A NICs due.

For further guidance see **NIM13001+**, **EIM21241** and **CWG5 Class 1A NICs on benefits in kind (2015)** or **CWG5 (2016)**.

There are specific rules for car and fuel benefits see **CA33 Class 1A NICs on Car and Fuel benefits (2015)** or **CA33 (2016)**.

To calculate the cash equivalent for cars and fuel see **Company car and car fuel benefit calculator**.

Class 1 and Class 1A NICs will never be due on the same benefit and a chart showing common benefits and which Class of NIC is due is available at **Appendix 1 of CWG5 Class 1A NICs on benefits in kind (2015) or CWG5 (2016)**.

Explanation
The conditions for liability to Class 1A NICs are:

- the benefit must be from, or by reason of, an employee's employment and must be chargeable under Income Tax (Earnings and Pensions) Act 2003 on an amount of general earnings as defined at **S7(3) Income Tax (Earnings and Pensions) Act 2003**
- the employment must be 'employed earners' employment' under Social Security law and employment as a director or an employee, but not lower paid employment as a minister of religion
- the benefit must not already attract Class 1 NICs liability

Certain expenses and benefits may be exempt from NICs. Class 1A NICs do not have to be paid on benefits which are:

- exempt from Income Tax S10(1)(a) Social Security Contributions and Benefits Act 1992
- exempt from Class 1A NICs part 3 Social Security Contributions and Benefits Act 1992
- covered by a dispensation S65 and S96 Income Tax (Earnings and Pensions) Act 2003
- covered by an extra statutory concession published by HMRC
- included in a PAYE Settlement Agreement S10(6) Social Security Contributions and Benefits Act 1992
- provided for business use (private use is allowed where it is not significant) S316 Income Tax (Earning and Pensions) Act 2003
- already liable for Class 1 NICs S10(1)(c) Social Security Contributions and Benefits Act 1992
- exempt from Class 1 NICs

For further information see **booklet 480 Expenses and benefits 'A tax guide' (2015)** or **booklet 480 (2016)** and **part 2 of CWG5 Class 1A NICs on benefits in kind (2015)** or **CWG5 (2016)**.

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14. Have Class 1A NICs been applied to any beneficial loans made to directors or employees appropriately?

Risk
If a director or employee receives a cheap or interest free loan related to their employment, a benefit is usually chargeable on the difference between the official rate of interest and any

interest paid. Class 1A NICs are then payable on the value of the benefit reported for tax on P11D.

Beneficial loans often arise when directors' loan accounts are overdrawn. However the benefit is not chargeable if the total balance outstanding on all loans made to each director or employee does not exceed £10,000 at **any point** during the tax year. Prior to 6 April 2014 the total balance outstanding was £5,000 for each particular tax year.

Employment related loans also include any loans from an Employee Benefit Trust set up by the employer.

Mitigation
Ensure Class 1A NICs have been applied appropriately to the chargeable benefit of any beneficial loans entered on a form P11D.

For further guidance on the NIC treatment of loans see **NIM16671+**.

Explanation
Employment related loans include those made by:

- the employer or prospective employer
- a company or partnership that controls, is under the same control as or is controlled by the employer
- a person having a material interest in a close company or in another company or partnership controlling that close company and the employee's employer

A cheap loan is where the rate of interest charged is less than the official rate prescribed by the Treasury Statutory Instruments.

For further guidance on how to calculate NICs on beneficial loans see **NIM16681+**.

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15. If there is a PAYE Settlement Agreement have Class 1B NICs been calculated and paid appropriately?

Risk
Class 1B NICs are payable at a fixed percentage rate on the total value of expenses and benefits whenever an employer enters into a PAYE Settlement Agreement (PSA). Class 1B NICs are payable on the total value of all items covered by the PSA which would give rise to a Class 1 or Class 1A liability and on the total amount of tax payable by the employer under the PSA.

Employers' Class 1B NICs apply to PSAs instead of Class 1 or Class 1A NICs.

Mitigation
Where there is a PSA ensure Class 1B NICs, on the value of the items covered in the PSA and the tax payable by the employer under the PSA, are calculated correctly and complete a **Form PSA1 PAYE Settlement Agreement Calculation**.

For further guidance see **NIM18060**.

Explanation
A PSA allows an employer to settle the tax and NICs due on certain expenses and benefits covered by the agreement with one single payment. For expenses or benefits to be covered by a PSA they have to be of a minor or irregular nature or where it is impracticable to operate PAYE on the expenses or benefits provided.

For further information see **PAYE Settlement Agreements (PSAs)**.

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Statutory payments

16. Have all of the qualifying conditions been met for any statutory payment made?

Risk
Providing the necessary conditions are met, employers are liable to make payments of Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP) Statutory Adoption Pay (SAP), Statutory Paternity Pay (SPP) and Statutory Shared Parental Pay (ShPP). There are several factors that have to be taken into account such as, has the employee earned enough, given sufficient notice or given the employer the correct evidence. Calculating statutory payments can be complex and if the qualifying conditions are not met statutory payments may be incorrectly paid out to the employee and/or reclaimed from HMRC by the employer.

Mitigation
Ensure that that all qualifying conditions have been met for any statutory payments made, see explanation below.

Explanation
To qualify for **SSP** an employee must have done some work under the employment contract before going off sick, be incapable of work for at least four consecutive days, have notified their employer of their sickness and their average weekly earnings in the relevant period must be at least the Lowers Earning Limit (LEL).

For further information on SSP eligibility and rates see **SSP employer guide**.

For **SMP** an employee must be employed by the same employer in the 26 weeks going into the Qualifying Week (QW), must still be pregnant, or have had her baby, at the start of the 11th week before the week the baby is due, have average weekly earnings for the relevant period which are not less than the lower earnings limit and normally give at least 28 days notice of the date they wish their Maternity Pay Period to start.

For further information on SMP eligibility and rates see **SMP employer guide**.

Before an employer can start to pay **SAP**, an employee must be continuously in employment for a period of 26 weeks before the matching week. A copy of the matching certificate is required or in the case of an adoption from abroad, a copy of the official notification from the relevant UK authority agreeing that the employee is suitable to adopt a child from overseas. The employee must also have average weekly earnings of at least the lower earnings limit within the relevant period and normally give at least 28 days notice of the date they wish their Adoption Pay Period to start.

For further information on SAP see **SAP employer guide**.

An employee may be entitled to SPP for the birth of a child if they have responsibility for the baby's upbringing, are taking time off to support the mother or care for the baby and they're either:

- the baby's biological father
- the mother's husband or partner - including a female partner in a same sex couple

The employee must also have been continuously employed for at least 26 weeks continuing into the qualifying week, have average weekly earnings of at least the lower earnings limit for the relevant period and have completed a form SC3 at least 28 days before the SPP starts.

Where a couple adopts a child, the partner, male or female, who's not claiming SAP may be able to claim **SPP**. An employee may be entitled to SPP for adoption if they're either:

- adopting a child with their partner
- the partner of someone adopting a child on their own

In this situation, the adoption must also be being arranged through an adoption agency in the UK, or for adoption from abroad the adopter has to have received Official Notification.

The employee must also have been continuously employed for at least 26 weeks continuing into the qualifying week, have average earnings of at least the lower earnings limit for the relevant period and have completed a form SC4 or SC5 at least 28 days before the SPP starts.

For further information on SPP eligibility and rates see **SPP employer guide**.

For **ShPP** a mother or adopter must:

- have worked continuously for the employer for at least 26 weeks ending with the end of the 15th week before the expected week of childbirth or the week in which they are matched with the adopted child
- have the main responsibility (apart from their partner's responsibility) for the care of the child
- have given appropriate notification and evidence to their employer
- have been entitled to SMP or SAP and given their employer notification of the date on which their pay period is to end
- intend to care for the child during each week in which they are paid ShPP
- be absent from work during each week in which they are paid ShPP and where they are an employee, be absent from work due to SPL for each week in which they are paid ShPP

The conditions for the partner of a mother or adopter to be eligible for ShPP are the same as those for the mother or adopter, with the exception that the partner does not have to be entitled to SMP or SAP.

For the partner to be eligible for ShPP it is also necessary that the mother or adopter satisfies the employment and earnings test:

- has the main responsibility (apart from the partner) for the care of the child
- is entitled to SMP, SAP or MA and has given notice of the day on which her pay or allowance period is to end

For further information on ShPP eligibility see **ShPP employer guide**.

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17. Has the correct amount of statutory payments been recovered from HMRC?

Risk
For all statutory payments other than SSP an employer can recover some or all of the statutory payments made to employees by making deductions from monthly tax and NIC payable to HMRC.

The calculation of how much an employer can recover for SMP, SAP, SPP and ShPP depends on their total Class 1 NICs (see explanation). If an employer uses the incorrect percentage rate to calculate their entitlement to recovery this may result in an over or under payment.

Mitigation
The amount of SMP, SAP, SPP and ShPP an employer can recover depends on their annual liability to Class 1 NICs in the last complete tax year before the employee's qualifying week or matching week. Check the total gross NICs in the relevant year tax year and establish the correct percentage recoverable for SMP, SAP, SPP and ShPP.

- SMP recoveries see **Help with statutory pay**
- SAP recoveries see **Help with statutory pay**
- SPP recoveries see **Help with statutory pay**
- ShPP recoveries see **Help with statutory payments**

Explanation
The amount of SMP, SAP, SPP and ShPP an employer can recover depends on their annual liability to Class 1 NICs in the last complete tax year before the employee's qualifying week or matching week. For employers whose Class 1 NICs payments were **£45,000 or less** they are entitled to recover 100 per cent of the SMP, SAP, SPP and ShPP paid out and compensation at the rate of 3 per cent for 2016-17. For employers whose Class 1 NICs payments for the qualifying tax year were **more than £45,000** they are entitled to 92 per cent of the SMP, SAP, SPP and ShPP.

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18. Have the correct dates and rates been used when calculating Statutory Maternity Pay?

Risk
Providing the qualifying conditions have been met an employee can choose when to start her Statutory Maternity Pay (SMP). It is important to use the correct qualifying period (known as the relevant period) and earnings to establish the amount of SMP payable. If the incorrect relevant period is used to calculate the average weekly earnings (AWE) then this could result in either under or overpayments of SMP paid to the employee and/or incorrect recovery by the employer from HMRC.

Mitigation
Ensure medical evidence, normally a form MAT B1, has been obtained confirming the expected date of birth and that this was received within 21 days from the date the employee's maternity pay period starts or there was a good reason for giving it late. Confirm the relevant periods and payments due have been correctly calculated, all payments made in the relevant period should be included and that a record of all SMP payments made and the dates has been retained. Ensure any SMP paid and recovered meets the relevant conditions.

For further guidance on calculating average weekly earnings, including a definition of the relevant period see **Statutory Maternity Pay: manually calculate your employee's payments**.

Explanation
SMP is a weekly payment and entitlement is calculated based on the AWE of a relevant period. SMP should not be paid without medical evidence. An employee can choose when to start her SMP, but SMP:

- generally cannot start before the 11th week before the week the baby is due but can start earlier if the baby is born earlier
- must start by the day after the baby is born
- may start on any day of the week where the employee continues to be employed by you beyond the 11th week before the week the baby is due
- will start the day following the birth if the baby is born before SMP was due to start, or before the 11th week
- may start earlier if the employee has a pregnancy related absence on or after the beginning of the fourth week before the week the baby is due

- must start the day after she leaves her employment if she leaves after the start of the 11th week but before the date she chose
- For more information on SMP eligibility and rates see **SMP employer guide**. If an employee qualifies for SMP, she is paid:
- for the first 6 weeks at 90 per cent of the average gross weekly earnings with no upper limit
- for the remaining 33 weeks at the lower of either the standard rate of £139.58 for 2016-17, or 90 per cent of her average gross weekly earnings

To qualify for SMP the average weekly earnings must be at least equal to the Lower Earnings Limit (LEL) in force at the qualifying week. To calculate the average weekly earnings you should average the gross earnings over a period of at least eight weeks up to and including the last payday before the end of the qualifying week. The qualifying week is the 15th week before the week the baby is due. This period may vary depending on how often the employee is paid such as weekly, monthly or other intervals.

For working out SMP purposes, 'pay' means gross pay that is due before any deductions. Further details of how to calculate SMP and what earnings to include can be found in **SMP eligibility and rates** and **Calculating SMP**.

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19. When an employee is off work with a pregnancy related illness has her Statutory Maternity Pay and leave started at the correct time?

Risk
Statutory Maternity Pay (SMP) may start earlier than planned if the employee has a pregnancy related absence on or after the beginning of the fourth week before the week the baby is due. Women who are entitled to SMP or Maternity Allowance (MA) are not entitled to Statutory Sick Pay (SSP) during the SMP/MA pay period.

Mitigation
Establish when SMP or MA is payable (maternity pay period) taking into account if she was off work with a pregnancy related illness. Consider if SMP can be paid and whether the qualifying conditions are met.

Explanation
If an employee is already receiving SSP her entitlement will end on the earlier of the date on which her baby is born, or the day she is first off sick, either wholly or partly because of her pregnancy, if this is on or after the fourth week before the baby is due. Her SMP pay period and her maternity leave will start on the day after the first complete day of absence from work. Women who are not entitled to Statutory Maternity Pay from their employer, or are self-employed, may be able to receive Maternity Allowance. For further information see **Maternity Allowance**.

If the employee becomes sick during the SMP pay period SSP is not payable, SMP should continue to be paid as normal.

Where the employee is entitled to SMP or MA, SSP is not payable during the 39 week maternity pay period. Where an employee becomes sick after the end of the disqualifying period, that is the 39 week Maternity Pay period, SSP should be considered under the normal rules.

For further information on the disqualifying period see **SSP employer guide exceptions**.

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20. Has any recovery from HMRC been correctly calculated when the business operates an Occupational Maternity Pay scheme?

Risk
Where an employer operates an Occupational Maternity Pay (OMP) scheme they may under that scheme choose, for example, to pay the employee amounts which differ to that due under the statutory payment scheme. For example if the employer chooses to top up SMP to full pay when an employee is on maternity leave they are only entitled to recover from HMRC the amount that would have been due under the statutory payment scheme.

If an employer uses the amount paid under an occupational scheme to calculate the amount they are entitled to recover from HMRC without reference to the amount due under the statutory payment scheme this can lead to an over or under recovery.

Mitigation
Ensure that the amount to be recovered has been calculated correctly by reference to the amount due under the statutory payment scheme.

Example
The employer has an occupational maternity pay scheme that pays full salary for the first 6 weeks then at 90 per cent of the woman's average weekly earnings for the next 6 weeks and after that the statutory rate of SMP for the remaining 27 weeks of her entitlement.

When calculating the amount of SMP he is entitled to recover the employer must use the Statutory Maternity Pay rate.

OMP scheme:

First 6 weeks full salary = £400

Next 6 weeks at 90 per cent of AWE = £360

Remaining 27 weeks at statutory rate = £139.58

SMP Scheme:

First 6 weeks at 90 per cent of AWE = £360

Remaining 33 weeks = £139.58

The employer can only base his recovery on £360 for the first 6 weeks and then £139.58 for the remaining 33 weeks.

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21. Has any pay increase been taken into account when calculating the employees average weekly earnings?

Risk
An employee may be underpaid or refused a statutory payment because a pay rise that would have increased their average weekly earnings (AWE) was not taken into account when the calculation was made.

Mitigation
Where a pay rise has been awarded by the employer ensure that the increase was correctly taken into account when calculating the employee's AWE.

Explanation
An employer must recalculate the employee's average weekly earnings for Statutory Maternity

Pay (SMP), Statutory Adoption Pay (SAP), Statutory Paternity Pay (SPP) and Statutory Shared Parental Pay (ShPP) to take into account a back dated pay rise.

In the case of an award of SMP if a pay increase comes into effect between the start of the eight week set period and the end of the statutory maternity leave period the employer must recalculate her AWE to include the pay rise as though it was effective from the beginning of the set period and pay any additional sum due for the six weeks SMP based on the revised calculation.

In the case of an award of SAP, SPP and ShPP you only need to take account of a pay rise if it comes into force during the employees set period.

In SSP cases pay rises are not taken into account for calculating the employees AWE.

For further guidance on the effect of a pay rise on employee's SMP entitlement see **Employee earnings affected by a backdated pay rise**.

For further guidance on the effect of a pay rise on employee's SAP entitlement see **Employee earnings affected by a backdated pay rise**. This also applies for SPP, and ShPP.

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22. Have directors' earnings been treated correctly for the purposes of calculating their average weekly earnings for statutory payment purposes?

Risk
The treatment of directors' earnings for statutory payments purposes can differ from their treatment for NICs purposes resulting in the possible over or underpayment of the statutory payment and an incorrect recovery. For example where the director is paid a salary contractually and a bonus by formal vote, the bonus should only be included as average weekly earnings if the date of the vote falls in the relevant period.

Mitigation
Ensure that earnings from the correct period have been used in the calculation as this can differ depending on how the director is paid.

Explanation
Where the director is paid contractually - their average weekly earnings should be calculated in the same way as for any other employee.

Where the director is paid contractually and by formal vote, for example paid contractually and paid a bonus or fees by formal vote - the monies voted by formal vote should only be included if the date of the vote falls in the relevant period.

The director is paid only by formal vote - go back to the last formal vote before the first day to be used to calculate their statutory payment entitlement and use the amount voted and any other payment of earnings paid between the relevant dates but do not include any money drawn in anticipation of the vote.

Certain directors of companies incorporated after 1 October 2009 can decide what to pay and when to pay remuneration without the need for a formal Annual General Meeting. In these cases any payment of directors fees will be regarded as earnings for the purposes of SSP, SMP, SAP, SPP and ShPP on the date the payment is made.

For further guidance see **Statutory Sick Pay: how different employment types affect what you pay**. This applies to all of the statutory payments.

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