

Commission

1 . Entitlement to commission

Commission is a payment made to employees based on their job performance or for completing a task or project. For example, achieving set targets or making a certain number of sales.

Employees can be paid commission on top of their basic salary. Or they might work on a commission only basis.

An employer should include an employee's entitlement to commission in their [written statement of employment particulars](#).

Commission and the National Minimum Wage

When calculating whether an employee has been paid the National Minimum Wage, commission payments can be included.

An employee's total pay, including commission, must give them the minimum wage each time they're paid.

If an employee has not made enough commission to earn the minimum wage, the employer must top up the employee's pay.

[Find out more about the National Minimum Wage](#)

Changing a commission scheme

An employer might need to change the terms of their commission scheme, or to remove it entirely.

Commission is usually one of the contractual terms agreed between the employee and employer. To change it, the employer needs to change the employee's contract.

Employers must follow the correct process when changing contracts.

[Find out more about changing an employment contract](#)

Discretionary commission schemes

If a commission scheme is discretionary (non-contractual) the employer should act reasonably when making changes.

For example, the employer should communicate changes clearly to employees. They should also give employees reasonable notice before changing or removing the commission scheme.

When employment ends

The employee's contract should say what happens to their commission when their employment ends. It should be clear about what happens if they leave before commission earned is due to be paid.

For example, the contract might say that commission earned is only paid if the employee is still employed at the payment date.

If there is no written contract, the employee is entitled to commission they have earned but have not yet been paid. This applies even if the payment date is after they have left employment.

If commission is not paid

If commission has not been paid, the employee should raise it informally first, by [talking to the employer](#). This can help resolve things quickly if there has been a mistake.?

If the employee talks to their employer, the employee should confirm what they have discussed in writing. For example, in a letter or email.?

If the issue cannot be resolved informally, the employee can [raise a grievance](#). This is where the employee makes a formal complaint to their employer.

Options for taking legal action

If an employee is not able to resolve the non-payment of commission informally or through a grievance, they might be able to either:

- make a claim to an employment tribunal
- make a county court or sheriff court claim

Making a claim to an employment tribunal

An employee might be able to make a claim to an employment tribunal for unlawful deduction from wages.

Find out more about:

- making a claim to an [employment tribunal](#)
- [employment tribunal time limits](#)

Making a county court or sheriff court claim

Alternatively, an employee could make a breach of contract claim in the county court (in England and Wales). They have up to 6 years from the date of the breach to make a claim.

In Scotland, an employee could make a breach of contract claim in the sheriff court. The time limit for breach of contract in a sheriff court is 5 years from the date the employee had knowledge of the loss.

Employees considering a county court or sheriff court claim should [get legal advice](#) on their situation, to understand what will be involved.

2. When employees are off work

An employee's entitlement to commission when they are off work depends on the type of leave they are taking.

Maternity leave

Employers should pay employees on maternity leave commission they earned before their leave. This applies even if the commission is paid after their maternity leave has started.

Employees are also entitled to be paid commission for the time that they:

- were on compulsory maternity leave (the first 2 weeks of maternity leave following the birth of the baby, or 4 weeks for factory workers)
- were working a keeping in touch (KIT) day

If an employer does not pay this commission to employees on maternity leave, it could be:

- [maternity discrimination](#)
- unlawful deduction from wages

Shared parental and adoption leave

Employers should pay employees on shared parental or adoption leave commission they earned before their leave. This applies even if the commission is paid after their shared parental or adoption leave has started.

Employees are also entitled to be paid commission for the time that they were working a:

- keeping in touch (KIT) day
- shared parental leave in touch (SPLIT) day

If an employer does not pay this type of commission to employees on shared parental or adoption leave, it could be unlawful deduction from wages.

Sick leave

An employee's written statement or contract should say what their sick pay entitlement is. If an employee is eligible for statutory sick pay (SSP), their employer must pay that as a minimum.

It might be written in the contract that employees get more than statutory sick pay. This can be called 'company', 'contractual' or 'occupational' sick pay.

Commission is not usually included in company sick pay. This is because the employee is not earning commission while they are away from work. However, employees should check the terms of their contract or their organisation's sick pay policy.

Suspension

Suspension is when an employer tells an employee to temporarily stop carrying out work. Suspension might be for medical reasons, or to allow an employer to carry out a disciplinary or grievance investigation.

An employee will not be able to earn commission during the time they are suspended.

An employer should have a good reason to suspend an employee. They should also make sure the suspension does not last longer than is needed.

Employees should continue to receive their pay and their contractual benefits while they are suspended. This includes any commission payments earned for work already done.

Find out more about:

- [suspension during a work investigation](#)
- [medical suspension from work](#)

Holiday pay

When calculating holiday pay, employers must include payments that are linked to doing required tasks in the contract. This includes commission payments.

Employers must include any relevant payments in at least 4 weeks of holiday pay.

Some employers might include these payments in the full 5.6 weeks' paid holiday (statutory annual leave), but they do not have to. Employees should check their written statement for their entitlement.

[Find out more about calculating holiday pay](#)