Commission

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.