

14.4 Other contributory benefits

14.4.1 Employment and support allowance

Employment and support allowance (ESA) may be available if an individual has a disability or health condition that affects the ability to work.

To qualify for ESA, the individual must ordinarily have paid sufficient Class 1 or Class 2 NICs or have sufficient Class 1 NI credits in the two tax years preceding the tax year in which the benefit is claimed. See the *Welfare Reform Act (WRA) 2007*, s. 1(2)(a) and Sch. 1, Pt. 1 for more details.

Other conditions that must be satisfied in relation to the claimant are that he or she:

- must be under state pension age;
- must not be claiming jobseeker's allowance (see **14.4.2**) or statutory sick pay (see **14.5.2**); and
- must be working fewer than 16 hours a week and earning less than £167. Where earnings derive from self-employment, any additional amount due to be taxed in 2023-24 as a result of the change in basis periods will not affect entitlement (see **11.4.1** for more details).

The level of ESA depends on personal circumstances and the reason for needing ESA. Any amount received is subject to income tax (but not NICs). ESA carries automatic Class 1 NI credits (see **13.4.2**).

Law: WRA 2007, Pt. 1, Sch. 1; SI 2013/379

14.4.2 Jobseeker's allowance

Jobseeker's allowance (JSA) is payable if the individual meets both of the following conditions:

- He or she has actually paid Class 1 NICs in respect of one of the two tax years prior to the relevant benefit year on earnings of at least 26 x the lower earnings limit for that year (see *Jobseekers Act 1995*, s. 2(1)(a)). (For the avoidance of doubt, the payment needs to have been made prior to the week in respect of which JSA is claimed.)

- He or she has either paid Class 1 NICs or been awarded Class 1 NI credits in respect of each of the last two complete tax years prior to the relevant benefit year and, in each such year:
 - the amount of earnings not exceeding the upper earnings limit on which Class 1 NICs was paid; or
 - the amount of earnings credited,

is not less than 50 x the lower earnings limit for that year (see *Jobseekers Act 1995*, s. 2(1)(b)).

In addition, the claimant must be:

- aged 18 or above, but below state pension age, although there are some limited circumstances where 16 to 17-year-olds qualify;
- available for work;
- not in full-time education;
- working fewer than 16 hours per week on average;
- taking reasonable steps to look for work or additional work;
- living in England, Scotland or Wales; and
- entitled to work in GB.

Where payable, the amount of JSA depends on age and other income. The income and savings of any partner are ignored in determining eligibility.

Any amount received is subject to income tax (but not NICs). JSA carries automatic Class 1 NI credits (see **13.4.2**).

Law: *Jobseekers Act 1995*, s. 1-2

14.4.3 Maternity allowance

Maternity allowance is generally payable when a pregnant woman does not qualify for statutory maternity pay (see **14.5.3**). As statutory maternity pay is only available to employed earners, maternity allowance is an important benefit for self-employed earners. However, to qualify, a self-employed earner must have paid Class 2 NICs for at least 13 of the 66 weeks before the baby is due.

Other conditions that must be satisfied are that the woman:

- is, in most cases, employed or self-employed at the 11th week before the baby is due;
- has, during the 66 weeks before the baby is due, been employed or self-employed for 26 weeks; and
- has earned at least £30 a week in at least 13 weeks (which do not need to be consecutive).

The amount of maternity allowance in 2023-24 is the lower of:

- 90% of average weekly earnings; or
- £172.48.

If all conditions are satisfied it will be payable for up to 39 weeks unless the individual returns to work earlier.

Where earnings derive from self-employment, any additional amount due to be taxed in 2023-24 as a result of the change in basis periods will not affect entitlement (see **11.4.1** for more details).

If the individual does not qualify for the full amount, a reduced period of up to 14 weeks may still be available in some circumstances (SI 1987/416, reg. 3.)

Any amount received is subject to income tax (but not NICs). Maternity allowance carries automatic Class 1 NI credits (see **13.4.2**).

Law: SSCBA 1992, s. 35-35B; SI 1987/416, reg. 3

14.4.4 Bereavement support payments

A bereavement support payment is made to the surviving spouse or civil partner where:

- the surviving spouse or civil partner is below pensionable age when the individual dies;
- the surviving spouse is ordinarily resident in GB (or in a country that pays bereavement payments and is covered by a reciprocal agreement) when the individual dies; and
- the deceased individual has paid NICs for at least 25 weeks in one tax year since 6 April 1975, or died because of an accident at work or a disease caused by work.

Bereavement support payments take the form of an initial payment, followed by up to 18 monthly payments. There are two rates:

- the higher rate (£3,500 and monthly payments of £350); and
- the lower rate (£2,500 and monthly payments of £100).

The higher rate is paid when the claimant is entitled to child benefit or is pregnant at the date the spouse or civil partner died.

Claims can ordinarily be made up to 21 months after the date of death. However, the claim should be made within three months of the date of death to get the full number of payments.

Law: PA 2014, s. 30-31

14.5 Statutory payments for Class 1 NIC primary contributors

14.5.1 Overview

Although not directly linked to an individual's contribution record, an employed earner who is subject to Class 1 NICs, and meets a minimum earnings requirement linked to the lower earnings limit, may be entitled to certain payments when absent from work due to:

- illness;
- having or adopting a child; or
- the death of his or her child.

These payments are made by the employer and represent the minimum that an employed earner is entitled to. Employers can, and often do, pay more.

An employer can recover 92% of the gross amount paid of:

- statutory maternity pay (SMP);
- statutory adoption pay (SAP);
- statutory paternity pay (SPP);
- shared parental pay (ShPP); and
- statutory parental bereavement pay (SPBP).

This increases to 103% of the amount paid where the total annual employer and employee Class 1 NICs contributions do not exceed £45,000. (The supplement of 3% is to compensate for the fact that employer's Class 1 NICs are paid in respect of the payments.)

The £45,000 limit is compared to the total contributions for the tax year prior to that in which the qualifying or matching week starts.

An employer cannot recover statutory sick pay (SSP).

All statutory payments, and any enhanced amount paid by the employer, form part of an employee's earnings for tax and NIC purposes. They will be accounted for through payroll in the same way as salary, with any claims for repayment recorded on the employer payment summary and off-set against PAYE/NICs due to HMRC.

Certain statutory payments also bestow on the recipient the right to apply for Class 1 NI credits (see **13.5.3**).

Law: SI 1994/1230; SI 2002/2820; SI 2014/2929; SI 2020/246;
SI 2020/512