
STATUTORY INSTRUMENTS

1982 No. 894

The Statutory Sick Pay (General) Regulations 1982

Meaning of “earnings”

17.—(1) In this regulation “secondary contributor” means a person who is, or but for the provisions of the Social Security Act 1975 relating to the lower earnings limit would be, liable to pay a secondary contribution under section 4 of that Act.

(2) For the purposes of section 26(2), the expression “earnings” refers to gross earnings and includes any remuneration or profit derived from a person's employment, except any payment in so far as it is—

- (a) a payment on account of the person's earnings in respect of that employment, which comprises or represents, and does not exceed in amount, sums which have previously been included in his earnings for the purposes of section 26(2);
- (b) a payment in respect of a period of holiday, where the sum paid is derived directly or indirectly from a fund to which more than one secondary contributor contributes and the management and control of which are not vested in those secondary contributors, or where the person making the payment is entitled to be reimbursed from such a fund;
- (c) a payment of or in respect of a gratuity or offering—
 - (i) where the payment is not made directly or indirectly by the secondary contributor and the sum paid does not comprise or represent sums previously paid to the secondary contributor; or
 - (ii) where the payment is not directly or indirectly allocated by the secondary contributor to the employee;
- (d) any payment in kind or by way of the provision of board or lodging or of services or other facilities;
- (e) a payment made to or by trustees, where—
 - (i) in the case of a payment to trustees, the share thereof which that person is entitled to have paid to him, or
 - (ii) in the case of a payment by trustees, the amount to be so paid,is or may be dependent upon the exercise by the trustees of a discretion or the performance by them of a duty arising under the trust;
- (f) any payment of earnings in respect of employed earner's employment which a secondary contributor is required to make under regulation 3(2)(e) of the Occupational Pension Schemes (Recognition of Schemes) (No. 2) Regulations 1973;
- (g) any payment by way of a pension;
- (h) a payment of a fee in respect of employment as a minister of religion which does not form part of the stipend or salary paid in respect of that employment;

- (i) a payment to defray or a contribution towards expenses incurred by persons for whom facilities are provided under section 15 of the Disabled Persons (Employment) Act 1944 in travelling to and from the place where they are employed or where training is provided;
 - (j) a payment by way of or derived from shares appropriated under a profit sharing scheme to which the provisions of Chapter III of Part III of the Finance Act 1978 (profit sharing schemes) apply.
- (3) For the purposes of section 26(2) the expression “earnings” includes also—
- (a) any sum payable by way of maternity pay or payable by the Secretary of State in pursuance of section 40 of the Employment Protection (Consolidation) Act 1978 in respect of maternity pay;
 - (b) any sum which is payable by the Secretary of State by virtue of section 22(3)(a) of that Act in respect of arrears of pay and which by virtue of section 42(1) of that Act is to go towards discharging a liability to pay maternity pay;
 - (c) any sum payable in respect of arrears of pay in pursuance of an order for re-instatement or re-engagement under that Act;
 - (d) any sum payable by way of pay in pursuance of an order under that Act for the continuation of a contract of employment;
 - (e) any sum payable by way of remuneration in pursuance of a protective award under the Employment Protection Act 1975;
 - (f) any sum payable to any employee under the Temporary Short-time Working Compensation Scheme administered under powers conferred by the Employment Subsidies Act 1978;
 - (g) any sum paid in satisfaction of any entitlement to statutory sick pay.
- (4) Where goods or services are supplied by an employee and earnings paid to or for the benefit of that employee in respect of that employment include the remuneration for the supply of those goods or services, and on that supply value added tax is chargeable, there shall, for the purposes of section 26(2), be excluded from the calculation of those earnings an amount equal to the value added tax so chargeable.
- (5) For the avoidance of doubt, in the calculation for the purposes of section 26(2) of earnings paid to or for the benefit of an employee, there shall be disregarded—
- (a) any payment by way of a redundancy payment;
 - (b) any specific and distinct payment of, or contribution towards, expenses actually incurred by an employee in carrying out his employment.