
STATUTORY INSTRUMENTS

2013 No. 378

The Jobseeker's Allowance Regulations 2013

PART 7

Earnings

Calculation of earnings derived from employed earner's employment

54.—(1) Earnings derived from employment as an employed earner are to be taken into account over a period determined in accordance with the following paragraphs and at a weekly amount determined in accordance with regulation 57 (calculation of weekly amount of earnings).

(2) Subject to the following provisions of this regulation, the period over which a payment is to be taken into account is to be—

- (a) where the payment is monthly, a period equal to the number of weeks beginning with the date on which the payment is treated as paid under regulation 56 and ending with the date immediately before the date on which the next monthly payment would have been so treated as paid whether or not the next monthly payment is actually paid;
- (b) where the payment is in respect of a period which is not monthly, a period equal to the length of the period for which payment is made; or
- (c) in any other case, a period equal to such number of weeks as is equal to the number obtained (see paragraph (13)) by applying the formula—

$$\frac{E}{J+D}$$

where—

E is the net earnings;

J is the amount of jobseeker's allowance which would be payable had the payment not been made;

D is an amount equal to the total of the sums which would fall to be disregarded from that payment under the Schedule to these Regulations (sums to be disregarded in the calculation of earnings), as is appropriate in the claimant's case,

and that period is to begin on the date on which the payment is treated as paid under regulation 56.

(3) Earnings derived by a claimant as a member of any territorial or reserve force prescribed in Part 1 of Schedule 6 to the Social Security (Contributions) Regulations 2001 in respect of a period of annual continuous training, whether paid to the claimant alone or together with other earnings derived from the same source, are to be taken into account for a maximum of 15 days in any calendar year—

- (a) in the case of a period of training exceeding 14 days, over a period of 14 days; or
- (b) in any other case, over a period which is equal to the duration of the training period.

(4) The period referred to in paragraph (3) over which earnings are to be taken into account is to begin on the date on which they are treated as paid under regulation 56.

(5) Where earnings are derived from the same source but are not of the same kind and the periods in respect of which those earnings would, but for this paragraph, fall to be taken into account, overlap wholly or partly—

- (a) those earnings are to be taken into account over a period equal to the aggregate length of those periods; and
- (b) that period is to begin with the earliest date on which any part of those earnings would otherwise be treated as paid under regulation 56 (date on which earnings are treated as paid).

(6) In a case to which paragraph (5) applies, earnings falling within regulation 58 (earnings of employed earners) are to be taken into account in the following order of priority—

- (a) earnings normally derived from the employment;
- (b) any compensation payment;
- (c) any holiday pay.

(7) Where earnings to which regulation 58(1)(b) or (c) (earnings of employed earners) applies are paid in respect of part of a day, those earnings are to be taken into account over a period equal to a day.

(8) Subject to paragraph (9), the period over which a compensation payment is to be taken into account is to be the period beginning on the date on which the payment is treated as paid under regulation 56 (date on which earnings are treated as paid) and ending—

- (a) subject to sub-paragraph (b), where the person who made the payment represents that it, or part of it, was paid in lieu of notice of termination of employment or on account of the early termination of a contract of employment for a term certain, on the expiry date;
- (b) in a case where the person who made the payment represents that it, or part of it, was paid in lieu of consultation under section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992(1), on the latest of—
 - (i) the date on which the consultation period under that section would have ended;
 - (ii) in a case where sub-paragraph (a) also applies, the expiry date; or
 - (iii) the standard date; or
- (c) in any other case, on the standard date.

(9) The maximum period over which a compensation payment may be taken into account under paragraph (8) is 52 weeks from the date on which the payment is treated as paid under regulation 56.

(10) In this regulation—

“compensation payment” means any payment to which regulation 58(4) (earnings of employed earners) applies;

“the expiry date” means in relation to the termination of a person’s employment—

- (a) the date on which any period of notice (which means the period of notice of termination of employment to which a person is entitled by statute or by contract, whichever is the longer, or, if they are not entitled to such notice, the period of notice which is customary in the employment in question) applicable to the person was due to expire, or would have expired had it not been waived;

(1) 1992 (c.52). Section 188 was amended by section 34 of the Trade Union Reform and Employment Rights Act 1993 (c.19) and S.I.s 1995/2587, 1999/1925 and 2010/93.

- (b) subject to paragraph (11), where the person who made the payment represents that the period in respect of which that payment is made is longer than the period of notice referred to in paragraph (a), the date on which that longer period is due to expire; or
- (c) where the person had a contract of employment for a term certain, the date on which it was due to expire;

“the standard date” means the earlier of—

- (a) the expiry date; and
- (b) the last day of the period determined by dividing the amount of the compensation payment by the maximum weekly amount which, on the date on which the payment is treated as paid under regulation 56, is specified in section 227(1) of the Employment Rights Act 1996(2), and treating the result (less any fraction of a whole number) as a number of weeks.

(11) For the purposes of paragraph (10), if it appears to the Secretary of State in a case to which paragraph (b) of the definition of “expiry date” applies that, having regard to the amount of the compensation payment and the level of remuneration normally received by the claimant when they were engaged in the employment in respect of which the compensation payment was made, it is unreasonable to take the payment into account until the date specified in that paragraph (b), the expiry date is to be the date specified in paragraph (a) of that definition.

(12) For the purposes of this regulation the claimant’s earnings are to be calculated in accordance with regulations 58, 59 and 63.

(13) For the purposes of the number obtained as mentioned in paragraph (2)(c), any fraction is to be treated as a corresponding fraction of a week.

(2) [1996 c.18](#). Section 227 was amended by paragraph 9 of Schedule 1 to the Apprenticeship, Skills, Children and Learning Act 2009, paragraph 47 of Schedule 7 to the Employment Act 2002 and [S.I. 2011/3006](#).