

Housing Benefit Overpayment Direct Earnings Attachment – Questions & Answers

The Welfare Reform Act 2012, which became law in March 2012, allows local authorities to ask you, as an employer to make deductions directly from a customer's earnings. We do this by asking you to operate a Direct Earnings Attachment (DEA). We do not have to go through the civil courts to do this, unlike the Attachment of Earnings Order (AOE) process, for example.

Within the Welfare Reform Act, the legislation covering DEAs, part of the Social Security (Overpayment and Recovery) Regulations 2013, came into force on 8th April 2013.

A DEA has its own regulations which follow some of the workings of a Deduction from Earnings Order (DEO) and some workings of an Attachment of Earnings Order (AOE). A DEA does not replace any of these orders and in some circumstances employers may receive requests to implement deductions for a DEO and a DEA for the same employee.

Your responsibilities

As an employer, you have a **legal** obligation to:

- Implement a Direct Earnings Attachment by making deductions from the employee's net earnings, ie after deduction of :
 - Income Tax
 - Class 1 contributions
 - Amounts deducted for work place pension scheme.
- Make payments to us by the 19th day of the month following the month the deduction is made.
- Keep a record of each deduction taken, and the employee from whose earnings it was made.
- Continue to operate the DEA until the DWP advise you to stop or your employee leaves.

If you fail to comply, you may be subject, on conviction, to a fine of up to £1,000.

You must notify us if:-

- We ask you to operate a DEA for someone who does not work for you.
- An employee for whom you are operating a DEA leaves your employment.

You must write to us at the address shown on the DEA request letter within 10 days if any of the above applies to you.

To your employee – you have a duty to:-

- Notify your employee in writing of :
 - The amount of the deduction taken, including any amounts taken for administrative costs (see section on administrative costs). If this information is shown on the payslip, it will suffice.
 - How the deduction amount was calculated

You must do this (and record it) no later than the payday after the one on which the deduction for the DEA was taken.

The definition of earnings for DEAs

The table below lists what counts and what does not count as earnings.

What counts as 'earnings' for DEAs	What does not count as 'earnings' for DEAs
Wages	Statutory Maternity pay
Salary	Statutory Adoption pay
Fees	Ordinary Statutory Paternity Pay
Bonuses	Additional Statutory Paternity Pay
Commission	Any pension, benefit, allowance or credit paid by DWP, a local authority or HMRC
Overtime pay	A guaranteed minimum pension under the Pensions Scheme Act 1993
Most other payments on top of wages	Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the UK.
Occupational Pensions, if paid with wages or salary	Sums paid to reimburse expenses wholly and necessarily incurred in the course of the employment.
Compensation payments	Pay or allowances as a member of Her Majesty's forces, other than pay or allowances payable to them by you as a special member of a reserve force.
Statutory Sick Pay	Statutory Redundancy Payments
Payment in lieu of notice	

If the only earnings your employee receives are those in the right hand column, you cannot calculate a DEA deduction, similarly, if any of these are paid as part of the earnings, they are not to be included as part of the employee's net earnings.

You must continue to calculate a DEA deduction every pay day until either one of the following change of circumstance occurs

- We advise you to stop – you may receive this request by telephone, which will be confirmed later in writing
- the employee leaves your employment
- the employee dies and the salary is paid after the date of the employee's death
- the amount to recover is no longer outstanding or
- We ask you to apply a fixed rate deduction.

Net Earnings

You must take the amount for the Direct Earnings Attachment directly from your employee's **Net** earnings (**Net** earnings are the amounts the employee earns after taking off income tax, National Insurance and contributions to a pension, including Additional Voluntary Contributions, Free Standing Additional Voluntary Contributions and Stakeholder Pension contributions)

How do I operate a DEA?

We will send you a letter (notice) which tells you to apply a DEA for your employee. This notice will include a payment schedule which will inform you of:

- When to send us payments
- Where to send payments
- How you can pay us

We will ask you to make payments in line with your payroll, so if your employee is paid weekly or monthly, you should pay us at the same time. However, if your employee is paid weekly you must still calculate and deduct the payment weekly, but you can pay us monthly if you prefer.

It is your responsibility to ensure you take the right amount from your employee's earnings each week or month and pay it to us.

When you calculate the DEA deduction amount, you must:

- Ensure that your employee has enough net earnings in the pay period for you to calculate a deduction (see table A & B below)
- Check that the correct percentage rate has been applied against those net earnings.
- Check that the total of all deductions does not leave the employee with less than 60% of their total net earnings during the calculating period to which the deduction relates.

If there is already a Direct Earnings Order in place, or other priority orders are in place, please refer to the examples on the following pages.

How do I calculate the amount to deduct?

- Work out the employee's net earnings as defined previously
- Use Table A/B to find the deduction percentage rate for the employee's net earnings
- Use the percentage figure against the net earnings figure to calculate the amount to be deducted.

Table A – Where earnings are paid WEEKLY

Net earnings (net earnings are gross pay, less tax, national insurance and pension contributions)	Deduction (percentage of net earnings)
Less than and exactly £100	Nil
Exceeding £100 but not exceeding £160	3%
Exceeding £160 but not exceeding £220	5%
Exceeding £220 but not exceeding £270	7%
Exceeding £270 but not exceeding £375	11%
Exceeding £375 but not exceeding £520	15%
Exceeding £520	20%

Table A – Where earnings are paid MONTHLY

Net earnings (net earnings are gross pay, less tax, national insurance and pension contributions)	Deduction (percentage of net earnings)
Less than and exactly £430	0%
Exceeding £430 but not exceeding £690	3%
Exceeding £690 but not exceeding £950	5%
Exceeding £950 but not exceeding £1,160	7%
Exceeding £1,160 but not exceeding £1,615	11%
Exceeding £1,615 but not exceeding £2,240	15%
Exceeding £2,240	20%

If an employee is paid 2 weekly, the total net wage is divided by 2 and table A is used.

If an employee is paid 4 weekly, the total net wage is divided by 4 and table A is used.

Holiday Pay

If an employee is paid a wage which includes holiday pay paid in advance, the net wage is averaged, and the percentage rate applied to the average figure, as follows:

Employee receives one weeks wage and 2 weeks holiday pay. Total net payment for 3 weeks is £850.00.

$$£850/3 = £283.33$$

$$£283.33 \times 11\% = £31.17$$

$$\text{Total deduction from net wage of } £850 = £93.51 (£31.17 \times 3)$$

Rounding

The exact amount of the net wage is used against table A & B. If the percentage amount calculated results in a fraction of a penny, it is rounded to the nearest whole penny, with a result of exactly half a penny being rounded down to the nearest whole penny.

Administrative costs

For each pay period when you calculate the DEA deduction, you may also take up to £1 from your employee's earnings towards administrative costs. You can take this even if it reduces the employee's income below the protected earnings proportion.

Failure to take deductions or incorrect deductions made

If you fail to take a deduction from the employee's net earnings when it is appropriate to make a deduction, or take an incorrect amount you should correct this on the next payday or paydays.

Where the incorrect amount is because the deduction was less than the amount specified under the regulations then you should first:

- Deduct the amount required for the current pay period
- Then include the difference between the incorrect and correct amount

Please note that the total to be deducted, including adjustments for an incorrect deduction, along with other deductions in place, must not leave the employee with less than the protected earnings limit of 60% for each pay period.

Where the incorrect amount is because the deduction was more than the amount specified under the regulations then you should first.

- Deduct the amount required for the current pay period
- Then reduce the deductions amount by the excess previously taken

It is important to note that if a deduction is reduced in any week or month simply because the DEA along with other orders in place will breach the protected earnings limit of 60% this is NOT a shortfall as described above. A shortfall only occurs when an incorrect amount has been deducted in error, or when one or more deductions have been missed.

Examples of Direct Earnings Attachment in practice

Example 1

A weekly paid earner with no prior attachment orders.

A person with net earnings of £385 per week will have a deduction of £57.75 per week (in accordance with the deduction rates table at 15%)

Example 2

A weekly paid earner with an existing attachment order for child maintenance.

A person with net earnings of £250 per week with an existing attachment order of £60 per week for child maintenance will have a deduction of £17.50 (in accordance with the deduction table at 7%)

Example 3

A monthly paid earner with existing priority attachment orders totalling £486.

A person with net earnings of £1620 per month should have a DEA deduction of £243 (in accordance with the deduction table at 15%). However, this deduction in addition to the existing deductions of £486, will breach the protected earnings limit of 60%. The maximum deduction we can make in this instance would be £162.

Calculation :

Earnings x 40% = £648 (maximum amount of total deductions)

Existing priority attachment order in place = £486

DEA deduction is £243

$£648 - £486 = £162$ (maximum amount available for the DEA deduction)

Therefore, although the deduction rates table stats that a deduction of £243 should be taken, the protected earnings limit means that the amount will be restricted to £162.

What if my employee does not earn enough for me to make the deduction ?

If the weekly or monthly earnings are below the threshold (see table A & B) you cannot calculate a DEA deduction.

You must continue to calculate a DEA deduction, if applicable, each pay period until either we tell you to stop or your employee leaves your employment.

What if the employee has other court orders against them ?

Courts can make orders that mean you must take money directly from your employee's earnings in a similar way to how we ask you to make deductions for a DEA. Your employee may have an attachment of earnings order, or a deduction from earnings order (for child maintenance). The DEA can be imposed without a court order, but if your employee has any other deduction orders against them there are rules that tell you which money you should take first.

If your employee has one or more of the following in place, these will take priority over a DEA.

Deduction from Earnings Order (DEO) – child maintenance

Attachment of Earnings Order (AOE) for maintenance or Fines

Council Tax Attachment of Earnings Order (CTAOE)

A student loan repayment also takes priority over a DEA.

Once these priorities have been taken into account in your calculation a DEA will then take priority in relation to other orders or notices in date order. The amount you can deduct will be subject to the available net earnings above the protected earnings limit of 60% of net earnings.

What happens once I am operating a Direct Earnings Attachment ?

Once you have started operating a DEA, you must continue to make payments to us until we tell you to stop. We shall contact you when deductions are to cease.

If there is a change in circumstances which means that you can no longer operate the DEA, you must notify us in writing within 10 days.

Where can I get more information ?

If you need more information about, or help to operate a Direct Earnings Attachment please ring the recovery section on 02476 376530. The telephone line is open from 9am to 5pm Monday to Friday.

The advice can be obtained through booklet - Department for Work & Pensions- Direct Earnings Attachment – A Guide for Employers - (Publication date January 2018)

Making payments to Nuneaton & Bedworth Borough Council

On receipt of a notice to operate a DEA , you must:

- Make regular payments to us until informed by us to stop
- Pay the amount you take from your employee's wages to us as soon as possible, but no later than the 19th day of the month following the month in which you have taken the deduction (eg if you take the money on 30th September, you must send it to us before 19th October; if you take the money on 1st October, you must send it to us before 19th November)

You can make payment to us by :

Telephone /internet banking/bacs or chaps

If your bank offers a bill paying facility and you wish to make a payment using the telephone/internet banking/automated credit transfer/bacs or chaps , the bank account details to quote for the transfer of funds are :-

Our Sort code	30-96-20
Our Account number	02832028

Reference	This will be the reference number shown on the notice sent to you to operate a DEA .
-----------	--

Company Name	The name of the company sending the payment to us
--------------	---

By Post

Cheques or postal orders may be sent through the post to:

Nuneaton & Bedworth Borough Council
Town Hall
Coton Road
Nuneaton
Warwickshire
CV11 5AA

Cheques should be made payable to Nuneaton and Bedworth Borough Council. Please allow sufficient time for your payment to reach us in time.

Please ensure that you quote the reference number (shown on the notice sent to you to operate the DEA) on the reverse of the cheque in order that the payment may be correctly allocated.

(Commfin/recoveryletterstemplate/HBOPDEAinsert)