

## Not getting paid?

### What are your legal rights to get paid?

Your right to pay (including how much and when) is governed by your contract with your employer. The contract can be verbal or in writing, and the terms can be expressly agreed between you or they can be implied.

As the right to get paid comes from the contract, failing to comply with the terms of the contract would be a breach of contract. You also have statutory protection from unlawful deductions from wages under the Employment Rights Act 1996. This is an important additional right, since it enables you to make a claim to the Employment Tribunal whilst you are still employed. If you have to rely on your contractual rights only, you can only make that claim in the Tribunal once your employment has ended.

There would be an unlawful deduction from wages if you are not paid the full amount of pay you are entitled and/or by the date you are entitled to get paid.

**Example 1 (non-payment):** If you are entitled to £1,000 on the last day of the month (after lawful deductions are made) but your employer only pays you £900, there will be an unlawful deduction of £100.

**Example 2 (late payment):** If your employer pays you the full £1,000 but 3 days late, there is also an unlawful deduction from wages, on the date you were supposed to be paid.

## Employment Rights Act 1996

### 13 Right not to suffer unauthorised deductions.

(1) An employer shall not make a deduction from wages of a worker employed by him unless—

(a) the deduction is required or authorised to be made by virtue of a statutory provision or a relevant provision of the worker's contract, or  
(b) the worker has previously signified in writing his agreement or consent to the making of the deduction.

(2) In this section "relevant provision", in relation to a worker's contract, means a provision of the contract comprised—

(a) in one or more written terms of the contract of which the employer has given the worker a copy on an occasion prior to the employer making the deduction in question, or  
(b) in one or more terms of the contract (whether express or implied and, if express, whether oral or in writing) the existence and effect, or combined effect, of which in relation to the worker the employer has notified to the worker in writing on such an occasion.

(3) Where the total amount of wages paid on any occasion by an employer

**What deductions is my employer allowed to make to my pay?**

Your employer is properly entitled to make some deductions from your wages, in certain circumstances. There are several situations in which your employer can lawfully make deductions from your pay.

**Required by statute:** If a statute requires your employer to make deductions, then not only may they make the deduction, they must. Examples include tax, national insurance or certain pension contributions (if you have not opted out of autoenrollment).

**Reclaiming overpayment:** If your employer has paid you more than they should have (for any reason, including their mistake), the law allows them to claim it back from your future pay subject to a couple of conditions. Firstly, your employer must either itemise the specific deduction on your payslip or provide you with a statement of standing deductions and update this every year. Secondly, your employer would risk breaching the implied term of mutual trust and confidence if they make deductions at too short notice or in instalments that are unaffordable to you.

**Agreement in writing:** Your employer can deduct any sums from you that have been put in writing. This can include a situation where your employer has made you a loan (e.g. for the purchase of a train season ticket), where you've signed up for a salary sacrifice (e.g. cycle to work, pensions or

to a worker employed by him is less than the total amount of the wages properly payable by him to the worker on that occasion (after deductions), the amount of the deficiency shall be treated for the purposes of this Part as a deduction made by the employer from the worker's wages on that occasion.

(4) Subsection (3) does not apply in so far as the deficiency is attributable to an error of any description on the part of the employer affecting the computation by him of the gross amount of the wages properly payable by him to the worker on that occasion.

(5) For the purposes of this section a relevant provision of a worker's contract having effect by virtue of a variation of the contract does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the variation took effect.

(6) For the purposes of this section an agreement or consent signified by a worker does not operate to authorise the making of a deduction on account of any conduct of the worker, or any other event occurring, before the agreement or consent was signified.

childcare vouchers). Worryingly, it can sometimes include items such as a requirement in a contract to reimburse your employer for training costs if you leave within a specified time frame.

### **Does my employer have to pay me by a particular time?**

When starting a new job your employer should have put your pay date in writing to you. This might have been by letter/email offering you the job, in a contract of employment, a written statement of particulars of employment or the staff handbook.

Unless your contract provides otherwise, your employer should usually pay you on a specific date or by reference to a calculation period (for example, every week, four weeks or monthly). If your employer doesn't pay you by this date, your employer will be in breach of contract. It will also be an unlawful deduction from wages. Even if your employer subsequently pays you the full amount of you pay, there will have an unlawful deduction from wages on the date your pay was due.

### **Are you entitled to claim your financial losses resulted in non-payment or late payment?**

Yes, if your employer fails to pay you in full and/or when it is due, the law gives you the right to claim any financial losses that you suffer as a result. For example, bank charges.

(7) This section does not affect any other statutory provision by virtue of which a sum payable to a worker by his employer but not constituting "wages" within the meaning of this Part is not to be subject to a deduction at the instance of the employer.

[F1(8) In relation to deductions from amounts of qualifying tips, gratuities and service charges allocated to workers under Part 2B, subsection (1) applies as if—

- (a) in paragraph (a), the words "or a relevant provision of the worker's contract" were omitted, and
- (b) paragraph (b) were omitted.]

**[The law is soon going to be amended to include a right not to deduct from tips – but proving this might become a problem].**

14 Excepted deductions.

(1) Section 13 does not apply to a deduction from a worker's wages made by his employer where the purpose of the deduction is the reimbursement of the employer in respect of—

- (a) an overpayment of wages, or

**What can you do if you are not getting paid or not getting paid on time?**

1. Check whether there has been an administrative problem.

What is the normal process to get paid and has this been done? Does your employer have your correct bank details? Has your employer had your authorised timesheets? Does your employer have your P45?

If any of these problems apply to your situation, it is possible that making enquiries and ensuring the relevant people have everything they need may be enough to get the matter sorted out.

2. Share information with your employer.

It may help to explain your need to be paid on time, the effect not having it will have on you and your legal rights. You may want to explain this face to face to maintain a good working relationship, but it is always a good idea to follow this up in writing.

3. Contact the union.

If your workplace recognises a trade union and you are a member of the union, now would be a good time for you to approach the union for advice and

(b)an overpayment in respect of expenses incurred by the worker in carrying out his employment, made (for any reason) by the employer to the worker.

(2)Section 13 does not apply to a deduction from a worker's wages made by his employer in consequence of any disciplinary proceedings if those proceedings were held by virtue of a statutory provision.

(3)Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of a requirement imposed on the employer by a statutory provision to deduct and pay over to a public authority amounts determined by that authority as being due to it from the worker if the deduction is made in accordance with the relevant determination of that authority.

(4)Section 13 does not apply to a deduction from a worker's wages made by his employer in pursuance of any arrangements which have been established—

(a)in accordance with a relevant provision of his contract to the inclusion of which in the contract the worker has signified his agreement or consent in writing, or

assistance. Your union representative should be able to give you advice and help you through the process of getting copies of your payslips. Your union representative may even act on your behalf to get this sorted out for you.

4. Raise a grievance.

If your attempts to sort this out informally have not been successful, you may want to have a look at your employer's policies to see how to raise a formal grievance. If your employer does not have a grievance policy, you can follow the [ACAS code of practice on discipline and grievance at work](#).

A formal grievance can be a useful tool to get your employer to think more seriously about your concerns. If your employer is a larger organisation, it can mean that your concerns will be looked at by someone who is impartial.

However, grievances can sometimes have their difficulties. Sometimes employers can misunderstand the purpose of raising the grievance and construe it as a personal attack rather than an attempt to resolve a problem. Being careful about your tone and focusing on constructive outcomes can be a help towards maintaining good working relations and move the

(b) otherwise with the prior agreement or consent of the worker signified in writing, and under which the employer is to deduct and pay over to a third person amounts notified to the employer by that person as being due to him from the worker, if the deduction is made in accordance with the relevant notification by that person.

(5) Section 13 does not apply to a deduction from a worker's wages made by his employer where the worker has taken part in a strike or other industrial action and the deduction is made by the employer on account of the worker's having taken part in that strike or other action.

(6) Section 13 does not apply to a deduction from a worker's wages made by his employer with his prior agreement or consent signified in writing where the purpose of the deduction is the satisfaction (whether wholly or in part) of an order of a court or tribunal requiring the payment of an amount by the worker to the employer.

23 Complaints to [F1 employment tribunals].

problem towards resolution.

5. Start ACAS Early Conciliation.

This is a statutory process that must be followed before you are allowed to make a claim to the Employment Tribunal; and must be started within 3 months less one day, from the date of the act or decision that you are complaining about.

However, it can be a useful tool in its own right; even if you do not intend to litigate. You'll be allocated a conciliation officer who has knowledge of employment rights and has been trained in mediation. After an initial discussion with you (and obtaining your consent), they will get in contact with your employer to try to help resolve the matter.

The fact that ACAS are a statutory organisation, they are part of the litigation process, have knowledge of your legal rights and have training in mediation can be significantly helpful facts that prompts your employer to sort the problem out.

6. Consider Employment Tribunal proceedings.

You can make a claim to the Employment Tribunal if your employer fails to pay you properly. You can ask the Tribunal to issue a Judgment which states the

(1)A worker may present a complaint to an [F1employment tribunal]—

(a)that his employer has made a deduction from his wages in contravention of section 13 (including a deduction made in contravention of that section as it applies by virtue of section 18(2)),

(b)that his employer has received from him a payment in contravention of section 15 (including a payment received in contravention of that section as it applies by virtue of section 20(1)),

(c)that his employer has recovered from his wages by means of one or more deductions falling within section 18(1) an amount or aggregate amount exceeding the limit applying to the deduction or deductions under that provision, or

(d)that his employer has received from him in pursuance of one or more demands for payment made (in accordance with section 20) on a particular pay day, a payment or payments of an amount or aggregate amount exceeding the limit applying to the demand or demands under section 21(1).

(2)Subject to subsection (4), an [F1employment tribunal] shall not consider a complaint under this

information that payslip should have included.

**How long should you wait before deciding to take action?**

Again, there isn't a one size fits all answer to this. It is recommended you start taking either of the informal steps to resolve this issue as soon as you should have been paid. You can then progress along each stage once you are convinced that you have exhausted a particular option. For example, if you are sure there is no administrative problem you can share information with your employer about your rights and the impact non-payment is having on you.

Generally, it may be reasonable to take further action if a week passes and there is no movement. Of course, you'll need to be flexible on this if your employer lets you know that there is something preventing them from getting back to you more quickly.

However, how quickly you progress through the stages of dispute resolution before getting to the litigation stage really depends upon your situation and how urgent it is for you to get your payslip. There is no prescribed time frame for starting the grievance process (other time Tribunal time limits) but the grievance policy itself might proscribe how the procedure should run.

section unless it is presented before the end of the period of three months beginning with—

(a) in the case of a complaint relating to a deduction by the employer, the date of payment of the wages from which the deduction was made, or  
(b) in the case of a complaint relating to a payment received by the employer, the date when the payment was received.

(3) Where a complaint is brought under this section in respect of—

(a) a series of deductions or payments, or  
(b) a number of payments falling within subsection (1)(d) and made in pursuance of demands for payment subject to the same limit under section 21(1) but received by the employer on different dates, the references in subsection (2) to the deduction or payment are to the last deduction or payment in the series or to the last of the payments so received.

[F2(3A)Section 207B (extension of time limits to facilitate conciliation before institution of proceedings) applies for the purposes of subsection (2).]

(4) Where the [F1employment tribunal] is satisfied that it was not

The final step, starting Employment Tribunal proceedings, must be started within 3 months less 1 day, of the date of the failure to provide the payslip to you. Although this may be extended by ACAS Early Conciliation or if there are subsequent failures to provide payslips. Even if you are at the stage of awaiting the outcome of your grievance, you need to ensure you comply with the obligation to start Early Conciliation and lodge your claim with the Employment Tribunal within the time limits.

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reasonably practicable for a complaint under this section to be presented before the end of the relevant period of three months, the tribunal may consider the complaint if it is presented within such further period as the tribunal considers reasonable.

[F3(4A)An employment tribunal is not (despite subsections (3) and (4)) to consider so much of a complaint brought under this section as relates to a deduction where the date of payment of the wages from which the deduction was made was before the period of two years ending with the date of presentation of the complaint.

(4B)Subsection (4A) does not apply so far as a complaint relates to a deduction from wages that are of a kind mentioned in section 27(1)(b) to (j).]

[F4(5)No complaint shall be presented under this section in respect of any deduction made in contravention of section 86 of the M1 Trade Union and Labour Relations (Consolidation) Act 1992 (deduction of political fund contribution where certificate of exemption or objection has been given).]



**24 Determination of complaints.**

**[F1(1)] Where a tribunal finds a complaint under section 23 well-founded, it shall make a declaration to that effect and shall order the employer—**

**(a) in the case of a complaint under section 23(1)(a), to pay to the worker the amount of any deduction made in contravention of section 13,**

**(b) in the case of a complaint under section 23(1)(b), to repay to the worker the amount of any payment received in contravention of section 15,**

**(c) in the case of a complaint under section 23(1)(c), to pay to the worker any amount recovered from him in excess of the limit mentioned in that provision, and**

**(d) in the case of a complaint under section 23(1)(d), to repay to the worker any amount received from him in excess of the limit mentioned in that provision.**

**[F2(2)] Where a tribunal makes a declaration under subsection (1), it may order the employer to pay to the worker (in addition to any amount ordered to be paid under that subsection) such amount as the tribunal considers appropriate in all the circumstances to compensate**

	<p><u>the worker for any financial loss sustained by him which is attributable to the matter complained of.]</u></p>
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