

Boston Borough Council

Direct Earnings Attachment Employers Guide

As an employer, you may be asked to deduct any benefit overpayments an employee owes Boston Borough Council from their pay under the Social Security (Overpayments and Recovery) Regulations 2013, SI384. 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.

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 (AEO). A DEA does not replace any of these other orders and in some circumstances employers may receive requests to implement deductions for a DEO and a DEA for the same employee.

You may be familiar with a DEO if you have ever been ordered to make deductions from an employee's earnings or pension for the Child Maintenance Group (CMG), or the Child Support Agency (CSA), as a way of collecting child maintenance from a non-resident parent.

Direct Earnings Attachment Employers Guide

(March 2023)



Introduction

Direct Earnings Attachments allow the DWP or Local Authorities to recover overpaid benefit money that is owed to them.

Employers are required to operate a DEA to make deductions directly from an employee's earnings until the amount is cleared in full, or Boston Borough Council advise you to stop or your employee leaves. Full details about how to do this are contained in this Employer's Guide.

This leaflet explains what you, as an employer, need to do if we ask you to implement a Direct Earnings Attachment. It tells you:

- how to operate and make payments for a Direct Earnings Attachment
- what your legal responsibilities are

This leaflet is intended to help you understand the main points about Direct Earnings Attachments.

If you are using a computerised payroll system and you receive a request to set up a DEA you will need to;

1. Manually calculate the amount to deduct from earnings.
2. Manually check whether there are any other orders currently in place - as the DEA may take priority over these
3. In cases where the DEA does take priority over another order, consider whether other orders need to cease or deduction amounts be recalculated
4. Ensure, in cases where other orders cannot be applied that these are removed manually from the payroll system and subsequently re-instated once a DEA ceases.

Your responsibilities

As an employer, you have a legal obligation to:

1. implement a Direct Earnings Attachment when we ask you to by making deductions from the employee's net earnings, i.e. after deduction of:
 - a) income tax
 - b) Class 1 contributions
 - c) Amounts deductible by way of contributions to a work place pension scheme which provides payment of annuities or lump sums
 - (i) to the employee on retirement at a specified age or on becoming incapacitated at an earlier age
 - (ii) on the employees death, to the personal representative, widow, surviving civil partner, relatives or dependants
2. make payments to us by the 19th day of the month following the month the deduction is made
3. keep a record of each deduction taken, and the employee from whose earnings it was made
4. Continue to operate the DEA until the amount you have been asked to deduct is cleared in full, or Boston Borough Council advise you to stop or your employee leaves your employment.

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

Providing information

You have a duty to notify Boston Borough Council 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.

You should also let us know:

- if your business ceases trading

You have duty to notify your employee in writing of:-

The amount of the deduction taken, including any amount taken for administrative costs. (See section on administrative costs).

If this information is shown on the payslip, it will suffice.

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

If you have any problems or queries in setting up the DEA, please ring the Overpayments Team on 01205 314200, please select option 2, 2, 2.

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 Social Security Act Pensions Act 1975
Most other payments on top of wages	Amounts paid by a public department of the Government of Northern Ireland or anywhere outside the United Kingdom
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	Redundancy payments and pay 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, if applicable, each pay period until the amount you have been asked to deduct is cleared in full, we tell you to stop or your employee leaves your employment.

Net Earnings

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

How do I operate a DEA?

The enclosed letter requests you to apply a DEA for your employee.

- when to send us payments
- where to send us 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 on the following page)
- 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 the protected earnings proportion, which is 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, 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 or B to find the deduction percentage rate for the employee's net earnings figure to calculate the amount to be deducted.

Table of amounts to be deducted by employer

TABLE A: WHERE EARNINGS ARE PAID WEEKLY	
AMOUNT OF NET EARNINGS	DEDUCTION (% 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 B: WHERE EARNINGS ARE PAID MONTHLY	
AMOUNT OF NET EARNINGS	DEDUCTION (% OF NET EARNINGS)
Less than and exactly £430	Nil
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 to check the percentage rate.

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

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 = £850.

$$£850 / 3 = £283.33$$

$$£283.33 \times 11\% = £31.17$$

Total deduction from net wage of £850 = £93.51 (£31.17 x 3).

Rounding

The exact amount of the net wage is used against table A and 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 below, as follows:

Example 1

Net wage £235.63 per week

$$£235.63 \times 7\% = £16.4941$$

Weekly deduction = £16.49

Example 2

Net wage £1547.99 per month

$$£1547.99 \times 11\% = £170.278$$

Monthly deduction - £170.28

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% (Example 3 below refers) 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 for 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 states that a deduction of £243 should be taken, the protected earnings limit means that the amount will be restricted to £162

You must continue to calculate a DEA deduction, if applicable, each pay period until the amount you have been asked to deduct is cleared in full, we tell you to stop or your employee leaves your employment.

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 and B) you cannot calculate a DEA deduction.

Making payments to Boston 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 Boston Borough Council as soon as possible, but no later than the 19th day of the month following the month in which you have taken it.

(For example, if you take the money on 30 September, you must send it to us before 19 October; if you take the money on 1 October, you must send it to us before 19 November).

Paying Boston Borough Council

When making a payment, please quote the correct Invoice number. You can pay the DEA to us via BACS.

Payment by Direct Credits (BACS)

Bank & Branch: H.S.B.C. Bank

Sort code: 40 12 30

Account Number: 51644807

Reference: This will be the employee's Invoice Number

Alternatively you can make payments by debit or credit card

Payment may be made by calling our Overpayments Team on 01205 314200, please select option 2, 2, 2.

You can also make payment via the website www.boston.gov.uk

Or via post to Boston Borough Council, Municipal Buildings, West Street, BOSTON, Lincolnshire, PE21 8QR.

Please make the cheque payable to Boston Borough Council and write the employee's National Insurance Number and Invoice Number on the back of the cheque.

Please do not send cash through the post.

Questions & Answers

Q) Does your employee have any other court orders against them?

A) 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 (England & Wales), Earnings Arrestment (Scotland) 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:

England & Wales

- Deduction from Earnings Order (DEO) from CMG
- Attachment of Earnings Order (AEO) for Maintenance or Fines
- Council Tax Attachment of Earnings Order (CTAEO)

Scotland

- Deduction of Earnings Order (DEO) from CMG
- Earnings Arrestment (EA)

Student Loans

A student loan repayment also takes priority over a DEA. This applies to both England & Wales and Scotland.

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

Q) What if your employee thinks the amount they owe is wrong?

A) If your employee thinks that the amount of money they owe is wrong, you should advise them to contact us on the telephone number at the top of the letter they received about the Direct Earnings Attachment.

Q) What if your employee thinks the amount of the deduction is too much?

A) If they think that the amount you have calculated is too much, you should first check that the amount being deducted is the amount directed by Boston Borough Council according to table A or B, on the basis of their earnings and other orders in place. If the amount is correct, you should explain that you have made the deduction as instructed to do so. If they feel that this is too much for them to manage, you should advise them to contact us.

Q) What happens once I am operating a Direct Earnings Attachment?

A) Once you have started operating a DEA, you must continue to make payments to us until the amount you have been asked to deduct is cleared in full, or East Lindsey District Council advise you to stop or your employee leaves. 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.

Q) Where can I get more information?

A) If you need more information or help to operative a Direct Earnings Attachment please visit www.gov.uk/make-benefit-debt-deductions. If you need further assistance please ring the Overpayments Team on 01205 314200, please select option 2,2,2

Contact Details

If you have any queries regarding the Direct Earnings Attachment please telephone the Overpayments Team on 01205 314200, please select option 2,2,2.

Alternatively send an email to over.payments@pspsl.co.uk

Alternatively you may prefer to send in your query in writing to the following address:

Boston Borough Council
Municipal Buildings
West Street
BOSTON
Lincolnshire
PE21 8QR

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If you would like this information in another language, large print or Braille, please contact us on 01205 314200.