

Frequently Asked Questions

Application Process Questions

Q1 How do I submit an Injury Allowance claim?

Employees should complete the appropriate accident report e.g. DATIX at the earliest opportunity or ask a manager or colleague to complete it on their behalf. Employees should then request and complete Part A of Appendix 1 of this guidance and submit it to their line manager to complete Part B.

Q2 Is there any qualifying period for Injury Allowance?

No. Payment of Injury Allowance is not dependent on length of service. This means that all employees are covered from their first day of employment.

Eligibility Questions

Q3 In what circumstances would my claim not be successful?

Where a person:

- is injured while on a normal journey travelling to and from work, except where the journey is part of their contractual NHS duties of employment
- stress related sick leave wholly or mainly due to investigations or disciplinary action
- stress related sick leave wholly or mainly due to a failed application for promotion or transfer
- other sickness absence as a result of disputes relating to employment matters
- where an employee sustains an injury or disease which is due to or aggravated by the claimant's own negligence or misconduct
- where the injury or disease is attributable to some other cause, for example the natural progression of a pre-existing condition, normal wear and tear or a non-work related injury, condition or disease
- where a person suffers from a *pre-existing or non-work related condition (injury or disease) unless there is some new work related cause and effect over and above the original problem (*each case will be considered on its own merit).
- where the employment contract ends
- stress related sick leave where it is not possible to determine that the cause is wholly or mainly due to NHS employment
- other sickness absence where it is not possible to determine on the balance of probability that the absence is wholly or mainly due to NHS Employment

Q4 In what circumstances might my claim be successful?

Some examples:

- physical or psychiatric injury sustained or disease contracted due to a specific incident or series of incidents
- injury sustained or disease contracted that does not manifest itself for several years, for example, asbestosis or Hepatitis C following a needle stick injury

- injury sustained while travelling on official duty, for example, road traffic accident (RTA), while travelling in an official car from one NHS premises to another injury sustained off duty, for example, while providing professional treatment which required professional training or knowledge at the scene of a RTA
- injury inflicted off duty, the cause of which can be attributed to NHS employment (for example, being assaulted on the way home from work by ex-patient)
- injury, disease or other health condition contracted due to a series of incidents relating to NHS employment (for example, exposure to noxious substances causing injury, condition or disease over a period).

Q5. Will employees retain enhanced payments when they are absent due to a condition that is likely to be covered by the Equality Act or where the absence is pregnancy related?

To date, no exemptions have been agreed nationally for these absence reasons therefore if the rostered shift is not worked, no unsocial hours payments will be made.

Q6 What if there is more than one cause of the injury, disease or other health condition?

If both employment and external factors are involved it is necessary to consider their relative importance. In such cases Injury Allowance is only payable if, on the balance of probabilities, the injury, disease or other health condition is wholly or mainly attributable to their NHS duties of employment. Employers may also wish to seek specific advice from their Occupational Health Department.

Q7 How long is Injury Allowance payable for?

Injury Allowance is payable for a period of up to 12 months per episode, subject to local absence management, return to work and rehabilitation policies.

The intention is for the injury allowance to be a flexible payment that supports staff when they are off sick and on return to work. As such it can be paid for a maximum of 12 months per episode, for example, during sickness absence on half or no pay and during any agreed phased return to work after pay has been reduced, with an episode remaining linked to the original injury.

Where an injury, disease or other health condition is exacerbated by a further injury, disease or other health condition that is wholly or mainly attributable to their NHS employment (which may not on its own have led to a period of sickness absence) then a new episode may commence.

Q8 How will the Injury Allowance apply to staff with more than one contract of employment?

Some staff may have more than one contract of employment and these contracts can vary from standard whole time equivalent contracts of employments to zero hours contracts covering bank staff, with differing terms and conditions of service being applied to each.

It is recognised that an employee who suffers a work related injury under one contract of employment may result in a period of absence in another. Employers will

therefore need to consider the interaction between the various contracts. Where a member of staff meets the eligibility criteria for Injury Allowance, it would seem reasonable to apply a similar approach as is adopted locally in respect of payment of sick pay entitlements.

Employers will also need to be aware that Injury Allowance may be payable for an injury that is not sustained on duty but is connected with or arising from the employee's employment

Pay Questions

Q9 Is an employee required to claim relevant contributory state benefits?

Yes. Employees are required to claim any contributory state benefits they may be entitled to and must inform employers immediately on receipt of such benefits. Where timely notification is not provided any overpayment of Injury Allowance that arises as a result must be recovered from the employee

Q10 What if an employer makes an overpayment?

Employers will require repayment when an overpayment is made. Where an employer has made an accidental overpayment, the statutory position is that the employer can recover this by deducting the overpayment from future wages or salary. This is covered by s.14 of the Employment Rights Act 1996, which provides that protection from deductions from wages does not apply to an overpayment of wages or employment-related expenses. Employers should take into account the period of time the over payment was made when agreeing the programme of repayments.

Q11 What about tax and National Insurance contributions?

Injury Allowance is subject to income tax and National Insurance contributions but is not subject to NHS Pension Scheme contribution deductions.

Q12 Can I use Injury Allowance to extend my phased return to work agreement?

The All Wales Sickness Absence Policy provides guidance on phased return to work agreements. It advises that employees can extend phased return to work plans by utilising accrued annual leave. As an alternative, an employee may wish to extend a phased return by using any remaining injury allowance which will top up pay to 85% instead of using annual leave. This will need to be agreed with the manager in advance.

Q13 What about pay protection?

Eligible employees who have to change jobs permanently to a position on lower pay due to a work related injury, disease or other health condition, are entitled to receive a period of protected pay that is the same as any local provision for pay protection during organisational change.

Q14. What if an employee works part of a shift that attracted enhanced payments but then went on sickness absence for the remaining hours where they are claiming the reason for the absence was due to an industrial injury?

The principle is that employees should only receive enhanced payments when they have worked unsocial hours, therefore the employee should only receive the enhanced payments for the actual number of unsocial hours worked during the shift. The enhanced payments linked to the remaining hours not worked due to sickness absence should not be paid until their industrial injury claim has been confirmed as successful, after which the USH payments will be backdated.

Dispute Questions

Q15 What happens if a person disagrees with the decision?

If a person disagrees with the outcome of a decision it should be handled as outlined in this guidance.

Manager's Responsibilities

Q16. When should I report an Industrial Injury under RIDDOR?

Accidents must be reported where they result in an employee or self-employed person being away from work, or unable to perform their normal work duties, for more than seven consecutive days as the result of their injury.

Q17. Is stress a reportable industrial injury (e.g. under RIDDOR)?

No, neither work related stress nor stress-related illnesses are reportable under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). This is because the causes of stress-related ill health are usually extremely complex and linking conditions to specific types of work activity would be very difficult. This does not mean that stress cannot be raised with the enforcing authorities nor does it mean that a complaint cannot be made which could result in an investigation. While work related stress is not reportable, employers have duties to assess and manage the risk of stress-related ill health arising from work activities.

Source: <http://www.hse.gov.uk/stress/faqs.htm>

Q.18. Do I need to meet with an employee who is on sickness absence due to an Industrial injury?

Yes, any employees absent due to an industrial injury should be supported as normal. Managers or designated deputies will still be required to maintain regular contact with the employee and hold Long Term Sickness Review meetings/ return to work meetings where relevant in line with the All Wales Sickness Absence Policy.

Q19. Do absences due to industrial injuries contribute to the triggers within the All Wales Sickness Absence Policy?

In accordance with the All Wales Absence Policy implemented by Hywel Dda Health Board in November 2013, absences due to industrial injuries will contribute to sickness absence triggers and therefore you should still meet with the employee where the triggers are breached to offer support and guidance. However if the absence is due to a confirmed industrial injury where contributory negligence has not been proven, you would decide not to take further action under the policy.

Q20. What if an employee has returned to work on a phased return or alternative duties where the absence was due to a confirmed industrial injury?

Employees returning to work on a phased return to work will receive the same pay as if they were working their normal hours (e.g. basic plus unsocial hours). Employees returning to work on alternative duties will only be paid unsocial hour payments when they work their alternative duties during unsocial hours. All alternative duties need to be agreed in advance by the employee's line manager.

Q.21 What other support is available to employees?

Where appropriate, staff should be referred to the Occupational Health Department for advice and support and a record of the referral made on the incident record. Where an injury occurs as a result of violence and aggression the Health and Safety Department can provide support to staff both post incident and where formal action such as prosecution of the assailant is justified. Support is also available from others including Occupational Health, Senior Managers or Trade Union Representatives.

Questions on the Changes to the Injury Benefit Scheme

Q22. What about injuries or diseases arising on or before 30 March 2013?

Employees who sustain an injury or contract a disease due to NHS employment on or before 30 March 2013 will still be able to access the NHS Injury Benefit Scheme until 30 March 2038 under new transitional arrangements. Changes to the NHS Injury Benefits Scheme 31 March 2013 (V1) 03/2013.

Under these **transitional arrangements** NHS Injury Benefits will continue to provide:

- Temporary Injury Allowance
- Permanent Injury Benefit
- Death Benefits

Temporary Injury Allowance

The application and decision making processes for Temporary Injury Allowance remain unchanged. Employers continue to be responsible for considering claims for Temporary Injury Allowance and for the calculation and payment of the allowance where appropriate. NHSBSA Pensions will continue to consider disputes about entitlement to TIA under its Internal Dispute Resolution procedures.

Permanent Injury Benefits

The application and decision making processes for Permanent Injury Benefits remain the same. Applications for Permanent Injury Benefit should continue to be made on Form AW13 and sent to NHSBSA Pensions for action. Form AW13 is available for download from the NHSBSA Pensions website at www.nhsbsa.nhs.uk/InjuryBenefitScheme

Death/dependants benefits

Death benefits remain available for people who die as a result of sustaining an injury or contracting a disease before 31 March 2013

Q23 Do the changes affect people already in receipt of NHS Injury Benefits on or before 30 March 2013.

No - People who are in receipt of Temporary Injury Allowance or Permanent Injury Benefits on or before 30 March 2013 will not be affected by the changes from 31 March 2013.

Q24 What about people who have had an application for NHS Injury Benefits rejected on or before 30 March 2013?

People whose application for Temporary Injury Allowance or Permanent Injury Benefits has been rejected on or before 30 March 2013 in respect of an injury sustained or disease contracted on or before that date will not be affected by the changes from 2013. The two stage Internal Dispute Resolution procedures operated by NHSBSA Pensions remains available to applicants who wish to challenge (appeal) the outcome of their claim for Temporary Injury Allowance or Permanent Injury Benefit.

Q25 Are there any changes to Permanent Injury Benefits

Permanent Injury Benefit under the NHS Injury Benefit Scheme will no longer be available to people who sustain an injury or contract a disease due to NHS employment on or after 31 March 2013

Q.26. Where can I find further information?

See the guidance documents on Injury Allowance available on the NHS Employers website