

Quick guide to employee expenses

The law

An employee may claim very few expenses against his or her taxable income.

The law is given in Income Tax (Earnings and Pensions) Act 2003 s336 which states:

“(1) The general rule is that a deduction from earnings is allowed for an amount if —
(a) the employee is obliged to incur and pay it as holder of the employment, and
(b) the amount is incurred wholly, exclusively and necessarily in the performance of the duties of the employment”.

Part (b) is often remembered the acronym WENPODE.

There are separate rules for travel expenses. There are also some other statutory provisions.

Although the wording has changed over the years, the law has not changed for more than a century.

In effect these words create seven conditions that must be satisfied.

1 Obligated to...

An employee must be **obliged** to incur the expenditure, and not merely choose to do so.

If an employee is provided with tools, pens or similar items but prefers to use his own, he may do so. However the cost of such tools or items is not allowable. The employee is not obliged to incur the expenditure.

2 Incur

The employee must have incurred the expenditure to be able to claim it.

Suppose an employee is allowed to spend £50 on overnight accommodation while away on business, but chooses to sleep in his car or stay with a friend. The employee cannot claim for the accommodation. He has not incurred any expense, and so cannot claim.

3 Deduction from earnings

The employee may only be claimed from earnings.

Someone who is unemployed for a whole tax year cannot claim for a professional subscription, even though they may be receiving taxable jobseeker's allowance, which is replacement income.

However if, say, someone was unemployed for half the year, they may claim for a whole year's subscription against their earnings in the other half-year.

4 Wholly

The expense must wholly relate to the employment. This means that there must be no personal benefit, except incidental benefit.

Someone may have private medical treatment to get back to work sooner. They may be able to demonstrate that they only went private to resume working sooner than if they waited for treatment under the National Health Service. However, it is most unlikely that the whole benefit of medical treatment would be for work and not for personal benefit.

A leading case is *Prince v Mapp [1969]* where a guitarist had an operation on his finger to resume playing the guitar professionally. As he also played for pleasure, his claim was disallowed.

In contrast, in the case *Parsons [2010] TC 421*, a stunt man was allowed to claim for medical, treatment in relation to his knee and back, as the injuries were sustained in his work and he could live with such injuries but for the nature of his work. That case must be regarded as exceptional.

(Both these cases related to self-employed people, but this requirement is the same for employees and self-employed.)

For clothing, a claim may usually be made for a uniform, protective clothing, costumes and ceremonial robes (such as a barrister's wig and gown or a clergyman's vestments). No allowance may be claimed for ordinary clothing even if it is of a style that the person would not otherwise wear.

5 Exclusively

The expense must be solely related to the particular employment.

This means that if an employed musician buys an instrument for use as an employee and for self-employment, he will not be able to claim for the instrument at all as it is not exclusively used for either. He could avoid the problem by having two instruments.

In practice, HMRC often takes a realistic view on this.

6 Necessarily

The expense must be necessary to the *duties* of the employment. This can involve neat distinctions as shown by two similar cases.

In *Brown v Bullock [1961]* a bank required its manager to belong to a club. This was not an allowable expense as it related to the employment and not to the *duties* of the employment.

In *Elwood v Utitz [1965]* a director was allowed to claim membership of clubs. His work required him to stay overnight and the club provided the most economical accommodation. The need for accommodation was prompted by the duties of the employment.

7 In the performance of the duties...

Expenses may only be claimed if incurred while performing the duties of the employment.

Commuting to work and paying for a child minder are not usually allowable. These are not incurred performing the duties of the employment, they are enabling you to get to a place where you can start those duties.

In the case *Ansell v Brown [2001]*, a rugby player was required to maintain a standard of fitness which required attendance at a gym and taking dietary supplements. This was not in the performance of his duties, which were to play rugby.

Similarly most examinations and tuition fees are not allowable. These are not incurred in performing duties but to get a person to the competence where they may start to perform them.

It is not enough that an expense is incurred because the contract of employment requires it. In the case *HMRC v Decadt [2007]*, a hospital doctor was required to pass an examination, which he did. The expenses were not allowable as the examination was not in performing his duties.

A contrasting case is *HMRC v Banerjee [2010]* where the High Court allowed examination fees. A consultant dermatologist was required under her contract of employment to attend courses to train colleagues. This was held to be in the performance of her duties.

So what is allowable?

Very little.

The few things that you can claim for as an employee may include:

- subscription to a professional body,
- travel in the course of work (such as visiting clients),
- providing tools and equipment not provided by the employer.

In each case, the claim may only be to the extent that the employer does not reimburse you.

If you **work from home**, you may claim £3 a week for doing so. If you can show that your actual additional costs are higher, you may claim those.

If you belong to a **pension scheme** run by your employer, you may claim your contribution to the scheme. So if you earn £2,000 in a month and pay £100 to a pension fund, you will pay income tax on only £1,900. If you have your own pension scheme, you will not get this tax deduction at source, but HM Revenue and Customs may pay the income tax into your pension fund.

For some **manual occupations**, HMRC has agreed small fixed amounts in respect of clothing and tools. Someone in those occupations may claim that amount without having to justify the expense. The law is contained in Income Tax (Earnings and Pensions) Act 2003 s367 (formerly extra-statutory concession A1). The list is given in the Inspector's Manual at EP2260.

If an employee is away on business, the employer may pay or reimburse **personal expenses** up to £5 a day in the UK or £10 overseas. The amount is considered for the total period of absence. This is only allowable when the employer pays the bill. It is intended to help employers having to extract small disallowable amounts for bar bills, newspapers, laundry and similar.

Travel expenses

An employee cannot usually claim the cost of commuting from home to work.

An employee may claim for the cost of travel in the course of work, such as visiting clients or collecting goods.

Where the employee uses his or her own transport, the employee may claim tax-free:

- for a car: 45p a mile (40p before 6 April 2011) for the first 10,000 miles
25p a mile thereafter
- for a motorcycle: 24p a mile
- for a bicycle: 20p a mile.

This does not give an employee the legal right to receive such an amount. If an employee receives more, the excess is taxable. If an employee receives less, the shortfall may be claimed against tax.

In addition, another 5p a mile may be claimed if taking a passenger. However this is an allowance and not a relief, so an employee cannot claim any shortfall on this payment.