



# **NHS Injury Benefits Scheme**

## Temporary Injury Allowance employer guidance

**Employers should do all they reasonably can to identify cases where Temporary Injury Allowance (TIA) should be considered. To qualify for TIA an employee who is covered by the Scheme must be absent on sick leave and suffering a reduction in their NHS pensionable pay (or, if they are not a Pension Scheme member, what would be regarded as their pensionable pay) as a result of an injury or disease (physical or mental) that is wholly or mainly attributable to their actual NHS duties. The injury or onset of the disease must have occurred on or before 30 March 2013.**

### **Who decides if an employee is entitled to TIA?**

Employers have delegated authority to make all decisions on entitlement to TIA.

In making their decision, employers should consider the following:

- details of the injuries sustained or the disease contracted (i.e. the condition) by the applicant, its treatment and prognosis
- how it is connected to their NHS duties (i.e. what caused it)

And obtain copies of:

- all accident reports
- all Occupational Health Department notes and records
- reports of any internal investigation connected with the claim
- a full job description
- sick leave records
- a full statement of events explaining what injury/disease the applicant is claiming for and the circumstances leading to the claim. Employers who do not support the claim must still provide a statement, and whatever other information the Pensions Division requires to process the claim.

If an employee disagrees with the decision or believes that a decision may be flawed because it has not been considered in accordance with the Regulations, they can refer their claim appeal to NHS Business Services Authority (NHSBSA) under the provisions of the Internal Dispute Resolution (IDR) procedures. The decision letter will include more information for the employee on how to go about appealing if they wish.

### **When can TIA be paid?**

TIA can only be paid during leave of absence on reduced or no pay, whilst the employee remains employed in the NHS i.e. up to their last day of employment. It ceases when they return to work in any capacity or leave the NHS. The injury or onset of the disease must have occurred on or before 30 March 2013.

## Staff who can claim TIA

Staff employed by NHS Employing Authorities and certain other NHS bodies can apply for TIA. GPs, Ophthalmic, and Dental Practitioners working for the NHS as well as holders of NHS honorary appointments can also apply for TIA. The injury or onset of the disease must have occurred on or before 30 March 2013.

## Entitlement criteria

To qualify for TIA the employee must be on a leave of absence (usually sick leave) with reduced or nil pay due to an injury or disease (condition) that is wholly or mainly attributable to their actual NHS duties. The injury or onset of the disease must have occurred on or before 30 March 2013.

If the injury or disease is wholly or mainly attributable to some other cause then TIA is not payable. If both NHS related and non-NHS related factors are involved it is necessary to consider their relative importance. In such cases TIA is only payable if, on the balance of probabilities, the injury or disease was wholly or mainly attributable to their NHS duties.

Where an applicant suffers from a pre-existing or non-work related condition (injury or disease) there must be some new work related cause and effect over and above the original problem.

TIA may not be considered if a person is injured travelling on a normal journey to and from work or is an NHS reservist who is injured whilst serving with the armed forces.

If an employee suffers an injury which the employer believes may have been due to or seriously aggravated by their own culpable negligence or misconduct the employer should contact the NHS Injury Benefits Team for advice.

If an employee commences sick leave as the result of investigations into their behaviour or subsequent disciplinary action the employer should contact the NHS Injury Benefits Team for advice.

## Calculating and paying TIA

Form AW (IB) 155C should be used to calculate TIA.

TIA tops up the total of any income from the items shown below to 85% of pre-loss (i.e. pre-injury) pensionable pay:

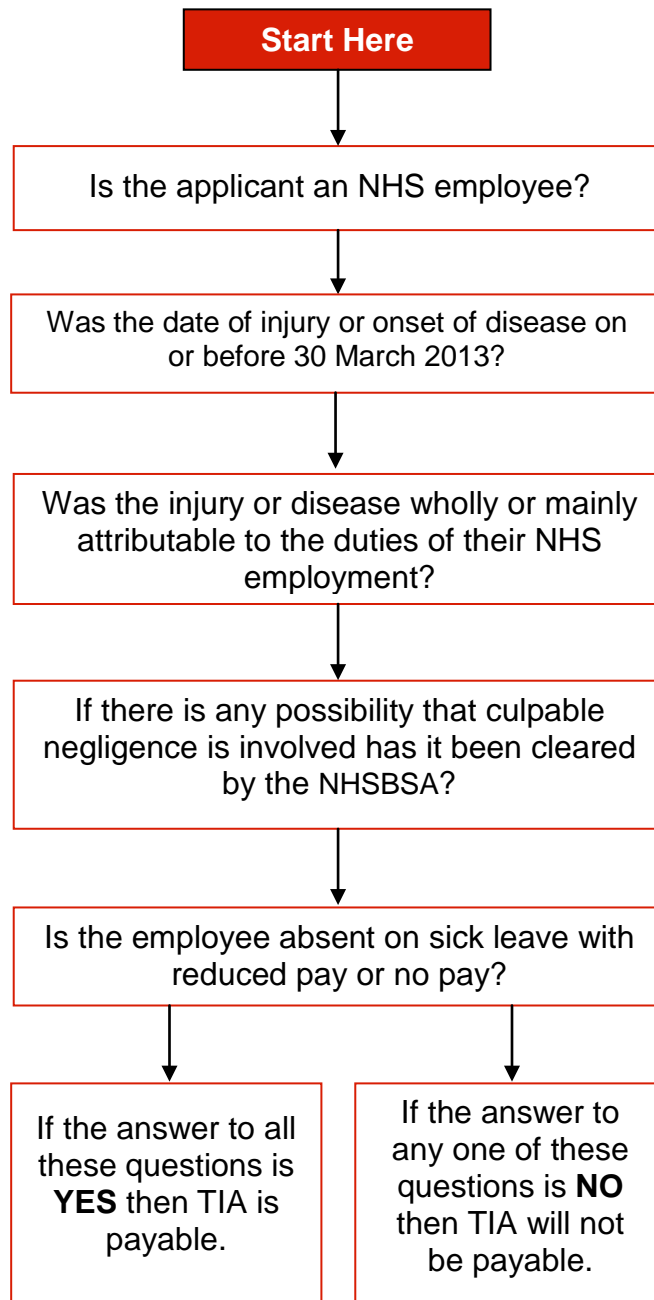
- Sick pay (including SSP).
- Certain Department for Work and Pensions (DWP) benefits.
- Any NHS pension or personal pension that is connected to the NHS employment.
- TIA is based on pensionable pay, or what would have been their pensionable pay if the employee is not a member of the NHS Pension Scheme. Overtime payments (above the standard whole time salary) and one off bonuses must not be included when calculating TIA.

- If the employee is, or would be, pensionable under the provisions of the 2008 Section or 2015 NHS Pension Scheme Regulations the employer should contact the NHS Injury Benefits Team for advice regarding pensionable pay.

More information about these benefits can be found on the DWP's website:

[www.gov.uk/government/organisations/department-for-work-pensions](http://www.gov.uk/government/organisations/department-for-work-pensions)

**The flowchart below provides a step by step guide for employers to decide if TIA is payable.**



If in doubt as to an applicant's entitlement to TIA contact your Injury Benefits administrator at the NHSBSA.

## Relevant Department for Work and Pensions (DWP) benefits

The rates of relevant benefits to be taken into account when calculating TIA are the actual rates in operation at the day on which their NHS earnings reduced. Although relevant benefits may increase each year to allow for inflation, no recalculation of TIA is necessary. This means that the TIA must not reduce solely because of any normal yearly increases to relevant DWP benefits.

In the unlikely event that a relevant benefit ceases or starts, the amount of TIA must be reassessed. It should be noted that a move from Assessment Phase to Main Phase Employment and Support Allowance is a change for the purposes of the NHS Injury Benefits Regulations and the TIA should be reassessed accordingly.

TIA must not be reviewed if the level of the DWP benefit in payment is adjusted. Employers are advised to obtain the employee's permission to contact the local DWP office.

The following DWP benefits are not taken into account when calculating TIA:

- Personal Independence payment
- Attendance Allowance
- Disability Living Allowance
- Income Support
- Invalidity Allowance
- Severe Disablement Allowance (awarded for an injury, disease, or condition contracted before 27 November 1985)

The following DWP benefits must be taken into account if the employee is in receipt of them:

- Industrial Injuries Disablement Benefit (IIDB)
- Incapacity Benefit plus certain additional components
- Employment Support Allowance (ESA) - TIA should be reviewed when the ESA changes from Assessment Phase to Main Phase
- Reduced Earnings Allowance (is only paid if the injury occurred prior to 1 October 1990)
- Retirement Allowance
- Severe Disablement Allowance (when awarded for an injury, disease, or condition contracted on or after 27 November 1985)

More information about these benefits can be found on the DWP's website:

[www.gov.uk/government/organisations/department-for-work-pensions](http://www.gov.uk/government/organisations/department-for-work-pensions)

In the unlikely event that DWP benefits cease or the employee begins to receive another kind of DWP benefit, the amount of TIA payable must be reassessed.

TIA must not be reviewed if the level of the DWP Incapacity Benefit in payment is adjusted.

Employers are advised to obtain the employee's permission to contact the local DWP office.

No TIA is payable if income from the sources above equals or exceeds 85% of pre-loss pensionable pay. TIA will be a full 85% of pre-loss pensionable pay if the income from the above sources is nil.

### **Tax, National Insurance and NHS pension**

TIA is taxable and subject to National Insurance contributions but not to deductions for NHS Pension Scheme contributions.

### **Average pay**

Except for practitioners, TIA is based on the best of the last three years pensionable pay (or, where the employee is not a member of the Pension Scheme, what would have been pensionable) up to the date the NHS earnings are reduced. If the employee is, or would be, subject to the provisions of the 2008 Section or 2015 NHS Pension Scheme the employer should contact the NHS Injury Benefits Team for advice regarding pensionable pay. For practitioners TIA is based upon their pre-injury average practitioner uprated (dynamised) pensionable pay. Clinical Commissioning Groups (CCGs) and Local Health Boards (LHBs) should contact the NHSBSA to assist with the calculation of average pay for practitioners.

Where an employee has less than three years employment with their present employer but there is previous employment elsewhere in the NHS the current employer should obtain details from the previous employer to determine the best of the last three years pensionable pay. If total NHS employment is over two years but less than three use the better of the final two years. If the total employment is over one year but less than two use the final 365 days. If the employment is less than one year 'gross up' the actual pay earned to a whole year's pensionable pay.

### **Pay rises affecting the pre-loss pay TIA**

A backdated pay award will have an affect on the pre-loss pay. The pre-loss pay and TIA must be recalculated. The TIA is always 85% of the preloss pay.

### **Sick pay and TIA**

If an employee's sick pay increases due to a pay rise awarded whilst in receipt of TIA the amount of TIA must be recalculated. For example if the sick pay increases by £10.00 per week due to a pay rise the TIA must reduce by the same amount to maintain the overall 85% TIA.

### **TIA and inflation increases**

Every April, TIA may be subject to increases under the Pensions Increase Act. If TIA spans the month of April employers should contact the NHS Injury Benefits Team in order to calculate any increase that may be due.

## **Concurrent employments**

Where an employee has two or more regular contracted NHS employments with different employers, employers should decide between themselves who will be responsible for the calculation of TIA, which must then be apportioned and paid by the relevant NHS employers in proportion to the annual rate of pensionable pay.

## **Damages / compensation and TIA**

The Scheme is a 'no blame' scheme and acceptance of a TIA claim does not constitute an employer's admission of negligence or responsibility or liability for the injury, disease, or condition.

Therefore employers must not delay the payment of TIA because legal proceedings are being taken against them.

## **Criminal Injuries Compensation and TIA**

If compensation is awarded for the same injury under the Criminal Injuries Compensation Scheme, employers may need to inform the Criminal Injuries Compensation Authority of any TIA paid.

Please refer to the Criminal Injuries Compensation Authority website for more information:

[www.gov.uk/government/organisations/criminal-injuries-compensation-authority](http://www.gov.uk/government/organisations/criminal-injuries-compensation-authority)

## **Part time staff**

If the applicant is working part time TIA is based on actual NHS pay and not the whole time equivalent.

## **Junior hospital doctors**

When calculating TIA for junior hospital doctors, NHS employers should contact the NHSBSA for guidance.

## **Bank nurses**

Bank employments are not counted as regular employments and pensionable pay is based on 365 calendar days not 365 paid days. Bank pay cannot be taken into account if the aggregated NHS employment exceeds whole time; i.e. the pay used for TIA purposes cannot exceed whole time.

For example in the case of a nurse with a full time salary of £19,000.00 and banking pay of £2,000.00 received in the last 365 calendar days the pay for TIA purposes would be £19,000.00.