



GUIDE TO MAKING NAECI PAYMENTS



INTRODUCTION

For some time the NJC has recognised the need to assist contractors' payroll and finance staff in the Engineering Construction Industry. This guide will help to ensure that the correct payments are made to employees working under the NAECI.

A wide selection of queries encountered by payroll providers, NJC and ECIA staff, together with the answers given have been analysed by a small working party comprised of representatives of the signatory employers, trades unions and informed payroll practitioners.

It was decided that we would provide and maintain a database of payroll related questions and answers on the NJC website. The database will provide a comprehensive reference point which will assist not just the providers but employees in the industry as a whole.

To make it easier to use, the document contains a Table of Contents of the NAECI sections referred to. There is also a Subject Index at the end of the document.

The database does not provide for simple questions that require only reference to the NAECI. An example of this is "What is the basic rate/day work of a Grade 1 Adult on Categorical Work?"

The ECIA intends to offer seminars to its members who may benefit from an introduction to the questions and answers document, the NJC and the NAECI. This will assist those who are new to NAECI payroll practices or returning to them and who need to update their knowledge of the NAECI rules relevant to payroll practices.

When consulting this guide in order to seek greater clarity, you must bear in mind that the intent and/or wording of the National Agreement for the Engineering Construction Industry shall take absolute precedence over the wording in this Guide. Additionally, this Guidance document applies to NAECI Registered work only, as defined in 1.3 of the NAECI 2022 – 2023.



PAYROLL QUESTIONS & CONSOLIDATED ANSWERS

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PAYROLL QUESTIONS & CONSOLIDATED ANSWERS

NAECI 5 STARTING EMPLOYMENT

NAECI 5.4.2 Grading

Q Operative grades, for example stores personnel and grinders often ask to be moved to a higher grade, and grade 4 employees to move to grade 5. What are the criteria for deciding when it is appropriate to re-grade someone?

A NAECI 5.4.2 sets out the Grades and the qualifications as well as experience that must be achieved before an employee is assigned to a higher Grade (NAECI 5.4.3 for CISRS trained scaffolders). Any grievances over NAECI Grading would be determined by use of the NAECI or Domestic Procedures.

NAECI 5.6 TRANSPORT EXPENSES & TRAVELLING TIME PAYMENT AND TRANSFERS

Q. What transport expenses and travelling time payments are due when an employee starts and finishes on an “away contract”.

A. NAECI 9.4(b) & (c) refer. On commencement and termination of employment on “away contracts” employees entitled to accommodation allowance shall be entitled to transport expenses and travelling time payment both at the start and finish of the “away contract”. However, the travelling time payment for periodic weekend leave is one way only. NAECI 9.4(d) provides the entitlement on transfer to another site.

Distance between home and site shall be measured by the fastest route option on the online RAC Route Planner. Recent changes to the RAC Route planner website mean that choosing the fastest route option is no longer clearly explicit. Guidance for choosing the fastest route on the RAC Route Planner can be found on the NJC website:

<https://www.njeci.org.uk/measurement-of-radius-allowance/>

Scale 1 Taxed and Tax Free elements for 2023 are contained in [NJC Communique 03\(22\)](#).

NAECI 5.7 PROBATIONARY PERIOD

Q During the first four weeks of employment how much notice pay do I have to give the employee if he is to leave?

A During the first 4 weeks of employment the notice required to be given by the employer or employee is 2 hours. NAECI 5.7(a) refers.

Note also: If the individual is Grade 1 or a registered trainee the probationary period is respectively 3 and 6 months.

Q What if a disciplinary matter arises during the probationary period?

A NAECI 5.7(c) sets aside the normal practice of issuing warnings for those on probation but the employee should be invited to attend a disciplinary meeting before any decision is finally taken to dismiss. The employee should be given written reasons following the meeting.

Q Does an employee have the right to challenge a decision of the employer to dismiss him/her during the probationary period?

A Yes, but only through the company's domestic procedure.

Explanation: Written reasons for a dismissal decision must be given following the meeting. Any appeal against dismissal during the probationary period shall be exercised solely through the domestic appeal procedure. The NAECI Procedure cannot be accessed during the probationary period.

NAECI 6 PAY

NAECI 6.1 PAYMENT OF WAGES

Q Can a company pay a worker at monthly intervals?

A Yes, NAECI 6.1 allows for employees to be paid monthly.

Note also: There is also provision for wages to be paid weekly, fortnightly, 4 weekly, by cheque or electronic transfer in accordance with company policy. NAECI 17 contains provisions for employees to be put on salaried status.

NAECI 6.4 PROFICIENCY PAY FOR WELDING AND AGREED TRAVEL EXPENSES WHEN TAKING WELDING SKILLS TEST

Q What are welders proficiency payments?

A Proficiency pay is paid to welders who are undertaking coded work on pressurised parts and systems. NAECI 6.4 refers.

Additional information: NAECI A.3 gives the details of the current rates for categories B to E. Category A does not attract a payment.

The following points are also important:

- Only one proficiency payment listed in NAECI A.3 may be paid at any one time.
- Skilled employees remain entitled to the payment while remaining qualified to the relevant level of proficiency throughout their employment with the current employer on the project or site for which they were tested and remain competent.

Q If, prior to employment, a welder is invited to attend a test, what should the individual receive in terms of expenses and payments?

A Reasonable travelling expenses should be paid that are demonstrably incurred getting to the venue. These expenses should be agreed beforehand.

Additionally, an individual who completes the test successfully: accepts the first offer of employment from that employer; commences employment as instructed; and completes the first week of employment, will be entitled to be paid 8 hours at basic rate only (as payment for the time taken for the welding test), when the first week's wages are paid.

Q What welding proficiency rate is paid for working overtime?

A The appropriate welder proficiency rate specified in NAECI A.3 applies to all hours worked. The proficiency payment is not enhanced for overtime working.

Q A welder is required to take a higher coded welding test during the course of a job. The test is taken away from the site on a weekday. What should the welder be paid?

A It is normal practice to pay the basic rate for the scheduled dayshift hours lost plus expenses.

NAECI 7 WORKING HOURS

NAECI 7.3.2 Shift systems and provisions

Q What is the payment calculation when men are required to change shift during the week, e.g. a nightshift worker returning to days?

A Nightshift employees returning to days shall normally received 24 hours notice and need 8 hours clear break between each shift. NAECI 7.3.2 (a)(v) refers.

Any loss arising is compensated for by payment of lost hours at the employee's basic rate.

In addition, NAECI 7.3.2(a)(iv) provides that a day worker working beyond the midday meal break and starting night work the same day is entitled to

overtime rate A up to midnight and rate B after midnight until the end of the shift.

Q If an employee is working shift work on a Sunday night, what rate is he paid after midnight on Sunday?

A If the Sunday night is part of their normal shift pattern any hours worked after midnight until the end of the shift are paid at overtime rate A. NAECI 7.3.2(a)(iii) refers.

Q Is the shift rate paid in addition to the basic rate for each grade?

A No.

Explanation: The NAECI specifies the basic rate applicable for the shift pattern the employee is working. NAECI A.2 and A.8 give the details. The basic rate and the shift premia are in effect encapsulated together into the shift rate.

NAECI 7.4 OVERTIME

Q How many hours do I have to work each day or week before the overtime rates apply?

A Overtime is calculated daily (unless a weekly calculation is agreed under the terms of an SPA or Local Agreement) and the full normal hours to that day must be worked before overtime is reckoned. NAECI 7.4(d)(i) refers.

Q What happens if an employee misses a day due to sickness?

A For the purposes of overtime calculation, a day of authorised sickness is classed as a full working day. Therefore a day missed due to authorised sickness does not affect the overtime earnings of any other day. NAECI 7.4(d)(i)&(ii) refer.

Q Can overtime, Monday to Friday, precede the normal shift hours?

A Yes. NAECI 7.4(e) provides for this. To be entitled to the appropriate overtime rate the full normal working hours that follow must be worked.

Q What is the overtime pay where employees are requested to work beyond midnight, finishing at various times up to and into the next working day?

A NAECI specifies the following:

- An employee working beyond midnight shall take a minimum break of 8 hours before starting the next day's work. Any loss of normal working hours by virtue of this rule is paid at the employee's basic rate. NAECI 7.4(g) refers.
- If the employee continues to work up to or beyond 7.00am or cannot obtain transport to get home earlier before 7.00am the employee is not required to recommence work that day.

- From the time of returning to work, overtime rate A is paid up to midnight. After midnight overtime rate B is paid until the task is completed. If this is before 7.00 am the rate reverts to overtime rate A until 7.00 am. NAECI 7.4 (e)(ii) refers.

Example: Overtime rate B is paid from midnight until the task is completed at 4.00am. The employee then receives a payment of 3 hours (4.00am to 7.00am) at overtime rate A.

Q An employee has finished his normal hours for the day and returned home. If the employee is then contacted and requested to return to site to undertake work which lasts for an hour, what is he / she paid?

A If an employee is summoned back to work having first gone home the employee is guaranteed three hours work at the appropriate overtime rate from the time of recommencing on site. NAECI 7.4(h)(ii) refers.

NAECI 7.5 MEAL BREAK AND REFRESHMENTS

Q What payment provisions apply to the morning refreshment break?

A NAECI 7.5 gives the details. Refreshment breaks, as opposed to the 30 minute meal break, are paid without loss of any normal earnings even if they take place (by use of the flexibility in the wording in this section) at a time other than during the morning/first half of a shift, before overtime etc, but each break should take no longer than 10 minutes.

Q The client has asked an employee to work through his recognised meal break. What is he paid?

A The employee will receive the appropriate overtime rate, any IBA payment and, if a welder, the appropriate proficiency payment for that period. An alternative meal break, for which no payment is made, should then be allowed. NAECI 7.4(i), 7.4(e) & 7.4(f) refer.

NAECI 8 PRESERVATION OF EARNINGS

NAECI 8.1 GUARANTEE PROVISIONS

Q1 It has been agreed that because of a shortage of work and as an alternative to redundancies a 3-day week will be worked for the next few weeks or so. What earnings can an employee expect under the NAECI Guarantee?

Q2 Is the 'statutory guarantee' on top of the Industry Guarantee?

A1&2 This is a complex section of the Agreement because there is an interaction between the Industry Guarantee referred to in the NAECI and the statutory guarantee. Generally it is recommended that payroll staff should discuss this NAECI provision with ECIA staff if circumstances arise such that the application of the ECI Guarantee is likely.

A Summary Explanation: Payment of the Guarantee is subject to a number of important conditions set out in NAECI 8.1.

a) If a period of short time working has been formally agreed as an alternative to redundancy then the Agreement says that the Guarantee is proportionally reduced. So in the case of three day working it would be 3/5ths of 38 hours x the basic rate of each employee instead of the full 38 hours x basic rate. By working three days on normal pay the proportional reduction of the Guarantee will clearly be met. However, as there will be other days when no work occurs the provisions of the statutory guarantee would apply as an additional payment for each workless day. The statutory guarantee is limited to 5 days in every rolling 3 month period.

b) In a situation where no work is available and employees have to be laid off the following method of calculation is recommended. In this example just Monday and Tuesday are worked:

1. Take the basic hours worked Monday x basic rate + bonus/hour earned for the same hours worked. Add payment for the overtime hours worked Monday @ the basic rate only + bonus/hour earned for the same overtime hours. This total equals earnings for Monday for NAECI Guarantee calculation purposes. Remember, the overtime premia element is discounted. Also note that if the employee is working shifts such as nightshift then the guarantee becomes 38 hours x the shift rate. *NB.* As the shift basic rate includes the shift premia element it is included in the calculation.

2. Add Tuesday earnings to the Monday earnings above:

The basic hours worked Tuesday x basic rate + bonus for the same hours worked. Add the overtime hours worked Tuesday @ the basic rate only + bonus for the same overtime hours. The total represents the total earnings for Tuesday for NAECI Guarantee calculation purposes.

Now that leaves the rest of the week, Wednesday, Thursday and Friday. Assuming no hours were worked on these days they were 'workless days' for purposes of the statutory guarantee, which is usually paid at the rate of £35.00 per day (from 6 April 2023) assuming the statutory guarantee rules within the Employment Rights Act 1996 are met so.....3 days @ £35.00 = £105.00.

3. Now add Monday earnings to Tuesday's earnings Plus £105.00, as the statutory guarantee goes towards discharging the employer's liability under the ECI Guarantee.

If this grand total is less than 38 hours x the basic rate of £19.11 (Categorised G5 rate) i.e. £726.18, then a make-up to the weekly NAECI Guarantee is necessary.

There may be other ways of doing the calculation but this method shows that the employer has had regard to the statutory guarantee (5 days in every rolling 3 month period) so that there is not a later claim for this to be paid as well as the NAECI Guarantee make-up.

Q Can the guarantee be suspended in the event of a dispute involving in-scope NAECI workers on a site?

A Yes. NAECI 8.1(e)(i) applies. Where there is an external industrial dispute (for example, a dispute involving client staff and / or contractors not in-scope of NAECI) different provisions apply. See NAECI 8.1(e)(ii).

NAECI 8.2 RATES OF PAY DURING TRAINING & DEVELOPMENT

Q What rate of pay is applicable for grades 1 – 3 when an employee is registered on a TECSkills course?

A Employees who are registered with the ECITB on a TECSkills course will be paid the appropriate adult rate as detailed in NAECI A.2 and A.8. NAECI 8.2(c) provides for such trainees to receive full incentive bonus payments whilst they are undertaking off-the-job training.

Q Is basic rate only payable to employees for induction regardless of when the induction takes place?

A Employees who are required to attend induction training on a weekend shall receive the applicable overtime rate for the hours involved. Basic rate only is paid during induction training undertaken on week days.

NAECI 8.3 RATES OF PAY DURING INCLEMENT WEATHER, EMERGENCIES AND TRIAL EVACUATIONS

Q If the workforce has to be cabined up, what pay do they receive for the period? In particular what about bonus payments?

A Basic pay, shift rate or the overtime rate for the schedule hours is paid plus any welder proficiency pay, if applicable. Fixed productivity allowance/second tier is not paid. The fixed and variable element of an IBA would similarly not be payable for the hours cabined up. NAECI 8.3 refers.

Q It starts snowing heavily during a morning shift and by lunchtime all companies on site decide to send home their NAECI employees. What pay are the employees entitled to?

A If employees are sent home during scheduled working hours because of sustained very bad weather they should receive the basic or shift rate for the remaining scheduled normal hours of that day. NAECI 8.3(g) refers.

Note: Coordinated discussion at the earliest possible time by all companies on the site/project is strongly recommended when handling such difficult circumstances.

Q What is the position if in-scope employees have to be sent home during a day when all the hours are in effect overtime hours, for example on a Saturday.

A The same principle applies as in the previous question. NAECI 8.3(h) provides that up to 8 hours may be paid at the basic rate for the balance of the defined overtime hours scheduled for that day. Incentive bonus is not paid.

Q What is the position if personnel are cabined up on account of a site emergency.

A The appropriate basic rate, overtime or shift rate, plus any proficiency payments are paid, but no other payments. NAECI 8.3(i).refers.

Note:- If however employees are prevented from working because of a trial evacuation from the site, undertaken at the request of the client, any applicable incentive bonus is also paid. NAECI 8.3(j) refers.

NAECI 9 TRAVEL AND ACCOMMODATION

NAECI 9.1 RADIUS ALLOWANCE

Q Do National Insurance contributions need to be made on Scale 2 radius?

A Yes, as the allowance equates to normal remuneration for travelling time. NI contributions apply to all taxable remuneration.

Q How is radius paid, per journey or per day?

A Per day.

Explanation: This allowance has always represented a contribution to travelling costs rather than exact travel cost. Therefore the allowance, now based on the fastest route option on the online RAC Route Planner, is one way and is not paid again for the return journey.

Note also that Radius Allowance is paid to an employee who travels daily and completes a full day's work. However, should an employee return to his place of residence on completion of his normal shift and then be called out to undertake further work, they are then customarily entitled to a further Radius Allowance payment.

Q Is Radius Allowance taxable?

A Under normal circumstances the NAECI's taxation treatment arrangements apply, however, it is important to note that this arrangement does NOT apply on a first assignment or where employees have been recruited at a site (as distinct

from being recruited at the company's office off site or at its head office) to work on that site. In such cases the full amount of Scale 1 radius allowance is taxable.

Q Can employees of an employment business on NAECI Registered Work take advantage of the NJC's beneficial taxation treatment arrangements?

A No. From 6th April 2016, HMRC have decreed that anybody engaged through an employment intermediary (e.g. an ECIA Employment Business) is not entitled to tax relief on travel and subsistence payments. Employment Businesses are therefore no longer able to pay radius allowance, on a tax free basis, on any assignment.

Q How is distance measured?

A Distance between home and site shall be measured by the fastest route option on the online RAC Route Planner. Recent changes to the RAC Route planner website mean that choosing the fastest route option is no longer clearly explicit. Guidance for choosing the fastest route on the RAC Route Planner can be found on the NJC website:

<https://www.njeci.org.uk/measurement-of-radius-allowance/>

Scale 1 Taxed and Tax Free elements for 2023 are contained in [NJC Communique 03\(22\)](#).

Q If an employee is based away from home (and at the same site) for a period of more than 2 years can an employer continue to pay accommodation allowance on a tax-free basis if the employee has declared that they are maintaining a separate and permanent home residence?

A The modified taxation procedures for travelling and accommodation allowances, contained within the NAECI, are negotiated nationally between the NJC and HMRC. They apply only where the employer fully adopts the terms and conditions of the NAECI. The preferential taxation treatment of NAECI allowances has been formally agreed because of the degree of mobility required of employees in the Engineering Construction Industry. HMRC has advised that where the NAECI is fully applied on this basis, the 24 month rule does not apply.

Q A number of employees responded to a call out request but in practice the work was done within 1/2 hour. They are claiming radius allowance for the call out. Is it payable in these circumstances?

A Yes, Radius allowance is payable if sufficient supplementary mileage has been incurred travelling from home to the call-out's location.

NAECI 9.2 ACCOMMODATION ALLOWANCE

Q Is Accommodation Allowance taxable?

A Under normal circumstances the NAECI's taxation treatment arrangements apply, however, it is important to note that this arrangement does NOT apply on a first assignment or where employees have been recruited at a site (as distinct from being recruited at the company's office off site or at its head office) to work on that site. In such cases the full accommodation allowance is taxable.

Q NAECI 9.2(c) refers to accommodation allowance being paid over a 7-day week except in the case of a broken week. What circumstances constitute a broken week?

A Examples of circumstances that break the normal payment of the full allowance for 7 days are when an employee starts mid week, when a termination date takes effect mid week, when public holidays shorten the week and when unauthorised absence precludes payment of the allowance. NAECI 9.2(f) refers to the penalty for absenteeism. In the case of a broken week there may be entitlement to an accommodation retainer.

Q Several employees live between 40-45 miles from a project where they are working. They seek the company's agreement to go into lodgings and receive the NAECI Lodge Allowance. As Radius payments do not extend beyond 35 miles, do they have an automatic right to lodge?

A No. Just because the employee lives over 35 miles from the site does not mean an automatic lodge entitlement.

Explanation: Accommodation allowance is paid to employees who have been required by their employer to work at a place outside normal daily travelling distance from their homes. The employer must use their discretion after considering all the relevant facts.

Q If an employee cannot find lodgings within a reasonable distance from the site where he is to work, is he entitled to any additional payment for the extra travelling?

A Yes.

Explanation: The NJC has determined that the first payable NAECI Radius band may be paid, but not more, to cover the additional travelling costs where the accommodation is more than 10 miles radius from the site. NAECI 9.1(a) refers to the rule concerning this point. As an alternative, employers may provide free transport to the site, in which case no other payment is made.

Q If a worker cannot find lodgings within acceptable financial limits, can an employer reimburse actual accommodation expenses?

A Yes. An employer may agree to reimburse actual accommodation expenses against receipts as an alternative to paying NAECI accommodation allowance.

Explanation: NAECI 9.2(e) states that “All such accommodation must be considered reasonable by the employer and mutually acceptable, taking into account the circumstances in the locality. However, if the employer reimburses accommodation expenses which are higher than the NAECI accommodation allowance and it cannot be demonstrated that the circumstances are exceptional, e.g. an exceptionally high cost area, then the amount in excess of the NAECI accommodation allowance must be taxed”.

As a minimum, by “demonstrate that the circumstances are exceptional” it would be expected that the employer would justify full re-imburement to the PJC, in advance of the Auditor noting the additional payment within the PJC Audit Report.

Payment of the Accommodation Retainer

Q Is a company required to make a reimbursement of accommodation retainer (as detailed in A.5(b) and A.5(c)) if the employee doesn’t provide receipts?

A NAECI 9.2 states that reimbursement should be made, subject to specific caveats, upon production of proof of payment to the employer’s satisfaction, up to the maximum amounts stated in A.5(b) and (c). The Guide to Taxation Treatment of NAECI Allowances adds that in all such cases, if the payment is to be made without the deduction of tax, the employee must provide the employer with a receipted invoice or similar proof of payment.

Q What is the lodging allowance entitlement (including tax position) during non-working weekends, which do not constitute periodic leave weekends?

A

- If the employee remains in their lodgings the accommodation allowance is payable over 7 days even if the employee is not required to work weekends.
- If the employee does not occupy the lodgings over the weekend or has not paid for them then the allowance is taxable.
- It is the employee’s responsibility to inform the employer if these circumstances apply.
- The allowance is not taxable if the employee can prove that there has been no reduction in what is normally paid for weekly accommodation.

Q When requested to attend training, induction or a drugs & alcohol test on a weekend before being mobilised to site, what allowances are the individual entitled to receive?

A These specific allowances cannot be paid with the associated taxation treatment benefit if the individual has not commenced employment but in the explanation section below a common sense approach is suggested.

Explanation If the training/testing involves an overnight stay, it might be felt reasonable to pay the accommodation cost, on production of receipts, (travelling men only). If, for example, this covered the Sunday night it would enable new starters to be on site promptly on their first working day, which might be less expensive than if the

employer had otherwise agreed to pay all reasonable travel expenses, bearing in mind that NAECI 9.4(b) provides for payment of transport expenses on commencement and termination of employment on ‘away contracts’.

Q A company accepts an employee’s request for five days bereavement leave. Should the company reimburse payment of the retainer if the employee is in lodgings?

A Yes

Q Should the retainer be reimbursed where the reason for absence is Paternity leave?

A Yes.

Explanation: For each day of bereavement or Paternity leave so granted, upon receipt of satisfactory proof of payment, the retainer should also be reimbursed. NAECI 11.4 and 11.5 refer.

Refer also to NAECI 9.2(d), which provides for the retainer to be reimbursed where the employee is absent with permission up to the amount specified in Appendix 5(c). The maximum of 14 days applies for other longer periods of such absence with permission.

Q Is the lodge retainer (plus other travel expenses) paid when an employee does not turn up or calls in sick after a periodic leave long weekend but then returns the next working day and says he/she was sick?

A If an employee fails to return to work on the day following periodic leave without the permission of the employer or without proof that it was due to causes beyond his/her control, he/she lose travel expenses, travel time and the accommodation retainer. NAECI 9.4(e) refers.

Q Is the accommodation allowance paid if the employee is absent on a normal working day without good cause or without permission?

A The same answer applies as in the previous question. If such absence occurs on either a Friday (or the second Thursday of a 9 Day Fortnight working pattern) or a Monday the accommodation allowance applicable to Saturday and Sunday shall also be forfeited, unless those days are worked. NAECI 9.2(f) refers.

Explanation: The employee is therefore required to contact the employer, in line with the company’s absence policy, on the first day of absence to qualify for payment. If no satisfactory reason is given the allowance should not be paid.

NB In most cases compliance with the employer’s sickness absence procedure/certification will be seen as sufficient proof.

Additionally NAECI 9.2(g) deals with employees who fall sick whilst occupying their lodgings. NAECI 9.2(h) provides the initial provisions setting out when the retainer is paid, as opposed to the full accommodation amount, for example, when periodic leave occurs.

Q We have a manager who has been employed to manage a specific project away from home. There is no intention to move him to any other site. Are we still able to pay him lodge non-taxable if he can verify that he maintains a separate residence elsewhere?

A The taxation treatment of NAECI allowances applies to all individuals directly employed on work within scope of the NAECI by companies (excluding employment businesses) in membership of a signatory employer association from Grade 1 to up to Grade 6 (Skilled Working Chargehand). The NAECI does not cover supervisors or managers. Outside the framework of the NAECI, employers are required to apply the statutory rules under Section 198 of the Income and Corporation Taxes Act 1988 to these allowances, unless they have specific authority from their own local office of HM Revenue & Customs not to do so.

Note: Employment Intermediaries -

From 6th of April 2016, HMRC have decreed that anybody engaged through an employment intermediary (e.g. an ECIA Employment Business) is not entitled to tax relief on travel and subsistence payments. Employment Businesses are therefore no longer able to pay accommodation allowance, on a tax free basis, for any assignment.

NAECI 9.5 AIR TRAVEL

Q Is it for the company to determine which airport an employee shall use to return home e.g. at the start and end of a contract as there could be a variable cost in air fares depending on which airport is used?

A Yes, the employer may determine the appropriate airport to be used.

Explanation: The first principle laid down in NAECI 9.5 is that the employer has sole discretion to decide whether an employee may travel by air. For commencement and termination of employment NAECI 9.5(a)(i) describes the entitlement as a single air fare between the airport nearest to the employee's home and the nearest appropriate airport to the site.

It should be remembered that when considering the overall cost, NAECI 9.5(a)(i) also provides for payment of single rail fare between the mainline station closest to the site and mainline station closest to the airport as well as travelling time (one way) between the site and the chosen airport.

The same principles apply to periodic leave travel except that in both cases the employee will be entitled to return fares. The travelling time allowance however remains 'one way'.

Q An employee has had to pay excess baggage payment when travelling home at the end of a job with his tool bag. Does the company have to pay excess baggage charges that can arise with certain airlines?

A No, the NAECI makes no provision for such reimbursement nor is there any additional time allowance for time spent at check-in.

Note: Employment Intermediaries -

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NAECI 10 HOLIDAYS WITH PAY

Q An employee queries how many days of holiday they are entitled to. How will the exact number of days be calculated?

A NAECI 10.1 details entitlement for employees working the whole leave year. NAECI 10.5 the weekly accrued formula (where applicable). NAECI 10.6 provides the formula for leave entitlement for those employees working only part of the leave year.

Q Does NAECI 10.1(b) and the related sections NAECI 10.6, 10.7, 10.11 and 10.12, (which reduce the annual holiday entitlement of 25 days to 20 days where a 4-day week is normally worked) apply to nightshift workers who are working 38 over 4 nights?

A Yes, where the employee's basic working week consists of 4 normal working shifts.

Q If employees finish working a 5 day normal working week pattern in week 1 and then start a 4 night-shift pattern after the weekend from week 2 onwards how is their holiday pay calculated?

A In these circumstances it might be appropriate to use the calculator method provided in NAECI 10.1(b), which provides for the employee's annual holiday entitlement to be expressed in terms of hours instead of days. For these purposes, the hourly equivalent of a full year's annual holiday entitlement shall be 190 hours.

Another example of where this calculation method might be appropriate is when a 9-day fortnight working pattern is in place.

Q Does bonus feature in holiday pay?

A Yes, for both the fixed productivity payment system (NAECI 19.2) and performance based payments (NAECI 19.3). In the case of performance based payments, the average of the preceding 52 weeks should be taken.

Q I have an employee who works two weeks of nights and two weeks of days. How do we calculate holiday pay?

A Where changing shift patterns are worked by an individual the holiday pay should be calculated by taking an average of the preceding 52 weeks. Holiday pay will consist of the 52 week average of basic rate (or the applicable shift rate)

at 38 hours per week, plus the average bonus over 52 weeks plus any applicable proficiency payment received.

Q The job I am currently on is coming to an end and redundancies will take effect at the end of the week leading into the Christmas week. What happens about the Christmas and New Year Public Holidays because it is unlikely that any employees leaving will be employed by any other company over Christmas?

A NAECI 10.11(b) provides for payment for a maximum of two public holidays falling within a period of 14 days following termination of employment for reason of redundancy for employees with more than 3 months' continuous service. So payment depends on when the effective date of termination (EDT) is and whether payment in lieu has been made.

Note: The 14 day period therefore starts on either the day of termination, ie. when worked notice ends or the last day of a period of statutory notice for which payment in lieu of notice has been made.

Q An employee has agreed to work on a day that had been designated earlier as a day of annual holiday. Is any premium due?

A No. An alternative date will be agreed when the holiday may be taken. Working on such a day does not attract any premium element.

Q What does the employee get paid for a day of Public Holiday if they fail to report for work the day before or the working day after the holiday?

A NAECI 10.9 refers. Employees are required to work their full normal hours on the days immediately preceding and following a public holiday, in accordance with the company's normal attendance rules and the provisions within the NAECI. Where employees are absent on authorised leave, or properly certificated sickness or accident absence on days immediately preceding or following a public holiday, they shall be paid in accordance with NAECI 10.3 for each day of public holiday concerned. They shall not receive both sick pay and holiday pay for the same period.

When un-procedural action is being taken before or after a public holiday the NAECI gives no entitlement to any payment. NAECI 10.9(a) provides the rule that if absence occurs before or after the holiday, disciplinary action may follow if an acceptable reason is not given.

Note The amount that an individual, who fails to report for work immediately before or after a public holiday, is paid for a public holiday will be determined by whether that public holiday has been labelled a Euroleave leave day or a Non Euroleave day. For further information see NJC Guidance Note (18)01.

Q What should an employee be paid when a day of designated Public Holiday is worked and what happens about the day of holiday not taken?

A NAECI 10.10 says that an employee is entitled to all hours worked at overtime rate B. In addition a day off in lieu will be taken at a convenient later date and paid in accordance with NAECI 10.3.

Q **Is Holiday pay inclusive of IBA payments?**

A Yes. IBA monies are included in the calculation of both Euroleave and Non Euroleave holiday pay.

Note: For further details of which pay items must feature in the calculation of both Euroleave and Non Euroleave holiday pay see NJC Guidance Note (18)01.

Q **Is an employer permitted to deduct an overpayment?**

A Yes, but the following contractual provisions must be noted. In addition to the following please see NAECI 10.11(a) in respect of over payment of holidays.

Although Section 14 of the Employment Rights Act 1996 allows deduction by the employer without the need for an agreement where the deduction is an overpayment of wages or expenses, it is normally essential within the statement of terms of employment to have an agreed clause such as:

“At any time during your employment, or upon its termination (however arising), the company shall be entitled to deduct from your pay, in addition to any statutory obligations placed on the Company, any monies owed by you to the Company by way of overpayments (including overpayment of holiday pay), payments made to you in error, compensation for failure by you to return to the Company property belonging to the company or compensation for loss of Company property”.

It is also advisable to reach agreement with the individual on the rate at which the overpayment will be repaid in order that the normal employer/employee ‘duty of care’ relationship is preserved.

If the contract is silent on this point then the company will need the agreement of the employee. If no agreement is reached the company may only be able to get the money back through the courts.

NAECI 15 MANAGING DISCIPLINE

Q **What payment is an employee entitled to receive whilst suspended from work, pending a disciplinary investigation?**

A If the employee is suspended it must be without loss of base rate, incentive bonus earnings and Welders Proficiency Payments, if applicable, for the hours so lost pending completion of the investigation. NAECI 15.4(b) refers.

Note Also: In the case of a travelling employee who needs to remain in his lodgings, payment of accommodation allowance should continue. During suspension the employee must remain available for work.

NAECI 16 TRANSFER & TERMINATION OF EMPLOYMENT

Q If a job that employees were specifically taken on for comes to an end and an offer of transfer is refused, have they effectively resigned?

A What does the contract say about the place of work and whether the employee has been taken on as a 'travelling employee'? NAECI 16.1 and NAECI 5.5 refer. This is a complex potential redundancy topic that needs further discussion so please contact the local ECIA Regional Manager.

NAECI 16.2 STATUTORY NOTICE AND PAYMENT IN LIEU OF NOTICE

Q Is payment in Lieu of Notice taxable?

A Yes, in some cases. See explanation below.

Explanation: The provision of notice (up to 12 weeks) in line with Employment Rights Act S.96, if paid in lieu, may be taxable if it is a contractual term ie. when the contract or a collective agreement's terms expressly provide for notice to be paid in lieu, or if there is custom and practice for notice to be paid in lieu.

Q When an employer terminates employment with payment in lieu of notice what elements should be included?

A The elements making up the calculation include:

- 38 hours basic pay/shift pay
- Bonus payments/IBA
- Welders Proficiency Pay

Explanation: An employee in scope of the NAECI terms, on termination of employment, is entitled to statutory notice under the ERA 1996. The employee will be entitled to a 'weeks pay' under the ERA 1996, which includes all earnings excluding overtime for the hours constituting the employee's basic week ie. 38 hours in the case of NAECI in-scope employees. Where the earnings are variable the average of the previous 12 weeks is used as the basis of the 38-hour calculation.

Also note that allowances such as Radius Payments/Accommodation Allowance are not payable as payment in lieu elements because the employee is not required to travel or spend time in accommodation once termination of employment occurs ie the date payment in lieu of notice is made.

Q If an employee leaves to go to another job without giving his employer notice or by giving insufficient notice than that required what does the employer have to pay?

A Any 'earnings' accrued to the effective date of termination and any residual pay representing untaken holidays.

NAECI 16.5 REDUNDANCY PAYMENTS

Q Are employees entitled to contractual severance payment at the end of a fixed term contract?

A Yes. Under the terms of the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations of 2002, a fixed term employee has the right not to be treated any less favourably than a comparable permanent employee as regards their contract or by being subjected to any detriment by their employer. Effectively, a fixed term employee has to be treated as a permanent member of the workforce but with a contract having an end date.

Where redundancies are necessary when fixed term contracts are used, employers will be in breach of NAECI if they fail to adhere to the provisions contained in NAECI 16.3, 16.4 and 16.5.

Q Is severance pay taxable?

A No.

Explanation: Existing HMRC arrangements allow for Severance Pay not to be treated as earnings. Therefore subject to the payments being made precisely in line with those set out in the NAECI, Severance Pay may be paid tax/NI-free. See NAECI 16.5(e) and also the NJC Guide to Taxation Treatment of NAECI Allowances.

Q What weeks of NAECI severance pay accrual are deductible when calculating the amount payable?

A In accordance with NAECI 16.5(a) – “The contractual severance payment will not be made for any week in which an employee has participated in a strike, industrial action or any other unauthorised stoppage of work”.

Q When does an employee’s absence not result in severance deduction?

A Days of holiday, sickness and temporary absence from work with permission in any period covered by the employee’s contract of employment will qualify for payment purposes.

Q Are NAECI contractual severance payments the same regardless of age?

A No. Contractual severance pay is calculated at 1.5 times the appropriate contractual severance payment grade value for any qualifying weeks after the individual reaches the age of 41. NAECI A.7(c), (i) & (ii) refer.

For example, a Grade 5 employee who is employed from 10th April 2023, turns 41 on 3rd June 2023, then is made redundant on 14th July 2023, would receive the following severance pay: 8 weeks at £12.37 per week and 6 weeks at £18.55 per week.

Q An employee is taken on to perform in-scope work on a NAECI project. After 20 weeks working there, he is transferred on to a site where NAECI terms and conditions do not apply. Several months later the employee is

made redundant. Is there any entitlement to a Contractual Severance Payment?

A Yes. Contractual Severance Pay only accrues for weeks of work done under a NAECI contract of employment. In this scenario, 20 weeks of Contractual Severance Payment would be payable, not at the point of transfer away from the in-scope work, but at the time of the subsequent redundancy provided that there was no entitlement to a Statutory Redundancy Payment.

Q **An employee has been working on an out-of-scope building services project for 6 months when she is transferred onto a site that is NAECI Registered. After a further 25 weeks performing in-scope work, the employee is terminated on the grounds of redundancy. Is there any entitlement to a Contractual Severance Payment?**

A. Yes. The individual will not accrue Contractual Severance Pay for the period before she was mobilized onto in-scope work, but for the 25 weeks of employment on NAECI Registered work Contractual Severance Pay is accrued. This should be paid out at the point of redundancy.

NAECI 19 INCENTIVE BONUS ARRANGEMENTS ON CATEGORISED WORK

Maximum Payments allowed

Q **Are there payment limits associated with Incentive Bonus Arrangements?**

A The maximum amounts that may be paid under NAECI 2022 - 2023 are as follows:

- Where National Guaranteed Rates apply – up to £2.40/hour. NAECI A.2(c)(iii) refers.
- Where there is a Fixed Productivity Allowance on Categorized work – up to £0.80/hour. NAECI A.8(c)(iii) refers.
- Where a performance-based payment arrangement has been negotiated for Categorized work – up to £2.37/hour. NAECI A.8(c)(iv) refers.

Note: As part of the NAECI 2016 – 2018 settlement 30p of the previous maximum £2.67 (performance based) and previous maximum £1.10 (Fixed Productivity Allowance) was absorbed into the 2016 **Categorised** base rates on a grade pro rata basis.

Q **How are the terms of an incentive arrangement determined?**

A Subject to the ‘employers’ wishing to introduce an IBA, the IBA is normally negotiated and agreed between the Trade Union FTOs and the Managing Contractor before the start of in-scope work. On a Major Project the IBA is usually part of the Supplementary Project Agreement and it is subject to approval by the NJC. The scheme must fit in with the criteria detailed in NAECI 19.3 & A.2(c) and A.8(c).

Q When bonus is stopped on account of un-procedural action, how are IBA payments forfeited?

A The rules regarding forfeiture are strict. On Categorised work they are found in NAECI 19.2(c) and 19.3(d) & (e). IBA Schemes should be drafted in line with the NAECI IBA principles.

NAECI APPENDIX C TRADES UNION MATTERS

Q What time off should shop stewards be allowed to perform their Trades Union duties?

A They should be granted a reasonable amount of time off on normal pay to carry out their Trade Union duties and in consultation with their employer undergo training relevant to those duties that have been approved by their local FTO.

Q What obligation is there on a company if a recognised Union asks for Union dues to be deducted directly from payroll and then forwarded to their offices?

A There is no obligation on a company to deduct union dues at source. It is a decision for the company.

Additional information: To enter into such an arrangement needs careful consideration, as it must be done in accordance with the legal process, which in part involves the employee filling out a form that gives the employer permission to make the deductions from their wages and the right of the employee to withdraw from the scheme. If the company agrees with a Union to set up what is often described as a ‘check-off’ arrangement, a well organised payroll department does not usually have difficulty making the deductions that are then forwarded to the Union.

ADDITIONAL ITEMS

NI Contributions

Q In relation to NAECI Allowances in what circumstances are National Insurance contributions not deducted?

A NI Contributions do not apply to non-taxable allowances such as lodge, radius, travel fares and severance pay. (NI contributions apply to all taxable income).

The deduction or withholding of wages

Q What is “quartering” and is it an illegal deduction of wages?

A The practice of withholding ¼ hour’s pay if someone arrives later than the accepted clocking-in time. The practice might amount to an unlawful deduction of wages unless there is provision in the contract.

Additional information: The practice may be legal if it is included as a term in the contract of employment/staff handbook when the employee starts work. (It would not be advisable to introduce a quartering scheme without contractual provision). If an employee challenged such a deduction the company would have to justify the reason for quartering. The practice used to be very common as an alternative disciplinary measure but is now seldom used in the ECI.

Welfare Benefits

Q As a company how should we be paying NAECI Welfare Benefits?

A NAECI A.7 (a) details very prescriptive levels of various welfare benefits. All in-scope contractors must have appropriate cover in place to ensure that those benefits can be delivered when required.

Welplan Ltd provide a tailor made NAECI welfare benefits cover arrangement, based around the payment of a weekly premium on behalf of each in-scope employee. Further details are available from:

<https://www.welplan.co.uk/industry-schemes/engineering-construction-employer-section/>

Employers must have appropriate cover in place that can pay out at the prescribed levels of benefit, irrespective of whether the employee is partially to blame for any incident. Project auditors will ask to see evidence that such cover is in place on a regular basis. Employers are not permitted to self-insure for NAECI welfare benefits.

Death Benefit

Q Under the NAECI, what is the maximum death benefit that can be paid?

A The NAECI welfare benefits provides for £35,000 for death by any cause. Should the death be as a result of a fatal accident due to occupational or site accident then an additional £40,000 accident lump sum benefit is provided, making a total of £75,000 death benefit.

A further conditional death benefit of £35,000 is available, providing that there is no related sympathy stoppage/walkout on any NAECI project or site. Where this requirement is met, the total death benefit is therefore £70,000 for death by any cause, or £110,000 if death is as result of a fatal accident as described above.

Tool Provision

Q. What Tool Allowance payment is made to Thermal Insulators when working on NAECI sites?

A. None. Payment of the Tool allowance prescribed by the TICA Agreement “Pink Book” is prohibited whilst thermal insulators are working on NAECI in-scope work. On NAECI Registered work the employer must provide, on a free (returnable) basis, such tools as are required to undertake the work that is required. NAECI 1.7.1(d) refers.



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