

National Insurance Contribution Rules for Entertainers

We outline here the NIC rules as applicable to entertainers, the article first appeared in Arts Professional.

The NIC regulations reflect the fact that instead of a 'wholly or mainly' salary test, those entertainers whose remuneration includes any element of salary, as defined below, will be treated as employed earners.

Where the payment is a fee for the production, not a salary - and this would have to be made clear in the contract - the entertainer will remain self - employed for NICs purposes and liable to Class 2 and Class 4 NICs.

Entertainer is defined as a "person" employed as an actor, singer or musician or in any similar performing capacity." This includes such professions as dancers, voice-overs and walk-on parts. TV Presenters and news reporters are not regarded as entertainers for the purposes of the legislation.

'Salary' requires that the following four tests need to be satisfied:

- made for services rendered;
- paid under a contract for services;
- where there is more than one payment, payable at a specified period or interval; and
- Computed by reference to the amount of time for which work has been performed.

The third bullet point ensures that those entertainers engaged on a single day or two-day engagements are covered by the legislation. This means that the policy intention of ensuring that the regulations apply to film extras and walk-on parts is achieved. The last bullet point, should apply to all entertainers, apart from a very small minority, who are contracted to appear in productions for which their remuneration is not directly calculated according to the period of weeks or months they are assigned to the production.

Revenue solicitors have confirmed that the words "by reference to" in this context should be interpreted widely to the extent that, should there be any link between the amount of the fee paid and the number of days worked or the period of the engagement, (whether or not there is a contractual requirement for work to be performed on each and every day,) then this bullet will be satisfied.

Special Cases

Session Musicians:

Session musicians are the elite group of musicians who did not pay Class 1 NICs prior to July 1998. In accordance with the Revenue's policy intention Session Musicians and their deputies will not fall under the 2003 regulations.

Regular Members of Orchestra or Chorus:

With the exception of the major London orchestras, musicians and singers who are permanent members of major orchestras and choruses are generally engaged under contracts of service and chargeable to tax under the employment income rules with Class 1 NICs liability.

Entertainers from Overseas:

Where an entertainer comes from a member state of the European Economic Area or a country which has a reciprocal agreement with the UK and provides a form E101 or equivalent certificate of continuing liability under their own domestic legislation, the special rules for entertainers will not apply. This will be the case even if the individual is engaged in the UK and remuneration includes a salary element. Instead the entertainer will remain in the category of earner determined by its own country's domestic legislation.

The following table should help you decide whether or not the various elements of remuneration under any of the standard BBC/Equity, ITVA/Equity or PACT/Equity contracts satisfy the case law definition of salary

TYPE OF PAYMENT	SALARY/ RIGHTS PAYMENT
Engagement Fee	Salary or Rights payment depending upon contract type
Attendance days	Salary
Standby days	Salary
Holiday pay	Salary
Overtime	Salary

Additional Use fee	Rights payment for pre-purchase
Retainer	Salary – to ensure services available when needed
Royalty	Rights payment - at each sale of programme
Residual	Rights payment - either pre-purchase or at each sale.
Option fee	Rights payment – to ensure an engager has priority use of entertainer’s services.