



STATUTORY SICK PAY

English employment law requires employers to provide their employees with some payment to cover certain periods of sickness absence. All employees are entitled to Statutory Sick Pay ('SSP') provided the relevant conditions are satisfied.

Employers are advised to familiarise themselves with the legal provisions concerning sick pay as employees may be entitled to statutory sick pay when ill.

1. Sick Pay

Employers are required to provide employees with particulars of "any terms and conditions relating to incapacity for work due to sickness or injury, including any provision for sick pay".

This information can either be set out in the employee's written statement of particulars of employment, or the statement can refer the employee to "the provisions of some other document which is reasonably accessible to the employee".

There is no statutory right to receive full pay for time spent away from work by reason of sickness. Employees are however entitled to receive SSP.

They may also be entitled to receive their full remuneration if their contract of employment or employer's sickness policy specifically entitles them to this.

2. Statutory Sick Pay (SSP)

The statutory SSP scheme entitles employees who have been absent from work due to illness for four or more consecutive days (including weekends) to receive a minimum weekly payment (the current rate of SSP is £81.60). In summary the SSP scheme provides:

- Employees do not receive SSP for the first three days on which they are absent from work or for periods of up to three days absence, unless their contract expressly entitles them to such payments.
- Employees are entitled to up to 28 weeks SSP in any period of incapacity for work (PIW) or in any series of linked PIWs. PIWs will be linked if one occurs within 56 days of a previous PIW. However, if a series of linked PIW run over three years, liability to pay SSP stops after three years, even if it has not been paid for 28 weeks.
- After 28 weeks, any sickness benefit entitlement will be paid directly to the employee from the Department for Work and Pensions (DWP). Any payments received from the DWP should be notified to the employer so that corresponding deductions can be made from any sick pay/salary an employee may be entitled to receive under a contractual scheme.

3. Eligibility

Employees are eligible for SSP from the fourth day of absence if they:

- Are working under a contract of employment.
- Have been sick for four or more consecutive days.
- Have had average weekly earnings of not less than the current Lower Earnings Limit (LEL) within the previous eight weeks (currently £95 per week).

SSP is not currently payable to:

- Employees who have not yet commenced work.
- Employees who have already received their full complement of SSP.
- Employees who earn less than the LEL (who may qualify for social security benefits instead of SSP).

Since 1 October 2006, there have been no age limits for claiming SSP, so employees under 16 or over 65 years old are no longer ineligible.

4. Claiming SSP

SSP is taxable and subject to national insurance contributions (SSP is usually paid directly to employees by employers, who are then able to reclaim it from HMRC). To receive SSP, employees must:

- Notify their absence to their employer;
- Have four or more consecutive days of sickness during which they are too ill to be capable of working; and
- Submit evidence of incapacity as agreed with their employer.

5. Notification

The statutory notification procedure for SSP provides that an employee (or their representative), must inform their employer of any date on which they are unfit for work within seven calendar days of that date. Where an employee notifies their employer of their sickness absence more than seven calendar days after the first day of incapacity and the employer does not accept there was good cause for delay the employer can withhold payment of SSP. Payment can be withheld for the duration of any such delay.

6. Evidence of Incapacity

Evidence of incapacity can be, for example, a doctor's certificate or a self-certification form confirming the cause and duration of the sickness absence. HMRC states that employers are entitled to ask for reasonable evidence of incapacity such as a doctor's statement, after seven days of sickness absence. Employers cannot however request a doctor's statement for the first seven days of sickness absence or for a period of absence of less than seven days as a condition of paying SSP.

Employers cannot withhold SSP for late receipt of medical evidence, only for late notification. If an employee satisfies all the conditions to receive SSP and the employer has no reason to doubt their incapacity, SSP can be paid without medical evidence. However, some form of evidence must be submitted to the HMRC in order for employers to claim back the SSP paid.

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