

Employment Law Fact Sheet No. 25

SICK PAY ARRANGEMENTS



There is no statutory right for employees to receive full pay for time spent away from work by reason of sickness absence.

However, eligible employees are entitled to receive Statutory Sick Pay (SSP). SSP is taxable and subject to national insurance deductions.

The entitlement is up to 28 weeks' SSP in any period of incapacity (PIW) or in any series of linked PIWs over 8 weeks.

Qualifying for SSP

The individual must:

- Be an employee
- Have been off sick for four or more consecutive days (including non-working days)
- Have average weekly earnings of not less than the current Lower Earnings Limit based on the previous 8 weeks. See: <http://www.hmrc.gov.uk/payerti/forms-updates/rates-thresholds.htm>

An employee does not need to be employed for a specified period of time before the right to SSP will kick in. However they must have commenced work before they go off sick (there is no right to SSP if the employee has accepted an offer of employment but has not actually started).

Evidence of Incapacity

The employee is considered incapacitated if not fit to perform their duties as a result of illness or injury.

The SSP Regulations state that incapacity includes situations where someone is under the care of a medical practitioner who states that they should refrain from work. As such, the entitlement to SSP is not dependent upon the submission of a doctor's statement (or 'Fit Note'). However, employers are entitled to ask for reasonable evidence of incapacity after the first 7 days of absence. What amounts to reasonable evidence is for the individual employer to determine and could include self-certification if the employer is satisfied by this.

Note: Employers cannot insist on a doctor's statement in the first 7 days of absence as a condition of paying SSP.

Note: Where a doctor's statement sets out that the employee "may be fit for work" if the employer accommodates certain changes and the employer is unable to do this, the employee remains unfit for work and the SSP rules continue to apply.

Notification Requirements

Depending on the circumstances, employers can withhold SSP for late notification of absence. However they cannot withhold SSP for late receipt of medical evidence. If an employee satisfies all the conditions for payment and the employer has no reason to doubt there are genuinely incapacitated, SSP can be paid without medical evidence.

Calculation of SSP and Recovery from HMRC

See the link below for guidance on these matters:

<http://www.hmrc.gov.uk/payerti/employee/statutory-pay/ssp-overview.htm>

It is no longer possible to recover SSP for sick leave after 5 April 2014:

<https://www.gov.uk/employers-sick-pay/help-with-sick-pay>

Record Keeping

The employer must keep records of sickness absence and SSP payments for at least 3 years after the end of the tax year in which the payment was made.

What if there is reason to doubt the incapacity?

A doctor's statement will be strong evidence of incapacity. Usually this should be accepted as conclusive unless there is compelling evidence indicating that the employee is not genuinely sick.

If an employer refuses to accept the employee's evidence and pay SSP the employee is entitled to refer the matter to the HMRC statutory disputes team for determination.

If an employee is repeatedly absent for short periods and the employer has strong doubts about the employee's sickness but they do not have access to their own medical services provider or 'works doctor' it may be possible to request that HMRC arrange for the employee to be seen by their medical services provider.

Such cases may potentially amount to a disciplinary situation (i.e. if you have reason to believe the employee is being dishonest). However, it is important to proceed with caution - see TBA fact sheet on Dealing with Disciplinary Situations.

Paying more than SSP

It is not necessary to pay an employee more than their statutory sick pay allowance. However, if an employer has an enhanced contractual sick pay scheme, the details should be clearly set out in writing and before implementing such a procedure it is advisable to seek advice in relation to the terms.

If making discretionary payments over and above the statutory (or any contractual) sick pay entitlements, an employer should be mindful of the obligation of implied trust and confidence to its employees. In particular, an employer should be even handed in its treatment of employees (so as to avoid allegations of discrimination). Where a decision is taken to stop discretionary payments that have been made for a period of time, give notice to the employee and ideally reduce the payments gradually.

Managing Sickness Absence

If you would like more information regarding the management of sickness absence (including cases of long term sickness absence) please follow the link below to helpful ACAS guidance:

<http://www.acas.org.uk/index.aspx?articleid=1183>

The link below also provides information regarding the government funded Fit for Work Scheme which is a service now available to all employers in England & Wales:

<http://fitforwork.org/about/>

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