

↓ Key Points

- Eligibility
- Exceptions
- Evidence of Sickness
- Notification of Sickness
- Paying SSP
- Ending SSP
- Qualifying Days
- Contractual Sick Pay
- Sick Pay and Holiday Pay
- Long-Term Sickness
- SSP for different types of workers
- Recovering SSP
- Record keeping

Guidance on Statutory Sick Pay (SSP)

UPDATED August 2022

Background

The Statutory Sick Pay (SSP) scheme is set out in the [Social Security Contributions and Benefits Act 1992](#) as amended and the [Statutory Sick Pay \(General\) Regulations 1982](#) as amended.

In accordance with the law, employers are required to pay SSP to employees and workers given they meet the eligibility criteria. For the purposes of this guidance, employers will also refer to employment businesses, and employees will also refer to workers.

Eligibility

For an employee to be eligible for SSP, the following criteria must be met:

- They must have been off sick for at least 4 consecutive days, including non-working days (also known as the 'period of incapacity for work' (PIW));
- They must earn on average at least £123 per week before tax (if the pay varies, the entitlement will depend on the average pay over the previous 8 weeks); and
- The employer has been notified within the deadline set or within 7 days.

Exceptions

An employee will not qualify for SSP if:

- They have already received the maximum entitlement to SSP of 28 weeks;
- They are already receiving Statutory Maternity Pay (SMP) or Maternity Allowance;
- They are off work due to a pregnancy-related illness within the 4 weeks before the week the baby is due;
- They have not yet commenced work with the employer;
- They were in custody or on strike on the first day of sickness (including linked periods);
- They are working outside the EU and you are not liable for their National Insurance contributions; and
- They have received Employment and Support Allowance within 12 weeks of starting or returning to work for you.

NEW Evidence of Sickness

After 7 days of being off sick (including non-working days) you can ask the employee for proof of their sickness which can be in the form of a fit note. As of 1 July 2022, nurses, occupational therapists, pharmacists and physiotherapists will be able to legally certify fit notes for SSP purposes in additions to doctors. The healthcare professional will need to be registered in accordance with the existing legislation governing their profession and this change will apply across England, Wales and Scotland.

If you agree, they can provide a report from a physiotherapist, podiatrist or occupational therapist which is known as an Allied Health Professional (AHP) Health and Work report.

Notification of Sickness

The statutory procedure for SSP requires an employee (or their representative) to inform their employer of any date which they are unfit to work within the period of seven calendar days. If the employee notifies the employer more than seven calendar days after the first day of incapacity and the employer does not believe there was a valid cause for the delay, payment can be withheld for the duration of the delay. However, you cannot withhold payment for the late receipt of medical evidence for example.

It is possible to have requirements for notification of sickness within the employment contract, and normally these require notification on the morning of the first working day of sickness. Whilst these contractual requirements do not override statutory requirements, they can be used as a condition for contractual sick pay or form the basis for disciplinary action for misconduct.

UPDATED Paying SSP

As of 6 April 2022, the weekly rate for SSP is £99.35 which is paid for up to 28 weeks. It should be paid for periods when the individual normally works, also known as 'qualifying days' and is paid in the same way as wages, for example payment being due on the usual payday. Tax and National insurance should also be deducted from these payments.

There is an [SSP calculator](#) available on the gov.uk website for calculating sick pay for employees on varied pay, such as a daily rate.

Ending SSP

If an employee is ineligible or no longer eligible for SSP, they must be provided with a [SSP1 form](#). On this form, the employer must state the reason for SSP not being paid or coming to an end, and if applicable – the last date SSP payment was made. This form can then be used by the employee for help with claims for government support such as [Employment and Support Allowance \(ESA\)](#).

SSP entitlement would come to an end at the earliest of:

- The employee's return to work;
- The expiration of fit note without a further fit note being obtained;
- Using up the maximum entitlement of 28 weeks;
- The contract expiring or being brought to an end; or
- The day immediately before maternity pay or maternity allowance commences.

Note: An employer cannot bring a contract, whether an employment contract or a temporary assignment, to an end solely because they wish to avoid the responsibilities of paying SSP.

Qualifying Days

SSP is only payable for qualifying days, the first 3 of which (waiting days) are excluded during the PIW. An employer and employee can come to an agreement as to which days of the week would count as qualifying days, albeit this is usually set out in the employment contract or the section 1 statement of terms.

Where an employee has a variable working pattern (such as a temporary worker), different qualifying days for each week can be agreed upon.

An employee that has been incapacitated for the whole week after the waiting days have passed is entitled to receive the full weekly amount of SSP. If incapacitated for part of the week, the SSP should be proportionate and based on how many qualifying days there are in the week and how many of those days are of incapacity.

Incapacity for work is usually understood to mean the individual is not fit, whether it be through mental incapacity, illness or injury, to perform their duties at work.

Contractual Sick Pay

Our [model terms for employing internal members of staff](#) have optional contractual sick pay provisions in place:

10.5 If you are absent through sickness or incapacity, and you have complied with the requirements above, you will be paid company sick pay, for up to a maximum of ... days in a calendar year. Company sick pay is equal to normal basic salary and shall include Statutory Sick Pay due. Thereafter you will receive Statutory Sick Pay in accordance with the law.

Tips for what to consider when drafting contractual sick pay clauses:

- If payment is conditional upon the employee following a sickness policy;
- Confirmation that SSP received will count towards the contractual sick pay;
- Evidence for incapacity required for contractual sick pay if different from that of SSP;
- Rate and time for which contractual sick pay will be paid; and
- Recouping contractual sick pay where absence is due to third party negligence and the employee successfully recovers damages.

It is only possible to withhold contractual sick pay in circumstances set out in the contract/sickness policy or where the employee has otherwise agreed in writing, otherwise this could amount to an unlawful deduction of wages.

Sick Pay and Holiday Pay

It is not possible for employees to receive sick pay and holiday pay at the same time. An employee is entitled to take holiday whilst off sick, for example if they have a mental health condition that may be helped by taking a holiday and believe taking holiday will help with their recovery. If the holiday request is approved, sick leave can be paused whilst the employee is on holiday and the employee should receive holiday pay. Sick pay can continue once the employee has taken holiday but is still not well enough to return to work.

If an employee falls sick whilst on holiday, they are entitled to take further holiday days to “compensate” for the annual leave lost due to sickness. However, this requires the employee to promptly report the sickness at the time.

Employees continue to accrue holiday as normal whilst off sick.

Long-Term Sickness

It is possible to complete the SSP1 form before the end of SSP if you are aware the employee will be off sick for more than 28 weeks. This will allow them to apply for [Employment and Support Allowance \(ESA\)](#) from the Government before their SSP comes to an end, the claim for which can be started 3 months beforehand. Employees on long-term sickness leave also continue to accrue annual leave and are entitled to take this during their sickness absence. You may also have a long-term sickness absence policy in place to help manage the impact on your business.

It is recommended that you consider obtaining an occupational health report to help you and the employee plan for a return to the workplace in the case of long-term absence. This may require disclosure of their GP

records to the occupational health specialist or a report from their GP. It is generally advisable to cover this eventuality in a clause of the employment contract. You may need to consider flexible working or alternative roles to accommodate the employee's needs.

Ultimately in rare cases, it may not be possible for the employee to return to work or the employer is put in the difficult position of needing to fill the person's role. In this case, capability proceedings (which broadly follow a disciplinary procedure) can be commenced and may ultimately result in a fair dismissal or settlement agreement. Suitable alternative roles must be considered as part of this process. Employers must be conscious of equality laws and the legal requirement not to discriminate on grounds of potential disability. Legal guidance or advice should be sought.

Statutory Sick Pay for Different Types of Workers

Agency workers are treated as employees for PAYE tax and Class 1 National Insurance contributions (NICs) purposes. This is a complex area of law and the advice below has been drafted [from Government guidance notes](#).

If an agency worker is on a contract for service, working on "day-by-day" assignments, then a "deemed contract" starts on the date the agency worker is offered and accepts that assignment and finishes at the end of that assignment. Subsequent assignments give rise to a new deemed contract for service. For example, if an agency worker is engaged on a weekly assignment from Monday to Friday, is given their next assignment on a Thursday then the new contract starts on that Thursday.

They are not entitled to be paid sick pay if they are sick on a day they are not scheduled to work. For SSP purposes, regulations were amended in October 2008 ([The Fixed-term Employees \(Prevention of Less Favourable Treatment\) \(Amendment\) Regulations 2008](#)) to the effect that agency workers, as well as other short contract workers, will become entitled to SSP from the first day of their contract provided they satisfy all other conditions for entitlement to SSP. However, they must have undertaken some work under that contract to become entitled.

Entitlement to SSP will cease at:

- the end of the Period of Incapacity for Work (PIW); or
- the end of the current contract or assignment; or
- the end of a future contract, placement, or assignment, where a future contract, placement or assignment has already been agreed.

Linking Periods of Incapacity for Work

SSP will be payable across two or more contracts where there is a linking period of incapacity for work if:

- the worker was sick for four or more days in the first contract; and
- they have started work on a second or subsequent contract; and
- they were sick again within eight weeks of the last PIW.

Provided all the conditions are satisfied, the normal eight week linking rule applies and any waiting days served in the previous contract will count for the subsequent contract. Similarly, any payments made in the previous period will count towards the worker's maximum payment of SSP.

Effect of Employment Rights Legislation

A person is treated as being in continuous employment if:

- they are employed on a series of contracts with the same employer; and



- the contracts are linked by periods of not more than eight weeks; and
- the period in employment exceeds three months

If the agency worker has more than 3 month's continuous employment, then the employer is liable for paying SSP for as long as they are sick if they remain them under a contract for service. Terminating the contract for service stops SSP liability.

Entitlement to SSP continues:

- until the end of the PIW;
- their contract is terminated; or
- they exhaust their entitlement.

From an administration perspective it is easier to issue a new set of terms for each assignment, which is the norm in professional technical contracts, but less so for education contracts.

Educational term-time workers may be entitled to SSP when contracted to work outside of term-times, dependent on the type of contract that exists. A term-time worker that falls sick outside of their contract, i.e. during the summer holidays, is not entitled to receive SSP as they are not considered as an employee during that period.

Entitlement to SSP stops when the contract comes to an end. If the PIW is either between contracts or when their new contract would have started, there is no entitlement to SSP as they have not yet worked under the new contract. If a new contract is signed at the start of a new term for example, entitlement to SSP will only apply once they have worked under the new contract.

Where a contract continues between term times, SSP entitlement will continue during the holiday periods until the earlier of the PIW coming to an end or the contract ending.

Umbrella workers are entitled to SSP where eligible, this should be paid by the umbrella company who is their employer.

Self-employed Personal Service Company (PSC) contractors are entitled to SSP from their own PSC, which is wholly financed by the PSC. There is no mechanism to pay SSP to these types of workers.

NEW Recovering SSP

Before 6 April 2014, if the total SSP paid by an employer in a month had been higher than 13% of the employer's total Class 1 NIC liability for that month, they were able to recover the excess from HMRC under the Percentage Threshold Scheme. However, this scheme ended in 2014, meaning employers are no longer able to recover SSP from HMRC.

If employers have an employee continuing to work for them who was sick before the business became insolvent, HMRC will pay SSP for that employee and they should contact the [Statutory Payment Disputes Team](#).

Record keeping

Previously employers had been required to keep records of dates of sickness and SSP payments for at least three years after the end of the tax year in which they related to, however as of 6 April 2014, regulation 13 of the SSP Regulations 1982 has been revoked by [The Statutory Sick Pay \(Maintenance of Records\) \(Revocation\) Regulations 2014](#), removing this requirement.

However do note that employers are still required to maintain records for PAYE purposes and to show that they are meeting their SSP obligations as HMRC may request to see these records.

Please contact legalhelpdesk@apsco.org should you have further queries in relation to Statutory Sick Pay.

Disclaimer

This guidance document is intended for use by APSCo members only. The facts, information, and opinions contained herein are correct to the best of APSCo's knowledge as at time of publication. This document is intended to provide general information only and does not constitute advice. It is not an exhaustive and complete reference document on this subject. APSCo can take no responsibility or liability for the use of or reliance on the information contained within this document or for any decisions or the consequences of any such decisions made by APSCo members.