

Research Briefing

Number 9435

By Patrick Brione,

Andrew Powell

27 May 2022

Statutory sick pay

1 Payment of statutory sick pay

1.1 What is statutory sick pay?

Statutory sick pay (SSP) is the basic minimum statutory payment to which qualifying employees are entitled for periods where they are incapable for work because of an illness. It is currently paid at a rate of £99.35 per week.¹

The right to SSP is set out in the [Social Security Contributions and Benefits Act 1992](#) (SSCBA 1992) and the [Statutory Sick Pay \(General\) Regulations 1982](#) (SSP Regulations 1982). These set out who is entitled to SSP, the rate at which it is paid and the periods when it is payable.

SSP is a minimum statutory right. Many employers have occupational sick pay schemes which may provide higher rates of pay or cover longer time periods. Occupational sick pay will be governed by the terms of the employment contract. There are no restrictions on how an occupational sick pay scheme operates, provided employees do not receive less than their minimum statutory entitlement and employers abide by the terms of their own policies and contracts.

¹ GOV.UK, [Statutory Sick Pay \(SSP\)](#), accessed 25/05/2022

1.2

Who is eligible for SSP?

SSP is paid to ‘employees’ who earn over the Lower Earnings Limit. However, the definition of an employee for SSP purposes differs from other areas of employment law.²

All those who pay [Class 1](#) National Insurance Contributions (NICs) are considered employees for the purposes of SSP.³ This can include some workers, including agency workers and those on zero-hours contracts.

To qualify for SSP, an employees’ average weekly earnings must be at or above the lower earnings limit (LEL).⁴ The LEL is currently £123 per week.⁵

Employees who have more than one job can claim SSP from each employer, provided they earn at least the LEL per week with each employer and their earnings are not aggregated for NICs purposes.⁶ It is also possible for an employee to claim sick pay from one job while continuing to work for another, although this may only apply in a limited number of cases.⁷

1.3

Non-eligible workers

Workers who do not pay Class 1 NICs are not entitled to SSP. This includes self-employed workers and many workers in the ‘gig economy’.⁸

Employees who earn below £123 per week are also not entitled to SSP. The TUC has estimated that close to 2 million workers are not eligible for SSP because they earn below the LEL.⁹ The Government has previously stated that there is a case for extending SSP to all employees, regardless of earnings.¹⁰

Casual workers, including agency workers and those on zero-hours contracts, will often be ‘employees’ for the purposes of SSP. However, some may fail to meet the earnings threshold.

² For a comparison of employment status definitions see Commons Library briefing CBP-8045, [Employment Status](#)

³ Section 163, [Social Security Contributions and Benefits Act 1992](#) (SSCBA); regulation 16, [Statutory Sick Pay \(General\) Regulations 1982/894](#) (SSP Regulations 1982).

⁴ Para 2(c), Schedule 11, SSCBA 1992.

⁵ GOV.UK, [Statutory Sick Pay \(SSP\)](#), accessed 27 March 2022

⁶ Section 153(4), SSCBA 1992; Regulation 20, Statutory Sick Pay (General) Regulations 1982.

⁷ [Brito-Babapulle v Faling Hospital NHS Trust 2013 IRLR 854](#).

⁸ GOV.UK, [Self-employed National Insurance rates](#) (accessed 27 March 2022)

⁹ TUC, [Sick pay for all](#), 3 March 2020.

¹⁰ HM Government, [Health is everyone’s business: proposals to reduce ill-health related job loss](#), CP 134, July 2019, para. 97.

1.4 When is SSP payable?

SSP is payable for ‘periods of incapacity for work’ (PIW). This is a period of four or more consecutive days where an employee is, or is deemed to be:

incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.¹¹

Any day can count towards establishing a PIW, including weekends.¹²

SSP is paid for each ‘qualifying day’ that falls within a PIW. Qualifying days can be agreed between the employer and the employee. They will usually be the days the employee is contracted to work.¹³

At present, SSP is not paid for the first three qualifying days. These are called ‘waiting days’.¹⁴ As such, employees will typically be paid SSP from their fourth day of absence from work.

Where two PIWs are separated by no more than eight calendar weeks, they can be linked. In such a case, SSP will be payable from the first qualifying day in the second PIW instead of the fourth.

If an employee is sick for more than seven consecutive days their employer can request evidence that they are sick.¹⁵ This normally takes the form of a ‘[fit note](#)’ issued by a GP.¹⁶

SSP is not payable for more than 28 weeks in a single PIW¹⁷ or linked series of PIWs, or for a continuous series of linked periods lasting more than 3 years.¹⁸

1.5 Who pays SSP?

SSP is paid by employers.

When SSP was first introduced in 1983, employers were able to reclaim the cost of the payments from the Government. This was subsequently replaced by a more limited ‘Percentage Threshold Scheme’ where employers could

¹¹ Section 151(4), SSCBA 1992

¹² Section 152, SSCBA 1992

¹³ Section 154, SSCBA 1992. See also Regulation 5, SSP Regulations 1982.

¹⁴ Section 155, SSCBA 1992

¹⁵ [Statutory Sick Pay \(Medical Evidence\) Regulations 1985/1604](#).

¹⁶ GOV.UK, [Fit Note](#)

¹⁷ Section 155, SSCBA 1992

¹⁸ Regulation 3(3), [The Statutory Sick Pay \(General\) Regulations 1982/894](#)

reclaim SSP costs which exceeded 13% of their monthly National Insurance liability. This scheme was abolished in 2014.¹⁹

During the COVID-19 pandemic March 2020 – September 2021 and again January – March 2022, the Government operated a SSP Rebate Scheme that allowed employers with fewer than 250 employees to recover two weeks of SSP per eligible employee off work due to COVID-19. This scheme ended on 18 March 2022.²⁰

SSP is subject to the same tax and national insurance contributions (NICs) as regular pay, as well as any other deductions made from pay such as pension contributions or Student Loan repayments.

2

Reform of statutory sick pay

The need for reform of statutory sick pay (SSP) was first raised in the Conservative Government's [Work, Health and Disability Green Paper](#) in 2016,²¹ which stated that:

We are clear that the systems around fit notes and Statutory Sick Pay should not discourage conversations between employers and employees, or the exercise of flexibilities, that support employees to remain in or return to work. We discuss the issues around fit notes in chapter 5 but believe that **we should reform the Statutory Sick Pay system so that it better encourages supportive conversations and phased returns to work.**²²

Reforming SSP was one of the recommendations in the 2017 independent review of mental health and employers ([Thriving at work](#))²³ and was accepted by the Government in the November 2017 response to the Green Paper [Improving Lives: The Future of Work, Health and Disability](#).²⁴

On 18 July 2019, the Government published [Health is everyone's business](#), a consultation on proposals to reduce ill health-related job loss. The consultation proposed "reforming Statutory Sick Pay so that it is better enforced, more flexible and covers the lowest paid employees."²⁵

¹⁹ [Statutory Sick Pay Percentage Threshold \(Revocations, Transitional and Saving Provisions\) \(Great Britain and Northern Ireland\) Order 2014/897](#).

²⁰ GOV.UK, [Guidance: Check if you can claim back Statutory Sick Pay paid to employees due to coronavirus \(COVID-19\)](#)

²¹ HMG, [Improving Lives: The Work, Health and Disability Green Paper](#), October 2016

²² HMG, [Improving Lives: The Work, Health and Disability Green Paper](#), October 2016, p60

²³ HMG, [Thriving at Work: the Stevenson/Farmer review of mental health and employers](#), October 2017

²⁴ HMG, [Improving Lives: The Future of Work, Health and Disability](#), November 2017, p31

²⁵ HMG, [Health is everyone's business: Proposals to reduce ill health-related job loss](#), CP 134, July 2019, p8

The consultation contained several specific proposals for reforming SSP, including:

- Allowing SSP to continue during phased returns to work (i.e. wages and SSP paid pro rata);
- Extending SSP to employees who earn under the Lower Earnings Limit;
- Removing the concept of qualifying days;
- Charging a new single labour market enforcement body which would handle the enforcement of SSP;
- Increasing the penalty (currently £3,000) for the non-payment of SSP following a HMRC or employment tribunal decision on liability; and
- Adopting a targeted rebate of SSP for SMEs.²⁶

In the consultation outcome, the Government reported that respondents were broadly supportive of most of these proposals, but that the questions posed in the consultation require further consideration. It also said that it was “not the right time to introduce changes to the sick pay system”.²⁷

On 24 February 2022, in response to a Parliamentary Question from Labour MP Jonathan Ashworth “To ask the Secretary of State for Work and Pensions, whether her Department is taking steps to review eligibility criteria for Statutory Sick Pay”, Minister for Disabled People, Health and Work Chloe Smith stated that the Government was continuing to review SSP following the pandemic:

In the Government’s response to the Health is Everyone’s Business consultation it was made clear that the pandemic was not the right time to introduce changes to the Statutory Sick Pay (SSP) system or its eligibility criteria as this would have placed an immediate and direct cost on employers at a time where many were struggling.

As we learn to live with Covid-19, government is continuing to take a broader look at the role of SSP and is keeping the system under review.

Many of those earning below the Lower Earnings Limit of £120 per week, who are not eligible for SSP, are already in receipt of benefits. Those who are not already in receipt of benefits may be able to claim Universal Credit and new style Employment and Support Allowance.²⁸

²⁶ HMG, [Health is everyone’s business: Proposals to reduce ill health-related job loss](#), CP 134, July 2019, paras 78-123.

²⁷ DWP and DHSC, [Government response: Health is everyone’s business](#), July 2021, pp27-29

²⁸ PQ 122663 [On [Statutory Sick Pay](#)], 10 February 2022

Disclaimer

The Commons Library does not intend the information in our research publications and briefings to address the specific circumstances of any particular individual. We have published it to support the work of MPs. You should not rely upon it as legal or professional advice, or as a substitute for it. We do not accept any liability whatsoever for any errors, omissions or misstatements contained herein. You should consult a suitably qualified professional if you require specific advice or information. Read our briefing '[Legal help: where to go and how to pay](#)' for further information about sources of legal advice and help. This information is provided subject to the conditions of the Open Parliament Licence.

Feedback

Every effort is made to ensure that the information contained in these publicly available briefings is correct at the time of publication. Readers should be aware however that briefings are not necessarily updated to reflect subsequent changes.

If you have any comments on our briefings please email papers@parliament.uk. Please note that authors are not always able to engage in discussions with members of the public who express opinions about the content of our research, although we will carefully consider and correct any factual errors.

You can read our feedback and complaints policy and our editorial policy at commonslibrary.parliament.uk. If you have general questions about the work of the House of Commons email hcenquiries@parliament.uk.

The House of Commons Library is a research and information service based in the UK Parliament. Our impartial analysis, statistical research and resources help MPs and their staff scrutinise legislation, develop policy, and support constituents.

Our published material is available to everyone on commonslibrary.parliament.uk.

Get our latest research delivered straight to your inbox. Subscribe at commonslibrary.parliament.uk/subscribe or scan the code below:



 commonslibrary.parliament.uk

 [@commonslibrary](https://twitter.com/commonslibrary)