



What to do if your employee is sick - Special Cases

For days sick on
or after 6 April 2004

**An employer's further guide
to Statutory Sick Pay**

Help

We can help you

By telephone

(Calls may be recorded for quality and training purposes.)

- New employers (*less than 3 years*) **0845 60 70 143**
open Mon – Fri, 8am-8pm and Sat – Sun, 8am-5pm.
- More experienced employers **0845 7 143 143**
open Mon – Fri, 8am-8pm and Sat – Sun, 8am-5pm.
- Deaf or hard of hearing employers *Textphone* **0845 602 1380**

For a list of helplines and opening hours, see your *Employer's Bulletin*.

In person

We have specially trained Business Support Teams covering all parts of the country to help you understand

- what records to keep
- what returns to make
- when to send us information.

The Business Support Teams can arrange a one-to-one visit at your business address to sort out your payroll needs. They also offer a range of workshops on specific subjects designed with busy employers in mind.

For more details, and to book a one-to-one visit or a workshop, contact your local Business Support Team by

- logging on to our website at www.inlandrevenue.gov.uk/bst/index.htm or
- calling the New Employer's Helpline on **0845 60 70 143** and ask for details of your local Business Support Team.

At your local Inland Revenue office

Your local Inland Revenue office can also help you. To contact them, look under 'Inland Revenue' in your phone book. Write the telephone number below for future use.

Please tell us your reference, which you can find on all correspondence from your Inland Revenue office.

If your enquiry is about one of your employees, please also tell us their National Insurance number.

By Internet

Log on to the Employer's website at www.inlandrevenue.gov.uk/employers

Further guidance

Employer's Help Books

In addition to those included in the Employer's Pack we have Employer's Help Books covering

- *Pay and time off work for parents, E15*
- *Pay and time off work for adoptive parents, E16*

The Help Books are for guidance only.

They are not comprehensive and have no legal force.

We also have a number of other booklets that give further guidance, for example

- *Employer's Further Guide to PAYE and NICs, CWG2(2004)*
- *Class 1A NICs on benefits in kind, CWG5(2004)*
- *Expenses and Benefits – a tax guide, 480(2004)*

You can view the full range of these booklets, and other forms and guidance on

- the Internet – log on at www.inlandrevenue.gov.uk/employers
- the Employer's CD-ROM.

or you can

- download them from the Internet www.inlandrevenue.gov.uk/employers
- print them from the CD-ROM*
- get copies from the Employer's Orderline www.inlandrevenue.gov.uk/employers
Fax: **0870 2 406 406**
Phone: **0845 7 646 646**

Check the Order Form in your Employer's Pack for a full list of what is available and how to order.

Forms and guidance in Braille, large print or audio

We have a range of services for people with disabilities, including leaflets in Braille, audio and large print. For details, please ask at your local Inland Revenue office or Enquiry Centre.

Yr Iaith Cymraeg

Ffoniwch **0845 302 1489** i dderbyn fersiynau Cymraeg o ffurflenni a chanllawiau.

**The CD-ROM contains interactive features designed to help the newcomer to payroll. This simple on-line guide takes the reader through the calculation of tax and National Insurance.*

Calculators have been built-in to help speed up your calculations of-

- *Pay Adjustment and PAYE*
- *NICs contracted out and not contracted-out*
- *Car benefit and Car Fuel benefit.*

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Who is an employee and who is an employer?

An employee is a person whose earnings attract a liability to employers' secondary and employee's primary Class 1 NICs, or would if they were high enough.

General

Whoever is liable to pay the employer's Class 1 NICs is the **employer**. There does not have to be a written contract.

Employees include office holders, for example, police officers, Members of Parliament, the judiciary and some company directors.

People who are classed as employed earners for Class 1 NICs liability, for example, agency workers, are also employees.

If you are not sure who is an employee and who is an employer for pay, contact your local Inland Revenue office and ask for the Status Officer.

Agency workers

There are various types of agency workers who are regarded as employees for SSP purposes. If a worker is treated as an employee for National Insurance contributions purposes, they will also be treated as an employee for SSP purposes.

Agency workers can be treated as employees for PAYE tax and NICs. If you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings then you will have to pay them SSP if they satisfy the qualifying conditions. If you're not sure whether you have to deduct PAYE tax and Class 1 NICs from the agency worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

Casual workers

General

A casual worker is usually someone who works for somebody as and when they are required, but

- they do not have to accept the work that is offered
- the person with the work does not have to offer it to them.

Pay

If you have to deduct PAYE tax and Class 1 NICs from the casual worker's earnings then you will have to pay them SSP if they satisfy the qualifying conditions. If you're not sure whether you have to deduct Class 1 NICs from the worker's earnings contact your local Inland Revenue office and ask for the Status Inspector.

Mariners

General

Mariners are covered by the SSP scheme, if they are

- employed on a British registered ship, **or**
- their contract was entered into in the United Kingdom (UK) and the person paying the mariners' earnings or the owner of the vessel has a place of business in Great Britain (GB).

Foreign-going

Mariners are not covered by the SSP scheme if they

- are employed on board a foreign-going ship and their earnings are paid exclusively for that employment, **or**
- are employed partly on a foreign-going ship and partly elsewhere and the earnings for the employment on the foreign-going ship are paid during that employment, **or**
- have been employed on a foreign-going ship within the last 13 weeks, **and**
 - remain employed by the same employer, and
 - are not employed by anybody on terms which would stop them returning to their employment on the foreign-going ship within 13 weeks of leaving it.

Employers of foreign-going mariners pay a special rate of NICs, details of these rates can be found in *Foreign Going Mariners and Deep Sea Fisherman's tables, CA42*.

Telling you they are sick

General

Notification is always the starting point for SSP. It is not evidence of incapacity, it is just your employee letting you know that they are sick.

Notification in writing must be treated as made on the day it was posted.

If you cannot tell the date it was posted, assume it was posted two days before the date it was received, or three days if it is received on Monday or Tuesday, but make allowances for public holidays and any known local variations in postal arrangements.

You can make your own rules about when and how your employee should notify sickness. You must tell your employees your rules for notification in advance.

Remember for SSP purposes, you cannot insist that the employee tells you

- in person
- earlier than the first Qualifying Day (QD) in a spell of sickness
- by a specific time on the first QD
- more frequently than once a week during the sickness
- on a special form
- on a medical certificate.

If you do not make your own rules, regulations state that your employee, or their representative(s), must tell you of any date that they are unfit for work no later than seven calendar days after that day.

Notice given late

Providing there was good cause for delay, you must accept that the notification was given correctly if it is given

- within one calendar month of the time you specify, or of the seven day period after the relevant day(s) of incapacity if you haven't specified any rules yourself, **or**
- up to 91 days after the relevant day(s) of incapacity, if you are satisfied that it was not reasonably practicable for the employee to notify you as above.

Remember that you can only pay a maximum of 28 weeks SSP. If still sick after 28 weeks the employee should claim Incapacity Benefit and you should give them form SSP1.

You do not have to pay SSP if notification is received after 91 days.

You may withhold SSP for any QDs for which notification is late if

- an employee is late in notifying sickness, **and**
- you are satisfied that there was no good cause for the lateness.

In these circumstances these QDs do not count towards

- the three waiting days, **or**
- your maximum liability to pay SSP.

Late notification can apply to second and following notifications in a spell of sickness as well as the first one. The first self-certified notification lasts for at least seven calendar days, or longer if your rules say so, from the day it was given. Therefore notification given on one Monday should normally be renewed by the next Monday.

If you withhold SSP because you do not accept that there was good cause for late notification and your employee does not accept your reasons, they have the right to ask you for a written statement and for an Inland Revenue decision on the matter. See page 22 for further information on what happens if there is a disagreement between you and your employee.

When and what medical evidence should your employee give you

Evidence of incapacity to work

You need to tell your employees what you want them to produce as evidence of incapacity. You cannot withhold SSP for late receipt of medical evidence, only late notification.

You are entitled to ask for reasonable evidence of incapacity after the first seven days of a spell of sickness.

Your employees can use form SC2 for self-certification for spells of sickness lasting four to seven days. You cannot ask for a doctor's statement for the first seven days of a spell of sickness.

Remember a doctor's statement is strong evidence of incapacity and should usually be accepted as conclusive unless there is evidence to the contrary.

You may find that your employee gives you a certificate from someone who is not a registered medical practitioner. In this instance it would then be up to you to decide how much you can rely on this evidence.

If your employee is away from work for compassionate reasons, but is not personally incapable of work, they are not entitled to SSP. See Managing sickness absences on page 22.

It is possible for an employee who has two distinct contracts, with the same employer or different employers, to be incapable of work under one of them but capable of carrying out the other.

When an employee has more than one contract with the same or different employers trading in association, and their earnings are aggregated for NIC purposes, they must be incapable of work under all contracts before they can be entitled to SSP.

Deemed Incapacity

Part of a day's sickness

An employee is deemed to have been incapable of work for the whole day if they arrive for work but do no work before they go sick.

If an employee has done even a minute's work, that day cannot be treated as a day of incapacity for SSP purposes.

Night shift workers

Work done in any shift which extends over midnight is always treated as done on the first of the two days, regardless of how many hours are worked before and after midnight. Therefore, if your employee becomes incapable of work after the end of the shift, the second day is deemed to be a day of incapacity even though they have worked that day.

Precautionary reasons

An employee is deemed incapable of work for SSP purposes if a registered medical practitioner states they should not work for precautionary reasons. Incapacity is deemed to continue as long as the doctor states that the employee should refrain from work for a precautionary reason.

Infectious or contagious diseases

An employee who

- is a carrier of, or
- has been in contact with

an infectious or contagious disease may have been issued with a statement from the appropriate medical officer advising them not to go to work. If they have been issued with such a statement, they are deemed to be incapable of work for SSP purposes.

This guidance applies to the whole of Great Britain and Northern Ireland.

Convalescence

An employee is deemed to be incapable of work for SSP purposes if a registered medical practitioner states that they should not work because they are convalescing.

Bereavement

Bereavement affects people in different ways. Your employee may well be ill due to bereavement, for example shock or depression. You must decide whether the incapacity can be accepted or not.

Working for therapeutic reasons or permitted work

If an employee returns to work, for example on a part-time basis, for therapeutic reasons, the days they work cannot be treated as days of incapacity for SSP purposes. For more information about the rules concerning supported permitted work contact your nearest Jobcentre Plus or social security office.

Has your employee worked for you long enough to qualify for Statutory Sick Pay (SSP)?

Employee works abroad

Employees who work outside the UK on the first day of a PIW may be entitled to SSP if you are liable to pay employers' Class 1 NICs, or would be if the employee's earnings were high enough.

If your employee's PIW or linked PIW continues but your liability to pay employers' Class 1 NICs ceases, the employee continues to be entitled to SSP until their entitlement stops for another reason, for example they have received 28 weeks' SSP.

Change of employer

If you take over a business and the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply, then continuity of employment is not broken. The Transfer of Undertakings (Protection of Employment) Regulations 1981 are often referred to as the TUPE Regulations.

Usually the regulations apply when you take over the business as a going concern, with no interruption to trading, and take over the contracts of employment of those employed in the business immediately before the transfer.

If you are not sure if the Transfer of Undertakings (Protection of Employment) Regulations 1981 apply contact the Arbitration and Conciliation Advisory Service (ACAS) (see www.acas.org.uk or call **08457 47 47 47**).

Continuity of employment is also not broken when

- one corporate body takes over from another as the employer by or under an Act of Parliament
- the employer dies and their personal representative or trustees keep the employee on
- there is a change in the partners, personal representatives or trustees
- the employee moves from one employer to another and at the time of the move the two employers are associated, for example
 - one is controlled by the other either directly or indirectly, or
 - both companies are controlled by a third party, either directly or indirectly
- a teacher in a school maintained by a local education authority, including maintained schools where the governors of the school, rather than the local education authority, are the teacher's employer
- an employee of a health service employer moves to another health service while undergoing training.

Does your employee earn enough?

General

The following paragraphs explain how to work out your employee's average weekly earnings in the set period for the various special cases. All the other guidance on what counts as earnings and how much your employee needs to earn applies.

Employees with more than one job

Your employee could have more than one job with you or work for you and another employer.

If all the employee's earnings have to be added together to work out Class 1 NICs they have to be added together to work out the employee's average weekly earnings, and the employee can only get one lot of SSP.

If Class 1 NICs are worked out separately on the employee's earnings, then you must work out their average weekly earnings separately, and the employee can get more than one lot of SSP.

For more information on how to work out Class 1 NICs for employees with more than one job see the booklet *Employer's Further Guide to PAYE and NICs, CWG2 (2004)*.

New employees

Employees who have not worked for you for long enough for the normal average weekly earnings rules to apply, or have worked for you before in a previous contract which does not link with the current contract fall into two groups, that is employees who have not received

- payments covering at least eight weeks at the time the PIW begins
- any payments at the time the PIW begins.

Where the last normal pay day before the PIW has been established but the eight previous pay days have not, regulations provide for an employee's average weekly earnings to be calculated differently. In these circumstances calculate by using the period represented by all the earnings, paid to him under his contract before his first day of sick absence, as the SET period.

So if the employee only received three days wages, the set period is three days. To get the average divide the three days' wages by three and multiply by seven.

Where the employee has not yet been paid before being sick you should use their contractual earnings to see if they earn enough to get SSP.

Weekly paid employee gets regular payment earlier or later than normal

This usually happens when you pay holiday pay in advance.

Follow Steps 1 to 6 of the weekly check sheet below but, divide the figure in Step 6 by the number of weeks' wages in the payment.

Weekly paid employee without whole number of weeks in the set earnings period

This usually happens when you have to bring your employee's normal payday forward because of Bank Holidays at Easter, Christmas or when you pay them early for their earnings.

Follow Steps 1 to 6 of the weekly check sheet below. Divide the figure in Step 6 by the number of weeks wages in the payment.

Change of employer in the set earnings period

If you take over a business during the set period worked out from the check sheets below, see 'Change of employer' on page 6.

You must still add together all their earnings in the set period even where some of them were paid by the previous employer.

Check sheet for employees paid weekly or fortnightly

To work out average weekly earnings for employees paid in multiples of a week, eg weekly or fortnightly

- | | | |
|---|---|---|
| 1 | Note first day of PIW. | <input type="text" value="/ /"/> |
| 2 | Find the date of the last normal payday on or before the date at 1. This is the last day of the set period. | <input type="text" value="/ /"/> |
| 3 | Count back eight weeks from the date in 2 and come forward one day, for example, if eight weeks back is 3rd August, enter 4th. | <input type="text" value="/ /"/> |
| 4 | Find the date of the payday before the date in 3 and come forward one day, for example, 25 June becomes 26 June. This is the first day of the set period. | <input type="text" value="/ /"/> |
| 5 | Add together the earnings paid between the dates in 4 and 2 (inclusive). | £ <input type="text" value=""/> <input type="text" value=""/> |
| 6 | Divide the figure in 5 by the number of weeks in the set period. (Don't round up or down to whole pence, use the unrounded figure to decide if the employee's average earnings are high enough.) | £ <input type="text" value=""/> <input type="text" value=""/> |

Check sheet for employees paid calendar monthly

To work out average weekly earnings for employees paid calendar monthly

- | | | |
|---|---|---|
| 1 | Find the date of the last normal payday before the first day your employee is sick. This is the last day of the set period. | <input type="text" value="/ /"/> |
| 2 | Count back eight weeks from the date in 1 and come forward one day, for example, if eight weeks back is 3rd August, use 4th. | <input type="text" value="/ /"/> |
| 3 | Find the date of the payday before the date in 2 and come forward one day, for example, 25 June becomes 26 June. This is the first day of the set period. | <input type="text" value="/ /"/> |
| 4 | Add together the earnings paid between the dates in 3 and 1 (inclusive). If there are more or less than two payments in the period, see page 10. | <input type="text" value="/ /"/> |
| 5 | Multiply the figure in 4 by 6. | £ <input type="text" value=""/> <input type="text" value=""/> |
| 6 | Divide the figure in 5 by 52. (Don't round up or down to whole pence, use the unrounded figure to decide if the employee's average earnings are high enough.) | £ <input type="text" value=""/> <input type="text" value=""/> |

Employee paid at irregular intervals

If you pay your employee at irregular intervals because they don't work for you during every pay period, see 'agency workers' below.

If you do not pay your employees in a regular pay pattern use the check sheet below to work out their average weekly earnings.

Agency workers, supply teachers, seasonal workers or other sporadic employment

Employees paid in multiples of a week

Use the weekly check sheet on page 8. You must still divide the figure in Step 6 by the number of whole weeks in the set period, even if your employee was not paid for some of the weeks.

Employees paid calendar monthly

Use the check sheet below to work out their average weekly earnings.

Check sheet for employees paid at irregular intervals

To work out average weekly earnings if you do not pay your employees in a regular pay pattern

- 1 Find the date of the last normal payday before the first day your employee is sick. **This is the last day of the set period.**
- 2 Count back eight weeks from the date in 1 and come forward one day, for example, if eight weeks back is 22nd June, enter 23rd.
- 3 Find the date of the payday before the date in 2 and come forward one day, for example, 15 May becomes 16 May. **This is the first day of the set period.**
- 4 Add together the earnings paid in between the dates in 3 and 1 (inclusive). £
- 5 Work out the number of days between the dates in 3 and 1 (inclusive).
- 6 Divide the figure in 4 by the number of days in 5.
- 7 Multiply the figure in 6 by 7. (**Don't round up or down** to whole pence, use the unrounded figure to decide if the employee's average earnings are high enough).

Check sheet for monthly paid agency workers, supply teachers, seasonal workers or other sporadic employment

To work out average weekly earnings for employees paid calendar monthly

- 1 Find the date of the last normal payday before the first day your employee is sick. **This is the last day of the set period.**
- 2 Count back eight weeks from the date in 1 and come forward one day, for example, if eight weeks back is 22nd June, enter 23rd.
- 3 Find the date of the payday before the date in 2 and come forward one day, for example, 15 May becomes 16 May. **This is the first day of the set period.**
- 4 Add together the earnings paid in between the dates in 3 and 1 (inclusive). £
- 5 Work out how many whole months there are between the dates in 3 and 1 (inclusive). For example, if the dates were 1 October and 31 December there are three whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' on page 11.
- 6 Divide the figure in 4 by the number of whole months in 5. £
- 7 Multiply the figure in 6 by 12. £
- 8 Divide the figure in 7 by 52. (**Don't round up or down** to whole pence, use the unrounded figure to decide if the employee's average earnings are high enough). £

Directors

If the director is contractually paid a regular salary calculate their average weekly earnings like any other employee; see page 8. The director may also be paid a bonus or fees by a formal vote. If so, only include this if it is paid in the set period.

If the director is paid only by a formal vote calculate their average weekly earnings using the check sheet below.

A formal vote usually takes place at the company's Annual General Meeting and is agreed in the company minutes. A director who is paid by a formal vote may draw money from the business on a regular basis. Do not include these drawings which are not earnings for SSP purposes when working out the director's average weekly earnings.

Check sheet for directors paid by a formal vote

To work out average weekly earnings for directors paid by a formal vote

- 1 Find the date of the last vote before the first day the director is sick.
This is the last day of the set period.
- 2 Count back eight weeks from the date in 1 and come forward one day, for example, if eight weeks back is 22nd June, use 23rd.
- 3 Find the date of the vote before the date in 1 and come forward one day. For example, 15th May becomes 16th May. **This is the first day of the set period.**
- 4 Add together the money voted between the dates in 3 and 1 (inclusive). (Do not include any money drawn in anticipation of the vote.) £
- 5 Work out how many whole months there are between the dates in 3 and 1 (inclusive). For example, if the dates were 1 January 2004 and 31 December 2004 there are 12 whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' on page 11.
- 6 Divide the figure in 4 by the number of whole months in 5. £
- 7 Multiply the figure in 6 by 12. £
- 8 Divide the figure in 7 by 52. (**Don't round up or down** to whole pence, use the unrounded figure to decide if the director's average earnings are high enough). £

Employees paid calendar monthly with more or less than two payments in the period

If your employee is paid calendar monthly and there are more or less than two payments in the period at Step 6 of the check sheet on page 8, use Steps 7 to 10 below.

- 7 Work out how many whole months there are between the dates in 5 and 3 (inclusive). For example, if the dates were 1 January 2003 and 31 December 2003 there are 12 whole months. If there aren't a whole number of months see 'Working out the number of rounded months when there aren't a whole number of months in the set period' on page 11.
- 8 Divide the figure in 6 by the number of months in 7. £
- 9 Multiply the figure in 8 by 12. £
- 10 Divide the figure in 9 by 52. (**Don't round up or down** to whole pence, use the unrounded figure to decide if the employee's average earnings are high enough). £

Working out the number of rounded months when there aren't a whole number of months in the set period

To calculate average weekly earnings for employees paid calendar monthly, when there aren't a whole number of months between the dates in **4** and **2**, when you get to Step **6** of the monthly check sheets, work out the number of rounded months as follows.

Count the number of whole months and the number of odd days. Round the odd days up or down in line with rounding rules

If the date at **2** is in

- February - round 14 days or less down and 15 days or more up.
- Any month except February - round 15 days or less down and 16 days or more up.

Then use the number of rounded months at Step **6** and follow the rest of the steps on page 10.

What earnings are used?

General

You must include all earnings paid in the 'set period' in the total earnings figure.

Average weekly earnings should include all earnings which attract a Class 1 NIC liability, or would if they were high enough. This does not include earnings which attract Class 1A, paid on company benefits or Class 1B, paid on PAYE Settlement Agreements. Working Tax Credit and Child Tax Credit do not count as earnings.

An employee who fails to qualify because their average weekly earnings are below the LEL may qualify if benefits and expenses were paid to them in the 'set period'. If the benefits or expenses, which would normally attract Class 1 NIC liability, were included in a PAYE Settlement Agreement which attracted Class 1B liability, these earnings must be included in the average weekly earnings calculation if their inclusion increases the average weekly earnings sufficiently to allow qualification.

If, on any pay day, the employee was not due any pay, for example they were on unpaid leave, the period over which the calculation is made remains the same and blank weeks are included.

Mistimed payments

Mistiming only applies to regular payments or earnings that have a normal or contractual payday. Other payments made within the 'set period', such as bonus or commission payments, are not affected unless they have a contractual payday.

Divide the payments by the number of weeks covered by the payments, rather than the number of weeks in the 'set period', if

- an employee is paid weekly or in multiples of weeks, **and**
- a normal payment has been made early, or late, so that the 'set period'
 - contains more, or less, than eight weeks' pay, **or**
 - is not an exact number of weeks.

Pay practice change during the set period

Where, for example, an employee has both weekly and monthly payday(s) within the 'set period', the average in each is calculated separately then added together to get the total average weekly earnings.

NHS employees

NHS employees whose contracts were split between Health Authorities (now known as Strategic Health Authorities) and/or NHS Trusts as a result of NHS re-organisation, can choose to have all their earnings added together for working out average weekly earnings for SSP purposes.

This means that employees with low earnings from their individual contracts won't lose out on SSP just because of NHS re-organisation.

The earliest date on which a Trust could be set up is 1 April 1991.

Some employees, could qualify separately for SSP under each contract, and would, therefore, benefit.

Others may no longer qualify for SSP, though they would have if the original contract had not been split, for example if their average weekly earnings under each separate contract are too low.

The law allows for these employees to elect, that is choose, to have their contracts treated as one for SSP purposes, if it would benefit them.

This rule

- only applies to employees who were employed by a Health Authority at the time the contract was split between the Health Authority and Trust(s), or between Trusts
- does not affect the rules where an employee has more than one contract with the same employer.

Employees who start working for the Trust(s) after the split.

- are not entitled to make this election, and
- will only qualify for SSP from their employers if the conditions are satisfied.

When NHS Trusts merge

At any time after 1 April 1999, two Trusts or a Health Authority and a Trust may merge to become one employer. If TUPE Regulations apply to the merger, an employee who:

- works for more than one employer prior to them merging, and
- who has SSP entitlement with each of the merging employers, continuing over the date of the merger will keep their multiple entitlements to SSP until they return to work.

The multiple entitlement will last only until the end of the current spell of sickness that spans the merger date. In any future PIWs that employee will only be entitled to one payment of SSP, even if the PIWs link with a PIW, which started before the merger.

Earnings subject to PAYE Settlement Agreements and Class 1B NICs.

If an employee does not qualify because their average weekly earnings in the 'set period' are less than the LEL for National Insurance purposes, you must check whether they received any benefits or expenses, which would otherwise have attracted Class 1 NIC liability, within the 'set period' that were subject to a PAYE Settlement Agreement and Class 1B NICs. If they did, you must recalculate their average weekly earnings on which Class 1B were paid.

Employee not entitled to Statutory Sick Pay (SSP)

Introduction

Some employees cannot get SSP from you when they are sick, but may be entitled to a social security benefit instead.

Remember if your employee cannot get SSP at the start of a PIW they will not be entitled to it in any subsequent linking PIW.

Your employee cannot get SSP if, on the first day of the PIW

- their PIW links with a claim for certain social security benefits
- they have already been due 28 weeks' SSP from their previous employer
- their average weekly earnings in the 'set period' are below the LEL National Insurance purposes (see page 12 for further information)
- they are under age 16, or over age 65
- she is within the 'disqualifying period' related to her pregnancy (see page 17 for further information)
- they are away from work because of a trade dispute
- they are in legal custody
- they are outside the UK and you are not liable to pay employer's Class 1 NICs, or would not be liable even if their earnings were high enough
- they are a new employee and have not yet done any work for you.

What to do if your employee is not entitled to SSP

You are required to complete form SSP1, or your own version, to enable them to claim social security benefits.

SSP1 issued by mistake

If you realise you have made a mistake and SSP is due, you should

- pay the SSP, **and**
- inform your employee and the Jobcentre Plus or social security office so that benefit is not wrongly paid.

Employee already due 28 weeks SSP from previous employer

Your employee cannot get SSP if

- your employee gives you a leaver's statement, form SSP1(L), which shows they have been due 28 weeks' SSP from their former employer, **and**
- the gap between the first day of the PIW with you and the last day of SSP shown at Date 2 on form SSP1(L) is eight weeks, that is 56 consecutive days or less.

Average weekly earnings below LEL

If your employee has average weekly earnings below the LEL in the "set period" then they are not entitled to SSP and should be given form SSP1.

Employee under age 16

An employee cannot qualify for SSP while they are under age 16. If sickness spans the 16th birthday, the spell of sickness is treated for SSP as starting on that date.

Employee aged 65 or over

An employee who is 65 or over on the first day of the PIW is not entitled to SSP. If your employee becomes 65 during the PIW, their entitlement to SSP continues until the end of that PIW.

Legal custody

An employee who is in legal custody at any time on the first day of the PIW cannot get SSP for the whole of that PIW. If they are taken into custody during a PIW your liability to pay them SSP stops and you should send them form SSP1. They cannot get SSP for the rest of that PIW.

Legal custody means detained, arrested or in prison. It does not include helping the police with enquiries or being bailed.

Paying Statutory Sick Pay (SSP)

General

SSP is paid at the same time you would pay wages.

A full week for SSP purposes begins on a Sunday and ends the following Saturday.

SSP must be paid for all periods of entitlement regardless of whether or not earnings would normally be due for the same period.

Manner of payment

You can use whatever means of payment you prefer. You may find it easier to pay SSP the same way you pay wages.

But you cannot pay SSP

- in kind
- as board and lodging
- by way of service.

Deductions from SSP against employee's pay

You treat SSP like pay, so you must make deductions for PAYE and NICs. Any other deductions which you make from pay can also lawfully be made from SSP, for example pension contributions, student loans and attachment of earnings orders.

Offsetting SSP against employee's pay

Pay means any earnings, which count for NIC purposes, paid to an employee under a contract of service. For example, wages or occupational sick pay scheme payments. You can treat such payments towards the SSP you have to pay for the same day. You do not have to pay SSP on top of these payments.

If a payment of SSP and a contractual payment are due for different days, they cannot be offset against each other.

If you pay contractual remuneration, which amounts to more than any SSP entitlement, then you may be able to choose not to operate the rules of SSP scheme.

Employee dies

SSP is due up to and including the date of death.

Insolvent and defaulting employers

The **SSP (General) Regulations 1982**, as amended describe circumstances under which the Inland Revenue will take over liability to pay SSP.

If an employer does not pay SSP following a decision by the Inland Revenue that SSP is payable and there is no appeal, liability for paying the SSP due legally transfers to the Inland Revenue.

If an employer is insolvent within the terms of these regulations and the employees' contracts are terminated, entitlement to SSP ends when the contracts end. But if the employees' contracts are not terminated on insolvency, any SSP due in that employment from the date of insolvency becomes the liability of the Inland Revenue. Remember, it is the responsibility of the employer to cover any SSP due for the period before the date of insolvency.

Where an employer has ceased to trade, entitlement to SSP ends only when the employee's contract ends.

Remember an employee who is still sick when their contract ends cannot continue to get SSP after that date, but can contact their local Jobcentre Plus or social security office and claim Incapacity Benefit.

Paying people unable to act for themselves

If your employee is mentally incapable of acting for themselves and you are unsure about who should be paid the SSP, contact the Employer's Helpline and explain the situation. They will be able to direct you to the appropriate Statutory Payments office to handle your employee's SSP.

Trade disputes

If your employee is off work because of a trade dispute on the first day of the PIW they cannot get SSP unless

- they had no direct involvement in the dispute, **and**
- they did not take part in it at any time up to and including the first day of the PIW.

Agency workers

There are various types of agency workers who are regarded as employees for SSP purposes. If a worker is treated as an employee for NICs purposes, they will also be treated as an employee for SSP purposes.

Workers introduced to a client who establish a contract with the client without further intervention by the agency will usually be employees of the client, unless they are self-employed. The client will need to consider SSP.

Workers who find work with a client through an agency, but who are not an employee of the client, will generally be treated as employees of the agency for SSP purposes.

Agency workers may work under a **contract of service** or a **contract for services**. Those workers employed under a contract for services, although not employed, will be treated as employed earners if they fall within the provisions of *Paragraph 2* of Part 1 of Schedule 1 of the Social Security (Categorisation of Earners) Regulations 1978. This legislation refers to workers providing services to agencies and provides for them to be **'treated as falling within the category of employed earner'**. The agency worker is deemed to have a contract of service for the purposes of entitlement to SSP. The deemed contract is considered to come into existence on the date the agency worker is offered an assignment. Subsequent assignments will give rise to new deemed contract of service.

Further information on the employment status of agency workers can be found in the *Employer's Further Guide to PAYE and NICs CWG2 (2004)*.

Agency workers will qualify for SSP from the commencement of the contract under which they work, by virtue of the *Social Security Contributions and Benefits Act 1992*. Generally the agency worker will have to have undertaken some work under the contract before qualifying for SSP. However, where the agency worker has worked for the agency within the preceding eight weeks they do not have to have worked under the latest deemed contract.

The most usual types of contract are

- 1 **Contracts that begin and end each day.**
- 2 **Contracts that begin at the start of a shift and end when that shift ends, for example agency nurses who might work from 8pm to 6am.**
- 3 **Weekly fixed term contracts beginning on Monday and ending on Friday.**
- 4 **Contracts that last for the whole period for which the client has contracted with the agency.**
- 5 **Contracts that combine the features of 1 with those of 3.**

The terms of a contract may differ from the above examples. It is up to the employer in the first instance to decide if SSP is payable.

However, because agency workers are usually employed under limited contracts of employment, with specified start and end dates, they will not always qualify for SSP.

If an agency worker's contract provides for them to work for three days or fewer they will not be entitled to SSP. Only when the agency worker's contract provides for them to work for four or more days in a row may they be entitled to SSP if all the conditions of entitlement apply.

Where two PIWs are separated by not more than eight weeks, the two PIWs are treated as one. However, where the deemed contract commenced between the two periods of incapacity, then the period of entitlement begins at the commencement of the second period of incapacity for work and hence entitlement to SSP will only arise after the first three QDs in the second PIW.

Liability to pay SSP will continue until the agency worker's entitlement ends. This will be when the deemed contract, the assignment, would have ended or the worker becomes fit for work.

If the client still requires a worker to be supplied by the agency in place of the sick worker then the contract does not come to an end. The sick worker's entitlement to SSP continues until either they become fit for work or the date the original contract would have ended.

Where an agency worker falls sick between assignments for their agency, entitlement to SSP cannot arise, this is because during any period when they are not placed in employment by the agency, i.e. between placements.

If any contract is terminated mainly for the purpose of avoiding liability to pay SSP, liability will continue, as provided by Regulation 4 of the Statutory Sick Pay (General) Regulations 1982, and SSP must be paid.

Example 1

The agency worker is given a new assignment on Friday lunchtime. The assignment lasts from the following Monday to Friday evening. The deemed contract lasts from Friday to Friday. This is the first assignment given to this worker by the agency. The worker falls sick on Sunday and undertakes no work under the deemed contract. There is no entitlement to SSP since the agency worker has not previously worked for the agency.

Example 2

The agency worker is given an assignment on Friday lunchtime. The assignment lasts from the following Monday to Friday evening. The deemed contract lasts from Friday to Friday. The worker has worked on previous assignments without a gap of more than eight weeks between them. The worker falls sick on Sunday and undertakes no work under the deemed contract. They are entitled to SSP after the WDs have passed.

Employee is pregnant

Disqualifying period

Women expecting a baby on or after 6 April 2003 will not be entitled to SSP:

- during the 26 weeks they are entitled to SMP, or
- during the 26 weeks they are entitled to Maternity Allowance (MA)

If they are not entitled to SMP or MA and are not getting SSP, for 18 weeks starting on the earlier of:

- the Sunday of the week they are incapable of work with a pregnancy related illness on or after the start of the fourth week before the week the baby is due, or
- the Sunday of the week in which the baby is born.

If they are getting SSP, they cannot get SSP for 18 weeks starting with the earlier of:

- the day following the day the baby is born
- the day after the day they are first off sick with a pregnancy related illness on or after the fourth week before the week the baby is due.

Where a PIW does not start until after the end of the disqualification period, SSP should be considered under the normal rules for that PIW.

Where a PIW started before, or during the disqualification period, SSP will not become payable until there has been a break of at least eight weeks after the end of that PIW, that is, until a new, unlinked, PIW is formed.

For more information about SMP and conditions, see *Employer's Help Book Pay and time off work for parents, E15*.

Paternity

An employee will not be able to receive SSP and Statutory Paternity Pay (SPP) for the same period.

If the father is sick before the start of their leave or SPP pay period they can delay the start of their SPP until they are well. The period within which they can take their paternity leave pay is not extended.

For more information about SPP and conditions, see *Employer's Help Book Pay and time off work for parents, E15*.

Adoption

An employee will not be able to receive SSP and Statutory Adoption Pay (SAP) for the same period.

If the employee is sick before the start of their leave or SAP pay period they should delay the start of their SAP until they are well. There is no extension beyond the original 26 week entitlement to SAP nor the eight weeks in which to take their SSP leave in these circumstances.

For more information about SAP or the eight weeks in which to take their SSP leave and conditions, see *Employer's Help Book Pay and time off work for adoptive parents, E16*.

When do I stop paying?

General

Usually your liability to pay SSP will end because your employee's incapacity for work under the contract ends, for example they return to work or stop sending doctor's statements.

You do not have to pay SSP for any day after your

- employee's contract of service ends
- employee has had 28 weeks' SSP in a PIW
- employee's linked PIW with you has run for three years
- employee's disqualifying period related to her pregnancy begins
- employee is taken into legal custody
- employee goes outside the UK and you do not have a liability for Class 1NICs, or would not even if the employee's earnings were high enough
- employee dies.

Twenty-eight weeks SSP due in PIW

Each time your employee begins a new PIW that does not link i.e. that is separated from the previous PIW by more than 56 consecutive days, your maximum liability to pay SSP is 28 times the weekly rate.

If SSP is stopping because your employee is due 28 weeks' SSP in the PIW and your employee is still sick, you must send form SSP1, or your own computerised version, to your employee. This allows your employee to claim Incapacity Benefit if they wish.

Employees who leave

If your employee leaves your employment issue form SSP1(L), or your own version, only if

- your employee asks for you to, **and**
- SSP was payable for at least one week, bearing in mind the rounding rules, see next paragraph, in the eight weeks, (that is 56 consecutive days), before the date their contract ended.

Rounding odd days of payment

To round odd days of payment

- divide the number of odd days of SSP payable by the number of QDs in that week
- multiply by seven
- if the answer is
 - more than three days, treat it as a whole week
 - three days or less, take no account of it.

When you get a leaver's statement form SSP1(L)

If a new employee falls sick for four or more days in a row within eight weeks of first starting work, they may give you a leaver's statement, form SSP1(L) completed by their previous employer.

If the period between the first day of the PIW with you and the date at Date 2 on the form is 56 days or less, (that is eight weeks or less) you can reduce your maximum liability in that PIW by the number of weeks of SSP shown on the statement.

A previous employment has no other effect on the new employee's PIW with you. Apply the usual rules about waiting days and average weekly earnings at the start of the PIW with you, unless the employments are treated as continuous under TUPE.

Control of sick absence

Introduction

How you record, monitor and control sickness absence is a matter for you to decide, but reducing sickness absence levels can reduce costs and increase productivity. You know your employees better than anyone else so you are in the best position to know whether repeated short absences for minor illnesses may be masking a more serious problem or some difficulty at work. Employers who have undertaken personnel or management initiatives to address such problems have seen significant reductions in sickness absence levels.

You may have reason to think that an employee who claims to be sick and incapable of work is, in fact, capable of doing their job and should therefore return to work. If so, you may wish to have their incapacity reviewed by a doctor.

Seeking medical advice about lengthy absences

Experience has shown that when a serious illness or injury is diagnosed, for example serious fractures, malignant diseases, pneumonia or an operation, it is unlikely that incapacity for work will be in doubt during the period for which SSP is payable. Control action would not be appropriate in such cases.

On the other hand, illnesses may continue longer than you would expect. The list on page 21 gives some of the diagnoses commonly given by doctors as the cause of incapacity on medical certificates issued by them. Rather than specify every illness or disease, the list

- groups similar illnesses under one heading
- suggests a period of absence from work after which you may wish to consider seeking advice.

Example

Use the group 'mouth and throat disorders' if the doctor's diagnosis is tonsillitis. It would be reasonable to seek advice after two months. If you wish to consult Medical Services, you should not do so earlier than two months after the sickness started.

Officers acting on behalf of the Secretary of State use similar guidance when considering the control of Incapacity Benefit.

If the employee's incapacity for work lasts longer than would normally be expected you could decide to

- stop paying SSP, but you must explain your reasons to your employee
- continue paying SSP but seek medical advice
- accept the incapacity as genuine and continue paying SSP.

If you decide to seek medical advice, you may

- have your own medical adviser, **or**
- wish to seek a report from your employee's doctor, **or**
- seek the help of Medical Services.

If your business has its own medical adviser, you should ask them to look into the matter and advise if they accept that the employee is incapable of work or not. The exact arrangements that you have with your medical adviser to deal with these cases is a matter for you to determine.

The Inland Revenue and the DWP have a contract with Medical Services whose main job is to give advice on the medical aspects of claims to State benefits. However, they are able to give you advice about your employees' incapacity for work in connection with SSP.

If you wish to get advice from Medical Services, you should write to your nearest Inland Revenue office enclosing:

- your employee's full name, address, date of birth, sex and NI number
- date the present sickness began and the nature of the illness certified by the doctor
- the latest medical certificate submitted by your employee making sure the doctor's name and address are clear
- your employee's written consent, see page 20 for the form of words which must be used
- employee's occupation and main activities involved in doing the job
- reason for requesting an opinion
- outcome of any control action already taken by you during the present spell of sickness.

Ask the Inland Revenue to obtain an opinion from Medical Services on whether your employee is incapable of work or not in connection with SSP.

The Inland Revenue will forward the case to Medical Services.

Medical Services will write to the doctor who issued the latest certificate asking for a report from them.

If Medical Services reach the opinion, based on the report, that your employee is incapable of work, they will tell the Inland Revenue who will contact you.

However, if Medical Services feel it is necessary for a doctor to examine your employee before they can give an opinion, your employee will be asked to attend for an examination. After the examination, a report is sent to the Inland Revenue.

In the report, the doctor will say whether or not they think your employee is incapable of work. The Inland Revenue will then write to you. You will not be sent a copy of the report.

Seeking medical advice about frequent absences for short periods

There may be some occasions when your employee has repeated short periods away from work and submits either self-certificates or sick notes provided by their doctor.

If your employee has been sick for four or more short periods in a 12-month period, you may decide to seek the help of Medical Services. You can do this even after your employee has returned to work.

If you wish to get advice from Medical Services, you should write to your nearest Inland Revenue office explaining that you are seeking Medical Services' help regarding your employee having taken repeated short absence from work.

Enclose

- your employee's full name, address, date of birth, sex and NI number
- date the latest period of sickness began and the nature of the illness certified by the doctor
- your employee's written consent, see this page for the form of words which must be used
- copies of any medical certificates submitted by your employee over the last 12 months making sure the doctor's name and address are clear
- your employee's occupation and main activities involved in doing the job
- reason for requesting an opinion
- outcome of any control action already taken by you during the present spell of sickness
- dates of any sick absences of at least 4 days over the past 12 months (details of the past 2 years, if known)
- cause of incapacity given on each occasion
- the four or more self certificates.

The Inland Revenue will forward the case to Medical Services.

Medical Services will

- ask for a report from your employee's doctor
- if necessary, ask your employee to attend for an examination.

A report will be sent to the Inland Revenue. In addition to giving an opinion as to whether your employee is incapable of work, the doctor will say whether in their opinion there are reasonable grounds for your employee having frequent absences from work for medical reasons. When the Inland Revenue receive the report, they will write to you.

You may find this information helpful in deciding whether or not you should pay SSP on the next occasion that your employee is sick.

Action when you receive the medical advice

If the medical advice is that your employee is capable of work, the next action is for you to decide.

If you decide to stop paying SSP to your employee, you should explain your decision to your employee.

If your employee is dissatisfied, they are entitled to a written statement from you. If they are still dissatisfied, they are entitled to seek a formal decision from the Inland Revenue.

The Inland Revenue will

- ask Medical Services for a copy of the medical reports they have
- reach a decision as to whether or not SSP should be paid
- inform both you and your employee.

Employee refuses to give consent

If your employee refuses to give their written consent for you to seek medical advice, the next step is for you to decide. You could decide that their refusal to provide consent is sufficient grounds for you to doubt that the incapacity is genuine and stop paying SSP.

If you decide to stop paying SSP to your employee, you should explain your decision to your employee. They are entitled to a written statement from you and to seek a decision from the Inland Revenue.

Form of written consent

Form of written consent

Name of employer

Full name of employee

Full address of employee.....

I agree that a medical opinion about my incapacity for work may be obtained by you from the Inland Revenue in connection with my entitlement to SSP. I agree that my doctor may give relevant medical information to a doctor acting on behalf of the Inland Revenue and agree that, if necessary, a doctor acting on behalf of the Inland Revenue may medically examine me and send a report in confidence to the Inland Revenue.

Employee's signature.....

Date

Control periods, common illnesses and abbreviations

Control periods for common illnesses (in weeks)

| | |
|--|-----------|
| Addiction (drugs or alcohol) | 10 |
| Anaemia (other than in pregnancy) | 4 |
| Anorexia | 10 |
| Arthritis (unspecified) | 10 |
| Back and spinal disorders (PID, sciatica, spondylitis) | 10 |
| Concussion | 4 |
| Debility, cardiac, nervous, post-op, post-partum | 10 |
| Other | 4 |
| Fainting | 4 |
| Fractures of lower limbs | 10 |
| Fractures of upper limbs | 10 |
| Gastro-enteritis, gastritis, D&V | 4 |
| Giddiness | 4 |
| Haemorrhage | 4 |
| Headache, migraine | 4 |
| Hernia (strangulated) | 10 |
| Inflammation and swelling | 4 |
| Insomnia | 10 |
| Investigation | 10 |
| Joint disorders other than arthritis and rheumatism | 10 |
| Kidney and bladder disorders, cystitis, UTI | 4 |
| Menstrual disorders, menorrhagia, D&C | 10 |
| Mouth and throat disorders | 4 |
| NAD | immediate |
| Nervous illnesses | 10 |
| NYD | 4 |
| Obesity | immediate |
| Observation | 4 |
| Post natal conditions | 10 |
| Respiratory illness: | |
| asthma | 10 |
| cold, coryza, URTI, influenza | 4 |
| bronchitis | 4 |
| Skin conditions, dermatitis, eczema | 10 |
| Sprains, strains, bruises | 4 |
| Tachycardia | 10 |

| | |
|---------------------------|----|
| Ulcers (perforated) | 10 |
| peptic, gastric, duodenal | 4 |
| varicose | 10 |
| corneal | 4 |

| | |
|--|---|
| Wounds, cuts, lacerations, abrasions, burns, blisters, splinters, FB | 4 |
|--|---|

Common abbreviations used on sick notes

| | |
|----------------|--|
| CAT | coronary artery thrombosis |
| CHD | coronary heart disease |
| COAD | chronic obstructive airways disease |
| CVA | cerebrovascular accident |
| D&C | dilation and curettage |
| DS | disseminated (multiple) sclerosis |
| DU | duodenal ulcer |
| D&V | diarrhoea and vomiting |
| FB | foreign body |
| GU | gastric ulcer |
| IDK(J) | internal derangement of the knee (joint) |
| IHD | ischaemic heart disease |
| LIH | left inguinal hernia |
| MI | myocardial infarction |
| MS | multiple sclerosis |
| NAD | no abnormality detected |
| NYD | not yet diagnosed |
| OA | osteoarthritis |
| PID | prolapsed intervertebral disc |
| PUO | pyrexia of unknown origin |
| RIH | right inguinal hernia |
| URTI | upper respiratory tract infection |
| UTI | urinary tract infection |
| VVs | varicose veins |

Disagreements between the employer and employee

Written statement

If you decide not to pay SSP for a QD, for whatever reason, you should explain your decision to your employee.

If they do not agree, they have the right to ask for a written statement from you about

- which, if any, days in the period concerned you regard as days for which SSP is payable
- how much SSP you consider your employee is entitled to for each of these days
- why you do not regard yourself as liable to pay SSP for other days in the period.

An employee can ask for a written statement at any time, and if the request is reasonable you must supply the statement within reasonable time, for example within seven days of the request.

Formal decisions about SSP

If your employee does not agree with your decision about their SSP entitlement, they can ask the Inland Revenue to make a formal decision. Only an employee or an officer of the Inland Revenue can ask for a formal decision.

The Board of Inland Revenue is the first of the authorities who decide questions about entitlement to SSP. In practice, such decisions are given judicially by authorised officers acting on behalf of the Board of Inland Revenue. Their decisions are given strictly in accordance with the facts and the law.

Before asking for a formal decision from the Board of Inland Revenue, your employee will be expected to have asked for a written statement about their SSP position. Perhaps they will also have discussed the problem with you.

Both you and your employee will be asked for observations in writing. Neither of you will be asked to appear before the officer making the decision. You can both give supporting evidence. In the event of an appeal, your evidence will be copied to your employee and vice versa.

The officer making the decision will send the formal decision to you both. If the decision is that your employee is entitled to SSP, the decision will give the time limit by which you must pay the SSP. You will be given full details of your appeal rights, including the time limit, with the notice decision.

If either of you appeals, the Inland Revenue will notify the other party. If you appeal, the officer making the decision will try to discuss the case with you so that the appeal can be decided by agreement between you, the officer and your employee.

Any agreement reached about the payment or otherwise of SSP must comply with the appropriate legislation.

If all parties are unable to agree, the appeal will be considered by Tax Commissioners. You both have the right to appear in person and/or be represented at the hearing.

Commissioner's decisions are final, except that you can appeal on a point of law, with leave, to the Court of Appeal, or in Scotland, to the Court of Session.

If new facts come to light which affect the decision, the decision will be reviewed and, if appropriate, a revised decision will be issued. There are new appeal rights against this decision. It is in everyone's interest to put all the facts before the officer making the decision, in the first place.

This leaflet gives general guidance only and should not be treated as a complete and authoritative statement of the law.

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