

# Statutory Sick Pay (SSP)

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In this guide we provide an introduction to Statutory Sick Pay (SSP) for those that do not regularly have to deal with SSP entitlement, and we also look at how the basic SSP rules have been changed as a result of coronavirus (hereinafter referred to as COVID-19).

Of course, employers can choose to provide sick employees their full pay or some lesser sum for a period of sickness absence, so long as the amount paid does not fall below the minimum SSP entitlement. Many employers have their own sick pay rules, which provide for greater amounts than SSP, and these are not considered here.

Firstly, a good starting point for information is the website of our Low Incomes Tax Reform Group (see, for example, <https://www.litrg.org.uk/tax-guides/tax-credits-and-benefits/state-benefits>, <https://www.litrg.org.uk/tax-guides/coronavirus-guidance> and <https://www.litrg.org.uk/latest-news/news/200326-press-release-tax-experts-try-clear-statutory-sick-pay-misinformation>).

Further, detailed guidance on Statutory Payments can be found on Gov.UK at <https://www.gov.uk/government/collections/statutory-pay> and there is an employer's guide to SSP at <https://www.gov.uk/employers-sick-pay>.

For CIOT and ATT members, and other subscribers of Tax Adviser magazine, there is a detailed article on the SSP amendments for employees with COVID-19 by Kate Upcraft in April 2020's magazine (see <https://www.taxadvisermagazine.com/article/changes-statutory-sick-pay>).

## The basics – Entitlement to SSP

An employee must meet all the following conditions to get SSP:

- They must be an employee of the employer – an employee doesn't need to have been paid yet to qualify but they will need to have done some work under their employment contract before going off sick;
- They must be incapable for work for at least four days or more in a row. This is called a 'Period of Incapacity for Work' (PIW);
- They must have at least one Qualifying Day in each week – these are days they normally work;
- Their earnings must be at least as much as the Lower Earnings Limit (LEL) for National Insurance contributions (NICs) that applies on the first day of sickness (the LEL is £120 per week from 6 April 2020); and
- They must provide evidence of their incapacity for work, see [www.gov.uk/statutory-sick-pay-employee-fitness-to-work](https://www.gov.uk/statutory-sick-pay-employee-fitness-to-work).

See <https://www.gov.uk/guidance/statutory-sick-pay-business-changes-that-affect-payment> for what to do if an employer ceases, becomes insolvent, takes over an existing business (TUPE), or makes employees redundant whilst paying sick pay.

See also [www.gov.uk/statutory-sick-pay-employee-circumstances-that-affect-payment](https://www.gov.uk/statutory-sick-pay-employee-circumstances-that-affect-payment) and <https://www.gov.uk/guidance/statutory-sick-pay-how-different-employment-types-affect-what-you-pay> for other circumstances that can affect entitlement. In particular, SSP is tied to Class 1 NICs, so agency workers, temporary workers, casual workers, zero hours workers, etc. who pay Class 1NIC under PAYE may qualify, whereas those in self-employment won't.

SSP is not payable for the first three days of absence (but see below regarding COVID-19).

The entitlement to SSP is per employment. An employee cannot amalgamate earnings over two or more employments to see if they have earned in excess of the LEL (unless those jobs are with the same employer). On the other hand, an employee with two or more jobs earning over the LEL in both can get SSP from both employers.

### Terms used

Periods of Incapacity for Work (PIW) – This is a period of sickness lasting at least four or more days in a row. All days of sickness count towards the total number of days in a PIW, including bank holidays, weekends and non-working days. If there are less than four consecutive days there is **no** PIW and **no** SSP is due.

Lower Earnings Limit (LEL) – This is the minimum level that an employee's **Average** Weekly Earnings (AWE) must reach in a specific period for them to get SSP.

**Qualifying Days (QDs)** – These are the only days that count as Waiting Days (WDs) and for which SSP is paid. An employee's QDs for SSP is usually based on the days that are ordinarily worked by that worker. There must be at least one QD in each week running from Sunday to Saturday. Bank Holidays and other non-working days do not alter the normal pattern of QDs.

**Waiting Days (WDs)** – Ordinarily, SSP is not payable for the first three QDs in a PIW (but see below regarding COVID-19). These are called Waiting Days (WDs). They are not always the first three days of sickness as the employee may have been sick on non-QDs such as at the weekend. Where PIWs are linked and all three WDs have been served in the first PIW, there will be no WDs in any later linked spells of sickness. But, if all three WDs have not been served in the first PIW, any remaining WDs must be served at the beginning of the next linked PIW or series of linked PIWs.

**Linking PIWs** – PIWs are linked and treated as one PIW if the gap between them is eight weeks (56 days) or less, irrespective of whether the reasons for absence are linked. Any subsequent spells of sickness must be four or more days in a row to form another PIW, otherwise there is no subsequent PIW to link with an earlier PIW.

**Average Weekly Earnings (AWE)** – To get SSP an employee must have AWE of at least the Lower Earnings Limit (LEL) in the period of at least eight weeks before the first day they are off work sick. For this purpose the LEL that applies on the first day of sickness is used even if the LEL is increased during the period of sickness.

#### **Points to note**

**Maximum entitlement to SSP** – While SSP can be paid for individual QDs there is a maximum entitlement of 28 weeks of SSP in a PIW or series of linked PIW's. The SSP entitlement used up in a PIW may differ depending on the employee's work pattern. Once the maximum entitlement has been paid, an employee must return to work for more than 56 days for a new entitlement to SSP to begin.

**Disqualifying events** – SSP is not payable if the contract of employment has ended or been brought to an end, or if the employee dies, or if the employee is taken into legal custody.

**Linked PIWs and disqualifying events** – Where an employee did not qualify for SSP in a first PIW – for example, because their AWE was below the LEL – they will not qualify for SSP for any later linked PIW. Similarly, if an employee is disqualified from receiving SSP at any time during a PIW – for example, due to Statutory Maternity Pay being paid – no SSP is payable for any subsequent linked PIW.

**Part days of sickness** – An employee is deemed to have been incapable of work for the whole day if they arrive for work but do not do any work before they go sick. But if an employee has done even a minute's work, that day cannot be treated as a day of incapacity for SSP purposes. See [www.gov.uk/employers-sick-pay/entitlement](http://www.gov.uk/employers-sick-pay/entitlement).

**Part-timers** – Part-time workers whose AWE is above the LEL qualify for SSP at the normal full weekly rate; they do not receive a pro rata amount.

## Employee fitness to work – evidence of incapacity

Employers must tell employees what they expect them to provide as evidence of incapacity for SSP purposes and when they expect them to give it. Employers cannot withhold SSP for late medical evidence as this could be because the employee is unable to get an appointment with their doctor.

Incapacity for 4 to 7 days – An employer may accept self-certification verbally or by letter, form SC2 for self-certification, or the employer's own similar form.

Incapacity lasting more than 7 days – An employer can ask an employee to provide medical evidence or a [fit note](#) from their doctor. It is the employer's decision whether evidence of illness is required, and if so, what evidence is acceptable.

See <https://www.gov.uk/guidance/statutory-sick-pay-employee-fitness-to-work> and <https://www.gov.uk/taking-sick-leave#fit-notes-and-proof-of-sickness> for more information on the evidence employees must give to employers.

## Paying SSP

For the 2020/21 tax year the weekly rate of SSP is £95.85. There is no need for employers to show SSP separately on payslips as long as the statutory minimum is paid.

A daily rate of SSP is needed to pay SSP for part of a week. The daily rate of SSP is the weekly rate divided by the number of QDs in that week.

To calculate the amount of SSP to pay multiply the number of QD's, excluding WDs, by the appropriate daily rate and round any fractions of a penny up. If the employees QD's vary the calculations will need to be done separately for each week (carrying forward any WDs if necessary).

SSP has a daily rate and can be split over the tax year end so that sick absences that overlap a change in the rate of SSP should have the old and new rates applied to the appropriate periods.

See <https://www.gov.uk/guidance/statutory-sick-pay-manually-calculate-your-employees-payments> for more information on calculating SSP.

## Refusal to pay SSP

Any employer who does not think an employee is entitled to SSP (or where entitlement to SSP has come to an end) should issue Form SSP1 to the employee. See <https://www.gov.uk/government/publications/statutory-sick-pay-employee-not-entitled-form-for-employers>.

If an employee thinks that he or she is entitled to SSP, but their employer has refused to pay SSP, they can contact the HMRC statutory payment dispute team on 03000 560 630.

## COVID-19 – Changes to SSP entitlement and SSP small employer refund scheme

On 4 March the Prime Minister announced changes would be made to SSP and subsequent to that it was confirmed that:

- SSP is extended on a temporary basis to cover individuals who are unable to work because they have been advised to self-isolate, as well as people caring for those within the same household who display COVID-19 symptoms and have been told to self-isolate; and
- self-isolating employees are able to obtain a notification via NHS111, which they can use as evidence for absence from work — this is intended to take pressure away from GPs

New legislation to effect the changes was laid before parliament (the initial regulations took effect from 13 March and revised regulations took effect from 17 March). Neither the secondary legislation nor the Coronavirus Act change the eligibility conditions for SSP.

### Day 1 SSP entitlement

The main change arising to the payment of SSP to employees affected by COVID-19 is the removal of WDs. With effect from 13 March 2020 employers are now required to pay qualifying employees SSP from day one of absence due to COVID-19 rather than from the normal fourth day of absence. Note, however, that it appears that an employee still needs to be absent for 4 days or more to be entitled to SSP.

Employees are eligible for day one SSP if they are not working due to their following government advice on COVID-19. For example, because they have been told to self-isolate, or are self-isolating because they have COVID-19, or are self-isolating to care for someone with COVID-19. This applies to anyone who is required to remain home due to COVID-19 and **cannot work from home**. For example, qualifying employees include those aged over 70 and those with underlying health conditions who are required to stay home. If an employee **can work from home** while self-isolating, then they are not entitled to claim SSP.

This means that an eligible employee who is self-isolating for two weeks and who normally works 5 days a week should get £191.70 SSP. Equally, an employee who is self-isolating for two weeks and who normally works 3 days a week should also get £191.70 SSP.

Where the COVID-19 absence straddles the end / start of the tax year (5 / 6 April 2020) the relevant pre and post 6 April 2020 SSP rates should be applied.

Employees are not required to give an employer a doctor's 'fitness to work' note for a claim to SSP because of COVID-19. If an employee has been self-isolating for more than 7 days because of COVID-19, they can get an ['isolation note' online from NHS 111](#) as proof of this if an employer requires it.. They do not have to go to their GP or a hospital.

If an employee chooses not to perform their work other than in circumstances where the government advice is to stay at home there is no entitlement to SSP, as the employee is not following government advice. If an employer stops an employee from attending work, for example,

because the business premises is closed in response to COVID-19, the employee is entitled to full pay or should be 'furloughed'.

The COVID-19 SSP day 1 entitlement is not an additional entitlement. It is our understanding that the basic SSP rules are unchanged and this means that if the employee was off sick prior to self-isolating or being absent due to contracting COVID-19, or had been off sick in the 8 weeks prior to a COVID-19 related absence, the 'Periods of Incapacity for Work' (PIW) are linked for the purposes of calculating the maximum entitlement to SSP. This also appears to mean that if an employee is self-isolating for care reasons and after 10 days of caring contracts the virus, the employer will only be able to claim for up to day 14 and the rest of the absence would be unfunded.

### **SSP and the Job Retention Scheme**

Where an employee is off-sick or self-isolating due to COVID-19 they will usually receive SSP. If, however, an employer wants to furlough a sick employee for business reasons, they are eligible to do so, as with other employees. In these cases, the employee should no longer receive sick pay and would be classified as a furloughed employee. The minimum period to furlough employees under the Job Retention Scheme is 3 weeks.

An employer cannot claim for furloughed salary for an employee for a period and claim an SSP refund for that employee for the same period. An employee that becomes sick whilst furloughed is, however, entitled to claim SSP. This means it is up to an employer to decide whether to move these employees onto SSP or to keep them on furlough, at their furloughed rate. The minimum 3 week furloughing requirement will be a relevant consideration here.

See <https://www.gov.uk/guidance/claim-for-wage-costs-through-the-coronavirus-job-retention-scheme> for more information on the Job Retention Scheme.

### **Small employer refund scheme**

The other change to SSP is an entitlement to a government reimbursement for employers with fewer than 250 employees. Qualifying employers will be entitled to a refund of up to 2 weeks of SSP payments made to each eligible employee who is unable to work because of COVID-19. For example, where the employee either has COVID-19 or is self-isolating at home in accordance with government guidelines. Qualifying employers that pay sick pay in excess of SSP will be able to claim a refund for the SSP element of the sick pay.

It is not clear yet whether an employer can claim more than once for an employee where 2 periods of absence due to COVID-19 for that employee are not linked (i.e. there is more than an 8 week gap between consecutive periods of absence from work). Nor is it clear whether any refund claim has to be for whole weeks of absence (up to 2 weeks) rather than days of absence (up to 14 days).

The refund scheme will apply to employers with fewer than 250 employees on the payroll on 28 February 2020 and HMRC will provide an online service for qualifying employers to reclaim SSP in due course. This is going to be a standalone system separate from the PAYE Real Time Information reporting system and from other statutory payment relief schemes. There is no immediate means of obtaining a SSP refund, nor is there currently any means for obtaining advance funding for eligible SSP payments.

Employers will need to have a PAYE Scheme registered with HMRC on or before 28 February 2020. For connected businesses or businesses with multiple PAYE Schemes, the total combined number of PAYE employees must be fewer than 250. While the exact rules for connected employers are not yet known it may be reasonable to expect similar rules as apply for connected employers for Employment Allowance purposes, although we await further detail as to how one determines the number of employees (e.g. do casuals get counted or only permanent staff).

See also <https://www.gov.uk/guidance/claim-back-statutory-sick-pay-paid-to-employees-due-to-coronavirus-covid-19>.

## **The basics – further details**

### **Linking Periods of Incapacity for Work (PIWs)**

PIWs are linked and treated as one PIW if the gap between them is 56 days or less. Exclude the start date of the latest PIW and exclude the end date of the previous PIW i.e. count the no. of days in the gap between the PIW's. Any subsequent spells of sickness must be four or more days in a row to form another PIW, otherwise there is no subsequent PIW to link with an earlier PIW.

Sick absences that are not PIW's, i.e. less than 4 days long should be ignored. SSP only applies to PIW's. All days of sickness count towards the total number of days in a PIW, including bank holidays, weekends and non-working days. If there are less than four consecutive days there is **no** PIW and no SSP entitlement. SSP can only be paid where a PIW has been formed.

If, for example, an employee qualifies for SSP in the first PIW, but their earnings fall below the LEL in a second linked PIW, then entitlement to SSP will continue during the second PIW regardless of the fall in earnings.

Tables for linking PIW can be found at <https://www.gov.uk/government/publications/statutory-sick-pay-tables-for-linking-periods-of-incapacity-for-work>.

SSP cannot be paid during the 39 week Maternity Pay Period (MPP). This is called the SSP disqualifying period. Where a PIW started before, or during the disqualifying 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 outside of disqualifying period.

SSP is not payable after 28 weeks of SSP is paid (including linking periods).

SSP is not payable if the employee was not entitled to SSP in a previous linking PIW.

### **Change of work pattern within linked PIWs**

The SSP entitlement used up in a PIW may differ depending on the employee's work pattern. An employee who works 2 days per week and is paid SSP for these 2 days uses up 1 week of SSP entitlement. An employee who is paid SSP for the same 2 days but works 5 days per week will only use up 0.4 weeks entitlement. Therefore, a method is needed to calculate how much of the 28 week SSP entitlement is used up by each linked PIW where the work pattern changes. This can be extremely complicated to calculate but, fortunately, many third party payroll software products can do the calculation for you.

### **Average Weekly Earnings (AWEs)**

An employee must have average weekly earnings above the Lower Earnings Limit (LEL) to qualify for SSP. You must use the LEL that applies on the first day of sickness. The relevant period for calculating AWEs is runs from the pay day before the 1<sup>st</sup> day of the PIW to the pay day at least 8 weeks before then. Employees paid other than weekly must have their average earnings converted to a weekly amount. Again, this can be extremely complicated to calculate but, fortunately, many third party payroll software products can do the calculation for you.



## **What counts as earnings?**

Use the amount actually paid before deductions such as PAYE, NICs and pension contributions. AWE should include all earnings that attract a Class 1 NICs liability, or would attract Class 1 if they were high enough. Such earnings would consist of:

- Any salary or wages (including cash allowances – for example, car allowance) and money paid in the period earned outside the relevant period, such as holiday pay, overtime and lump sums paid for arrears of pay
- Any other element of the person's earnings which is chargeable to Class 1 NICs (including in very limited circumstances Class 1B)
- Shares or share options
- Retail and other vouchers (where the cost is taxable under the P11D procedure and subject to Class 1 NICs)
- Statutory Sick Pay
- Statutory Maternity Pay
- Ordinary Statutory Paternity Pay and Additional Statutory Paternity Pay
- Statutory Adoption Pay
- Shared Parental Pay

## **Holiday entitlement**

Entitlement to the minimum statutory annual leave continues to accrue while an employee is off work sick (no matter how long they're off) and can be taken during sick leave.

## **Record Keeping**

All records must be kept for at least three years after the end of the tax year to which they relate. Employers must keep:

- All dates of employee sickness lasting four or more days in a row, including for employees who are under 16 years old, and this should include non-working days;
- a record of the payment dates and the amount paid during each PIW;
- the date the pay period began; and
- a record of any unpaid SSP with reasons.

Form SSP2 is a Statutory Sick Pay (SSP) record sheet

[www.gov.uk/government/publications/statutory-sick-pay-record-sheet-ssp2](https://www.gov.uk/government/publications/statutory-sick-pay-record-sheet-ssp2). It is not a mandatory form but could be used as a guide to record keeping requirements.