

PAY & EMPLOYMENT RIGHTS SERVICE

PERS leaflet number 3

STATUTORY SICK PAY

What you need to know about:
What it is
How much you get
Whether you qualify for it

*Community
Legal Service*



APRIL 2010

WHAT IS STATUTORY SICK PAY (SSP)?

Statutory Sick Pay (SSP) is the money your employer has to pay you when you are off work because of illness. Almost all employees who earn £97 a week or more (from 6 April 2010) are entitled to SSP for up to 28 weeks of sickness. Your employer is legally obliged to pay you SSP if you qualify for it.

In addition to SSP, you may also get contractual sick pay as part of your agreed terms and conditions of employment. Your contractual sick pay entitlement should be included in your Written Statement of Employment Particulars. See PERS leaflet No 1 Contracts of Employment.

HOW MUCH SSP WILL YOU GET?

From 6 April 2009, providing you qualify for SSP, you will receive £79.15 per week. This will stay the same in 2010. SSP counts as taxable earnings.

However, SSP is only paid from the fourth day of sickness onwards. The first 3 days of illness are called 'waiting days' and are unpaid. These days and the days you get SSP ('qualifying days') must be days you would normally work. If your working week varies, then you and your employer must agree on which are the qualifying days.

The whole length of time you are off sick (including non-working days such as weekends) is called a 'period of incapacity for work'. If you return to work but are then off sick again within 8 weeks, this is counted as an uninterrupted illness (or 'linked periods of incapacity for work').

You can get SSP at once without waiting for another 3 days before you are paid, provided the second period of sickness is for four days or more.

ARE YOU ENTITLED TO SSP?

Employee

For you to claim SSP, your average weekly earnings over the 8 weeks before you went off sick must be at least £97 (from 6 April 2010). This is the same as the 'Lower Earnings Limit' for National Insurance (NI) - see PERS leaflet No 2 National Insurance and Income Tax. If you have worked for your employer for less than 8 weeks, the calculation is based on your average weekly pay since you started, or what you would normally earn. It does not matter how long you have worked for an employer or how many hours you work, as long as you earn enough.

If you do more than one job and earn over £97 a week in each, you will get SSP from each job. However, if you have two jobs and you earn less than £97 a week in each job, you will not be entitled to SSP even if your combined earnings are more than £97 a week.

Agency Worker

Prior to 27th October 2008, agency workers needed 3 months or more continuous service with the same employment agency to claim SSP, This service requirement was abolished from 27th October 2008.

To qualify for SSP, your average weekly earnings over the 8 weeks before you went off sick must be at least £97 (from 6 April 2010). If you have more than one contract and earn over £97 a week in each, you will get SSP from each one. However, if you have two contracts and you earn less than £97 a week in each, you will not be entitled to SSP even if your combined earnings are more than £97 a week.

Employee and Agency Workers

You can receive SSP from the fourth day of your employment (see above), providing you normally earn more than £97 per week.

REMEMBER: Your right to SSP does not depend on your actual payment of NI contributions. As long as your average pay is £97 per week or above, you are entitled to SSP. For example, women over 60, who are no longer liable to pay NI, will still get SSP if they earn at least £97 per week.

IF YOU DON'T QUALIFY FOR SSP

If you do not qualify for SSP because you have not been earning enough, you may be able to claim Earning and Support Allowance whilst you are off sick. Whether you will be entitled to this benefit will depend on your NI contribution record or your income. Check with your local Citizens Advice Bureau (CAB) or Jobcentre Plus what you can claim.

HOW DO YOU CLAIM SSP?

It is important that you tell your employer as soon as you fall sick or you could lose your right to SSP. Your employer may want you to fill in a self-certification form to cover the first 7 days of sickness. If you are sick for more than 7 days, you need to get a doctor's note. Your employer may have special rules for claiming sick pay. Make sure you know them and follow them.

If your employer refuses to pay you SSP, ask them to fill in a form (SSP1 - your employer should have one) and to give you the reasons in writing. Take the form and the written statement to your local Jobcentre Plus to see if you can get Earning and Support Allowance instead. If you (or Jobcentre Plus) consider your employer's reasons for refusing you SSP are wrong, you can appeal. Jobcentre Plus or your local Citizens Advice Bureau (CAB) can give you more information. Alternatively you may wish to contact:

HM Revenue and Customs
Disputes Team
Room BP 3202
Benton Park View
Longbenton
Newcastle upon Tyne
NE98 1YS
Tel: 0191 225 5221

IF YOU ARE STILL SICK AFTER 28 WEEKS

At the end of your 22nd week of illness your employer should issue you with a form (SSP1) that will allow you to transfer to Employment and Support Allowance (previously Incapacity Benefit) from your 29th week of sickness onwards.

IF YOU FALL SICK WHILE ON HOLIDAY

If you are sick when on holiday, you may have the right to retake this holiday when you have recovered. Your organisation's sick reporting procedures will apply.

Workers on sick leave do accrue statutory holiday pay even though they are not actually at work. This holiday can then be taken on return to work, or paid to you if you leave employment in that holiday year.

If you are off long term sick and you had already booked holiday in that period (or your work shuts down for an annual holiday) you should continue to receive SSP, since this will be seen as an ongoing 'period of incapacity for work'. Your SSP may be 'topped up' if your holiday pay for that period should be more. This can be complicated. Contact PERS for more information.

IF YOU ARE OFF SICK FOR PREGNANCY REASONS

If you are sick for pregnancy-related reasons within 4 weeks of the expected date of childbirth, you will automatically be 'bumped' onto Statutory Maternity Pay (SMP), and your maternity leave period will start, whether you intended to start your maternity leave then or not. You cannot receive SSP and SMP at the same time.

If you are sick at the end of your maternity leave, whether or not you receive SSP will depend on your earnings level in the previous 8 weeks. If your average pay in this period has been less than £95 a week, you will not qualify for SSP.

IF YOU ARE DISMISSED FOR BEING OFF SICK

You should not normally be dismissed for short periods of sickness. However, your employer is not obliged to let you take 28 weeks sick leave simply because you are entitled to 28 weeks SSP.

It is not automatically unfair for your employer to dismiss you whilst you are sick. If you are off work long term, your employer should follow reasonable procedures to find out when and if you are likely to return to your job and also take account of the difficulty in covering your absence. Your employer may then be justified in dismissing you on capability grounds. If you are unreasonably dismissed for being off sick, and you have worked for your employer for 1 year or more, you may be able to take a case to an Employment Tribunal for unfair dismissal. However, if you have worked for your employer for less than 1 year there may be very little you can do about it. Most people are entitled to full pay if they are off sick during their notice period. This may not apply if your contract gives you more notice than the statutory minimum. See PERS leaflet number 11, Dismissal, for more information.

If your dismissal is on the grounds of a long-term sickness that may be defined as a disability, you may be able to claim under the Disability Discrimination Act. See PERS leaflet number 13, Disability Discrimination for more information.

Your statutory holiday still accrues when you are off sick. This can be taken on your return to work or be paid if either you resign or are dismissed. The amount you are paid should be equivalent to your normal pay.

IF YOU CHANGE JOBS

When you leave a job you should ask your employer for a statement giving details of periods of sickness, the number of qualifying days for

which SSP was paid and the number of qualifying days in a week (form SSP1L). This will protect your right to Incapacity Benefit if you had SSP before changing jobs.

HOW ABOUT OTHER BENEFITS?

While you are unfit for work, you may be entitled to Income Support, Housing Benefit, Council Tax Benefit, Tax Credits and NHS benefits such as free prescriptions, even if you get SSP or Employment Support Allowance. If you live with your parents and they get Income Support or Housing Benefit, they may be entitled to a higher amount while you are ill. If you have mobility problems, or need a lot of care, you may qualify for Disability Living Allowance. For more information about benefits, contact your CAB or other advice agency.

This leaflet is intended as a guide and is not a full statement of the law.
Please seek advice before taking any action.

PERS has a complaints and comments procedure.
Please contact us for a copy if you wish to make a complaint
or comment about our services.

PAY & EMPLOYMENT RIGHTS SERVICE

**Unit 14 Batley Enterprise Centre • 513 Bradford Road
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www.pers.org.uk

Telephone advice is available from PERS at the following times:

Monday: 10am to 1pm

Tuesday: 10am to 4pm & 5.30pm to 7.30pm

Wednesday: 10am to 4pm

Thursday: 10am to 4pm

Friday: 10am to 1pm

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