



**Amicus**

Hayes Court  
West Common Road  
Hayes, Bromley BR2 7AU  
Tel: 020 8462 7755  
Fax: 020 8315 8234  
[www.amicustheunion.org](http://www.amicustheunion.org)





# **SICK PAY AND SICKNESS ABSENCE**

Amicus Guide

2005



**Amicus Guide to  
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General Secretary Derek Simpson

35 King Street, Covent Garden, London WC2E 8JG

Hayes Court  
West Common Road  
Bromley BR2 7AU  
Tel: 020 8462 7755  
Fax: 020 8315 8234

33-37 Moreland St  
London  
EC1V 3HA  
Tel: 020 7505 3000  
Fax: 020 7505 3030

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## ■ STATUTORY SICK PAY

Statutory sick pay (SSP) is a flat rate benefit paid by your employer in accordance with national rules. If you are covered, your employer must either pay you statutory sick pay when you qualify, or open up the company scheme to you and offer you benefits that are at least as good.

### **You will qualify for SSP if you:**

- Are an employee (please see the Amicus guide “Employment Status and Related Rights” for the difference between an employee and a worker)
- Were over 16 and under 65 when your sickness began
- Earn enough to pay National Insurance contributions (£79 per week from April 2004)

### **You will not qualify if you:**

- Are self employed
- Have not started work yet
- Have a contract of employment that lasts less than 3 months. However people who have actually been employed for more than 3 months will usually qualify, even if their original contract was for less than that.

## ■ CLAIMING SSP

- SSP is paid at a flat rate of £66.15 (2004/5). If you have two or more jobs and earn more than £79 per week in each, you may be entitled to SSP from each employer.
- SSP is paid in the same way as your wages and you claim it on a form from your employer.
- You are entitled to SSP for up to 28 weeks in one spell of sickness.
- You will not be paid for the first 3 days. These days are agreed in advance with the employer and normally include all working days. A claim can be made after the fourth day.
- Spells of at least 4 days in a row with 8 weeks (56 days) or less between them are counted as one spell.
- You are not entitled to SSP once your contract of employment ends.
- Pregnant women can claim and will only be excluded from SSP if sick for a pregnancy related reason any time after four weeks before the baby's expected week of birth. Women in receipt of Statutory Maternity Pay (SMP) cannot claim SSP at the same time.

- You must notify your employer of your illness. A doctor's certificate cannot be demanded before the end of seven days illness but employers can ask for a self-certification form by the end of the fourth day of absence.
- Workers who have frequent periods of sickness absence may be asked to attend a medical examination by the Department of Work and Pensions (DWP) after a fourth period of absence.
- SSP cannot be claimed if the illness begins while the individual is on strike. Workers sick before the beginning of a strike are not viewed as taking part in it. However this would not apply if it could be proved that the sick employee was somehow actively participating in the strike.
- Workers refused SSP can appeal. The Inland Revenue handles appeals.
- Claims for non-payment of SSP must be pursued through the DWP and not via the individual employer.

## ■ OCCUPATIONAL SICK PAY SCHEMES

Many organisations offer sick pay benefits well in excess of the legal minimum required by the statutory sick pay framework. In so doing, employers are free to set their own rules on matters such as notification and certification procedures. Below are some of the elements of different company schemes.

## ■ WHO IS COVERED?

It is possible for companies to have separate schemes for different groups of staff e.g. manual and non-manual workers. The entitlements can be different depending on the scheme. Companies can also impose a service-related qualifying period for all employees to be eligible to receive company sick pay.

This can range from 1 week to 1 year. In this instance the employee would be paid the statutory minimum until he or she had completed the qualifying time.

Under the Fixed-term Employees Regulations 2002 and the Part-time Workers Regulations 2000, companies have to ensure that these groups of protected individuals receive no less favourable treatment in regard to sick pay unless differential treatment is objectively justified. Part-time workers are entitled to sick pay pro rata and fixed-term workers should be covered on the same basis as permanent employees or overall be treated no less favourably on account of their fixed term status unless there is objective justification.

## ■ THE LEVEL OF BENEFIT

The maximum amount payable under occupational sick pay schemes can vary enormously.

Most schemes ensure that sick pay is equivalent to full pay for a certain number of days or weeks. This can be supplemented by a further period at half or reduced pay. Full pay is generally deemed to include SSP but can be restricted to basic pay or include additions such as location allowances, overtime or shift payments.

When the employee is eligible for half or reduced pay, SSP can be added to it but employers must ensure that the combination does not exceed full pay.

## ■ SICK PAY INCREASES WITH LENGTH OF SERVICE

Maximum sick pay entitlements can be linked to an employee's length of service. The speed with which employees become eligible for the overall maximum scheme entitlement can vary from entry to the organisation, to 10+ years of service.

## ■ LINK TO ABSENCE RECORDS

The level of benefit can be linked to a person's or group's previous absence history whereby sick pay is calculated using the average basic pay depending on previous absence history. The amount payable can also be determined by when the employee joined the company, e.g employees who joined before a certain date may benefit from a more generous scheme.

## ■ ACCRUING HOLIDAY PAY WHILE ON SICK LEAVE

Under the Working Time Regulations all workers are entitled to four weeks' statutory annual leave.

As long as there is a contract in place at the time governing the employment relationship, this entitlement is unaffected by absences from work, including sickness absence. Therefore even when contractual sick pay and SSP entitlements have run out, employees are entitled to four weeks paid holiday per annum during any long-term sick leave. The holiday pay must reflect the weekly amount that the employee was earning prior to commencing sick leave.

Workers can take annual leave in lieu of sickness absence but cannot take sick leave and annual leave simultaneously.

## ■ DISMISSAL

Employers can dismiss for sickness absence on the grounds of capability. Tribunals will take all factors into account to decide whether the decision to dismiss was reasonable. Employers dismissing for sickness will be required to show that they have:

- Consulted with the employee and kept them informed at all stages of the procedure
- Consulted a doctor about the nature of the illness
- Considered whether suitable alternative employment is available

The employer should also have taken steps to investigate the sickness and absence. Attempts to contact the employee by phone or letter can be viewed as sufficient.

The dismissal of disabled employees should be dealt with under the Disability Discrimination Act 1995.

Many companies operate a sickness absence code or attendance management code alongside their sick pay arrangements to help reduce casual absenteeism and to offer support to those whose sickness is genuine. The code needs to be contractual for both sides to be bound to it. To be contractual the code would have to always be applied in all cases and the employer cannot exercise any discretion.

Therefore if an employer fails to follow the procedure, any attempts to stop the employee's sick pay entitlement could be seen as unlawful.

Many sickness absence procedures set down rules for keeping in touch during sickness absence. These can require employees to contact the employer at regular intervals or give the employer the right to make contact. However they must not be exercised in a manner that would be regarded as "unreasonable".

## ■ ACCESS TO MEDICAL RECORDS

The Access to Medical Reports Act 1988 gives employees (and prospective employees) the right to see medical reports prepared by their own GP in connection with their employment.

The Act says the employer must obtain the individual's consent before seeking a report from his/her doctor; that the individual has the legal right to have a copy of the report before it is forwarded to the employer; that the individual can query items in it; and that if the doctor refuses to accept it, the individual's objection may be attached to the report.

The Access to Health Records Act 1990 gives individuals the right to apply for access to records relating to them that are held by a health professional such as a company doctor.

## ■ WHAT HAPPENS WHEN MY ENTITLEMENT TO SSP RUNS OUT?

When your entitlement to statutory sick pay ends you can claim Incapacity Benefit.

To do this you must obtain a claim form from your local Job Centre Plus office or social security office. You must claim IB straight away otherwise you may lose some of your entitlement.

For more information on Incapacity Benefit visit the Department of Work and Pensions website on [www.dwp.gov.uk/lifeevents/benefits](http://www.dwp.gov.uk/lifeevents/benefits).