

Employment Fact Sheet: Sickness at work

Will you get paid for time off work if you are sick?

If you are off for four days in a row or more and you earn more than £102 a week, you will be entitled to **statutory sick pay (SSP)**. SSP is money paid by employers to employees who are away from work because they are sick. It is the minimum amount you can be paid you when you are off work because you are sick. Your contract of employment may give you extra rights to more sick pay than this (**contractual sick pay**). You should check your contract to see what you are entitled to.

Most workers may qualify for SSP, including part-time workers, workers on a fixed-term contract and agency workers. SSP can last for up to 28 weeks. Contractual sick pay may last for longer. You will need to check your employment contract to see if this applies to you.

If you cannot get SSP, or if you have been off sick for more than 28 weeks, your employer will give you form SSP1 and tell you why. You can use form SSP1 to claim Employment and Support Allowance (ESA) from your local Social Security Office if you are not entitled to either SSP or contractual sick pay.

How much sick pay will you get?

You will be paid either SSP, or, if your contract of employment gives you more pay when you are off sick, you will be paid what it says in your contract. This might not be your normal rate of pay, but it should not be less than SSP. This is £81.60 a week.

You cannot get SSP for the first three days you are off sick. For these three days you will only be entitled to sick pay if your contract of employment allows for it. After this, you should get the daily rate of SSP for each day you are off sick when you would normally be working.

If SSP is your only income whilst you are off sick, you may be able to claim other benefits such as Housing Benefit. To find out what benefits you may be entitled to, see further help at the end of this fact sheet.

Telling your employer you are off sick

If you can, you should **tell your employer straight away** that you are ill and unable to go to work. You may lose sick pay if you don't do this (see below). Your employer may have rules about what to do if you cannot come to work because of illness. They can, for example, insist that you tell them you are ill on the first day that you cannot go into work. Your employer must let you know what these rules are in advance. If you don't keep to the rules, you will be breaking the terms of your employment contract.

If you're getting SSP, your employer can't refuse to pay you SSP if you don't:

- provide a medical certificate until your eighth day of illness
- phone in by a certain time of day to tell them you are sick
- phone in more than once a week when you are off sick
- phone in yourself and ask someone else to do it on your behalf.

However, your employer can make rules like these about the payment of any contractual sick pay you are entitled to.

Medical statements

Medical statements can also be known as **fit notes**. On a medical statement, your doctor can say that you're: fit for work, not fit for work or fit for work as long as certain changes are made at your workplace.

It's up to you and your employer to agree between you what changes should be made. If your employer refuses to make the changes recommended by your doctor, you will still be considered unfit for work and can continue to get Statutory Sick Pay.

If you recover sooner than expected you can return to work before the end date on your medical certificate if your employer agrees to this. However, they may insist on you getting a new certificate from your GP to confirm that you are fit to return to work.

Can your employer refuse to pay you if you are off sick?

You are off sick because of a disability

If you are disabled and your employer refuses to give you sick pay when you are off sick for a reason connected with your disability, your employer could be breaking the law. You may be able to make a complaint to an **industrial tribunal** for unfair treatment because of your disability (**disability discrimination**), but you should raise a written grievance with your employer first. You should get help from an experienced adviser (see further help at the end of this fact sheet).

You do not call in sick straight away

If you do not tell your employer that you are off sick straight away, you could lose some or all of either SSP or contractual sick pay, unless you have a good reason for not telling them. Your employer can refuse to pay you contractual sick pay for the days you are off and do not call in sick.

You are off for several short periods of time

If you are off sick for more than four short periods (four to seven days) in a year, your employer can contact Medical Support Services to look into the reasons you have given for missing work. Medical Support Services are contacted by your employer through HM Revenue and Customs (HMRC). They may contact your doctor to ask for information about your illnesses. Medical Support Services cannot contact your doctor unless you give them permission to do so. If the Medical Support Services report says you have been off work without good reason, your employer may refuse to pay you SSP. You can appeal against this decision if you think it is wrong.

You are off for long periods of time

If you have long periods of time off work, your employer can contact Medical Support Services to decide if you are fit enough to do your job. If the Medical Support Services report says you have been off work without good reason, your employer may refuse to pay you SSP. You can appeal against this decision if you think it is wrong.

What you can do if your employer won't pay you SSP?

If you think you should be getting SSP but your employer won't pay it, they should give you a statement on form SSP1 explaining why. You should also use this form to claim Employment and Support Allowance (ESA), and make it clear that you want HMRC to consider your entitlement to SSP. You should send the form to your local Social Security Office.

If the Social Security Agency (SSA) is unsure about your entitlement to SSP, it will forward a copy of your form to HMRC's national insurance contributions office. To be on the safe side, you should send a copy of your form to your local national insurance contributions office yourself (any local HMRC office will be able to give you the address).

If your employer refuses to give you form SSP1, you should apply in writing for a decision to your local national insurance contributions office and claim ESA from the SSA. HMRC's decision is legally binding on your employer. You both have the right to appeal against this decision.

If you are entitled to SSP and your employer refuses to pay, you can make a claim for unlawful deduction of wages to an industrial tribunal. You must raise a grievance with your employer first.

HMRC can fine an employer who repeatedly fails to pay you SSP.

You are off sick whilst you are away on holiday

If you are off work on holiday, and you become ill enough that you could be off work on sick leave, you can ask your employer to treat your time off work as sick leave and not holiday. You can then ask your employer to give you extra time off because you were off sick.

However, if you want to treat your time off work as sick leave instead of holiday, your employer can pay you sick pay rather than holiday pay for that time. Sick pay will be less than normal pay.

Your employment contract should say how and when you should let your employer know you are sick, and what proof they might need.

You are dismissed for taking time off sick

If you are dismissed while you are receiving SSP, your employer must give you form SSP1. This explains why SSP is no longer being paid. You should complete the form and take it to your local Social Security Office to claim ESA. If you believe you have been dismissed because you are ill, or because you have asked for SSP, you may be able to complain to an **industrial tribunal**. You should **talk to an experienced employment adviser straight away**. See below for details.

You are dismissed because of your disability

If you are disabled and your employer dismisses you for taking time off sick for a reason connected with your disability, your employer could be breaking the law. You may be able to make a complaint to an **industrial** tribunal for unfair treatment because of your disability (**disability discrimination**). You may have to raise a written grievance first. You should get help from an experienced adviser (see below).

Further help

Citizens Advice Bureau

Citizens Advice Bureaux give free, confidential, impartial and independent advice to help you solve problems. To find your nearest CAB visit www.citizensadvice.co.uk or look under C in your phone book.

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