

Sickness issues and SSP

Businesses lose a lot of money through sickness absence, not all of it medically justified. While many of the issues can be handled on the basis of give and take, there are times when clear policies and decisive action are needed.

This briefing covers:

- Statutory sick pay (SSP).
- Keeping sickness absence under control.
- Coping with long-term sickness.
- Dismissing sick employees.

1 Sickness absence payment

1.1 Employers have to pay **sick pay** to those employees who are entitled to it (see **3**) from the fourth 'qualifying day' of sickness.

- The first SSP payment must be on the next — or, at the latest, the second — pay day after the sick leave.

1.2 Many employers choose to pay **higher levels** of sick pay, well above SSP.

1.3 You can **opt out** of SSP requirements if your company's sick pay arrangements are more generous than the legal minimum.

- You must keep detailed records.

2 Statutory sick pay (SSP)

SSP is the minimum level of payment you must make to any employee unable to work because of physical or mental illness or disablement.

2.1 As long as an employee qualifies for SSP

(see **3**), it is paid at a flat **rate** of £81.60 a week.

- SSP is payable for a maximum of 28 weeks for any one period of sickness, and is subject to income tax and employees' National Insurance contributions (NICs). Employers must issue Form SSP1 by the end of the 23rd week to let the employee know when SSP will be ending.

2.2 Employees become **entitled** to SSP from the fourth 'qualifying day' of sickness onwards.

A qualifying day is basically a day on which the employee would normally have worked.

- In practice, the rule means that there are usually three clear 'waiting days' before SSP is payable in any 'period of incapacity for work' (PIW).

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- If the employee is sick on a weekend day or a Bank Holiday — or any other non-working day — this counts towards the four-day PIW, but is not a 'qualifying day'.

2.3 Employers must keep **full records** of SSP.

- Records must be kept for three years.
- Failure to do so can lead to a £1,000 fine.

2.4 You can get **money back** from HM Revenue & Customs (HMRC) if the SSP you pay out exceeds a set level.

- If your SSP exceeds 13 per cent of your gross NI contributions in any month (which is unusual), you can reclaim the extra in full. You do this by deducting the amount first from your NI payments and then from the PAYE you are due to pay.

3 Who qualifies for SSP?

SSP is for all employees, full-time or part-time, who are unable to work because of sickness and who earn enough to qualify. This includes

Backs, stress and headaches

Bad backs, stress and headaches cause more pain and suspicion in the workplace than any other sickness issues.

The key to controlling this kind of absence is to stress that anyone unable to attend work regularly must realise his or her job is at risk, whether the absence is genuine or not.

- A** Employees with any **persistent health problems** should be encouraged to seek proper medical advice.
- If they refuse, or no improvement is seen, they may need to be told that their level of absence is unacceptable. Make it clear that the next step may be to start the disciplinary procedure, which may lead to dismissal.
- B** No business can afford to carry employees who keep **missing work**, especially if other employees believe the sickness is exaggerated. The costs must be judged in terms of cash and morale.
- C** If you believe someone is exploiting the system, consider **dismissing** the offender (after following disciplinary procedures). See **9**.

temporary staff and agency workers working on a fixed-term contract, regardless of the contract length.

3.1 You must pay SSP to any employee who is **unfit** for work.

- There is no qualifying length of service or minimum number of hours a week.

3.2 The employee's **earnings** must be over the NI lower-earnings limit of £102 a week.

3.3 You can **withhold SSP** if the employee:

- Has recently drawn a state benefit (such as sickness, incapacity or maternity benefit).
- Is held in custody.

4 Tracking sickness absences

You must have clear rules and show employees they are enforced.

4.1 Tell employees they (or someone else) must **notify** you by telephone that they are sick by, say, 10am on the first day.

4.2 Ask employees who are off sick for less than seven days to fill in a **self-certificating** form, giving the reason for their absence.

- Insist on a specific description — eg food poisoning, rather than upset stomach. One of the things you want to be able to track is whether it is the same as last time.
- You can design your own form, or use self-certification form SC2 from HMRC (www.hmrc.gov.uk). Form SC2 does not say that giving false information is a disciplinary offence and has no place for a supervisor to sign, which you may want to include.

4.3 **Interview** employees who have been off sick for a specified period of time (eg seven days) on their return.

- There may be things you can do to prevent a recurrence of the ailment. For example, providing better seating for an employee with back problems.
- Return-to-work interviews are the first line of defence against abuse of the system.

4.4 Ask for a **doctor's certificate** for periods of sickness of more than seven days.

Since April 2010 the new 'fit note' has replaced the 'sick note' issued by doctors and indicates whether an individual is:

► Employment law is complex and is changing rapidly. This briefing reflects our understanding of the basic legal position as known at the last update. Obtain legal advice on your own specific circumstances and check whether any relevant rules have changed.

- is not fit for work.
- may be fit for work.

A 'may be fit for work' statement would be given if the doctor believes your worker's health condition may allow them to work, if you give them appropriate support.

5 A pattern of absence

Those who set out to exploit the system unfairly often fall into habits of abuse. These habits may show up as patterns in your personnel records.

5.1 Be on the alert for lots of **short absences**.

- Repeated absences involving Mondays and Fridays may be particularly significant.
- People who work too many hours, for whatever reason, tend to be off sick more.

Rules of thumb

Employees will occasionally need time off for visits to the doctor or dentist or for hospital treatment. Be sympathetic, but let employees know that you expect them to take a reasonably constructive attitude.

- A** Make it clear that you expect employees, where possible, to arrange appointments for the beginning or end of the day to **minimise lost time**.
- B** You may ask to see an **appointment letter** or card.
- There is often no documentary evidence available for a one-off visit to the GP. If you have real doubts, seek permission to contact the doctor or dentist directly.
- C** Encourage people **recovering** from injury or illness not to prolong their absence.
- Offer to send a taxi, or arrange a lift, for someone getting over a broken leg.
 - Suggest light duties or part-time work for an employee who is not fit enough to do what he or she normally does.
- D** Recognise that NHS patients may have little choice about when to have important but **non-urgent surgery**.
- E** You may insist that paid holiday time be taken for purely **cosmetic surgery**.

5.2 A pattern of absences coinciding with major **sporting events** may be suspicious.

5.3 A combination of frequent **lateness and one-day absences** demands investigation.

- The employee may have continuing difficulties at work, or at home.
- There may be chronic health problems that need to be addressed.

Whichever it is, you need to know. Consider providing counselling, instead of embarking on the formal disciplinary procedure.

6 Reducing sickness absences

6.1 Create a good working **environment**.

- Invest in ergonomically sound furniture, lighting and equipment.
- Enforce health and safety standards.
- Encourage teamwork, contact between people and positive motivation.

6.2 Move sick or injured employees to **other duties** which will not affect their condition.

6.3 Since April 2010 the traditional doctor's sick note has been replaced by a **'fit note'** (see 4.4).

If a doctor has stated that your employee 'may be fit for work', they can offer suggestions about simple and practical adjustments you could make to help your employee return to work.

7 Sickness and discipline

All your employees share an interest in seeing that the few who try to exploit the sickness provisions are brought into line.

7.1 Spell out, in your **disciplinary procedure**, the consequences of wilful absenteeism.

- Any procedure must be seen to be fair, objective and consistently applied.
- If you discover that an absentee has not been genuinely ill, you will probably wish to activate your formal disciplinary procedure.
- This could eventually lead to sanctions (eg loss of benefits), or even to dismissal. If you dismiss, you may have to be able to satisfy an employment tribunal that the dismissal was fair (see 9).

7.2 You can **withhold SSP** if you reasonably suspect an employee is not ill.

“If you suspect that certain employees are taking sick leave without justification, but do nothing about it, it sends a damaging message to the rest of the workforce.”

Amanda Galashan,
EmployEase

7.3 If you want to stop paying SSP to an employee after four or more absences in a year, seek an **adjudication** from HMRC's Medical Services.

- Write to your local HMRC office enclosing the employee's written permission for Medical Services to become involved and any medical certificates the employee has supplied.
- If the employee refuses to give permission, this may be grounds to stop SSP.
- Medical Services will get a report from the employee's GP, and may conduct its own examination, before deciding if SSP can be withheld.
- If Medical Services decide that an employee has grounds for their continuing absence, you should continue (or reinstate) SSP.
- If the advice is that the employee can work, you can choose not to pay SSP, but must explain why.
- If the employee is dissatisfied, they are entitled to a written explanation. If they are still dissatisfied, they can seek a formal decision from HMRC, who will obtain the medical reports from Medical Services. Once HMRC has decided whether or not SSP should be paid, they will inform both you and the employee.

7.4 Always **tell** employees if levels of sickness absence are putting their jobs at risk.

7.5 If the disciplinary procedure is invoked, make it clear that it is the repeated absence from work, and thus the employee's '**capability**' to do the job, that is causing the problem.

- If the process ends in dismissal and a tribunal hearing, it is much easier to justify dismissal on grounds of lack of capability than to get involved in arguments about whether illnesses were real or not.

8 Long-term sickness

8.1 Do not abandon an employee who is on long-term sick leave. Arrange **progress reports** and home visits.

- Make the employee aware of his or her position. Just knowing there is a job to come back to can help people's recovery.

8.2 After a long time away, an employee may feel **fear** about returning.

- Suggest a staged return to work, on a part-time basis, building up to full time.

8.3 Explore the possibility of **alternative duties**.

- Could the employee come back and do lighter work?

8.4 If a return looks unlikely after a long illness, consider offering **early retirement**, perhaps with enhanced pension arrangements.

8.5 If dismissals resulting from long-term sickness involve people with **disabilities**, they must be for 'a substantial and material reason'.

- It may not always be obvious what is a disability and what is not. Long-term health problems, including asthma and ME, can be regarded as disabilities.
- You are under a positive duty to make reasonable adjustments to the job, or the way it is done, to stop a person with disabilities being at a substantial disadvantage.

9 Dismissal

If you can show you have considered all the alternatives and consulted the employee, you can dismiss a person for reasons of sickness.

9.1 You can dismiss a sick employee at any time when it is **reasonable** to do so.

- In established companies, this may mean waiting for the full 28-week SSP period.
- In a small firm where a gap in the ranks could threaten the business, it might be reasonable to dismiss sooner.

9.2 You will need to have gathered all the **facts**, including full medical information, to show that the dismissal is reasonable.

9.3 Contact the employee's GP, with his or her permission, and get a **medical assessment**.

- The employee has the right to refuse permission, or to see the doctor's report and to request amendments to it. In case of doubt, ask the employee to agree to an independent examination.
- If you get no co-operation, explain that a decision will be taken on the basis of available information, which may result in dismissal.

9.4 If there is no serious prospect of an eventual return to work, **explain** to the employee that the job can no longer be kept open.

9.5 Confirm the dismissal, giving the appropriate **written notice** and the appropriate pay.

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