



Law Society
of Scotland

Written Evidence to the Work and Pensions Committee

Statutory Sick Pay

December 2023



Introduction

The Law Society of Scotland is the professional body for over 12,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Employment Law sub-committee welcomes the opportunity to consider and respond to the Work and Pensions Committee call for evidence: Statutory Sick Pay.¹ The sub-committee has the following comments to put forward for consideration.

Please note that we have responded to a limited number of questions by providing some legal and practical considerations. We have refrained from answering other questions that predominantly focus on a public policy, international or cost issues.

Questions

Statutory Sick Pay is currently paid from the fourth qualifying day of sickness absence. Should this three-day wait period be changed or removed?

This proposal would likely have policy and spending implications which are not appropriate for us to comment on. However, some factors that we consider relevant to the debate are:

- the practical effect of the wait period is to discourage intermittent absences because there will be no corresponding pay until the entitlement is reached. Those who are paid the least are most likely to be disadvantaged by this because they are less able to absorb the financial pressures associated with loss of pay, even where that is for a relatively short period.
- The wait period is often rationalised by employers because of a distrust in the genuineness of the sickness. Open and honest dialogue can mitigate this risk by clearly communicating expectations and addressing any shortcomings via capability or disciplinary processes.

¹ [Call for Evidence - Committees - UK Parliament](#)

- Whilst some employees benefit from enhanced day 1 company sick pay, this is more likely to occur in larger employers and certain sectors. This can create inequality amongst the general working population.
- Those employees with irregular work patterns are less likely to have clarity on their waiting period due to the complexity of the legislation around qualifying days.
- Any reduction of the waiting period (potentially to nil) will result in earlier SSP administration by the employer.
- it will impact the flexibility that parties have to agree a phased return to work (see below).

How could a phased return to work and Statutory Sick Pay work better together?

It would encourage greater flexibility if individual incapacity days could be linked for the purposes of an agreed phased return pattern. Very often medical evidence will influence a phased return pattern, or the parties will have agreed something in light of the health impacts to the employee and resources of the employer. In cases where the genuineness of the sickness is not being questioned, it is at odds for the employee to forfeit SSP because of a pattern that, if not put in place, would result in a longer absence and SSP entitlement. To encourage employees back to work, particularly those who are less able to absorb the financial pressure associated with loss of pay, then consideration could be given to a mechanism to allow SSP for linked incapacity days and/or part-days where this is agreed between the employer and employee.

Should Statutory Sick Pay be available to people who are self-employed? How might this work?

It would not be appropriate for us to comment on the policy impacts of this. However, it is worthwhile highlighting that employment status is already a complex area of the law which businesses find difficult to navigate. In our experience, businesses will often rely upon self-employed contractors to mitigate the risk of disruption when dealing with short or temporary projects. SSP entitlement to self-employed contractors may encourage absences, but this needs to be balanced against the various arguments in favour of wider application. It is unlikely that the end client of a self-employed contractor will want to absorb additional administration for a self-employed contractor (if that is a proposal) and there will be less certainty surrounding the genuineness of the incapacity due to the independence required to establish self-employed status. As a result, consideration needs to be given to the self-employed contractors ability to verify their own SSP entitlement.

For further information, please contact:

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