



## Public Consultation on the introduction of a Statutory Sick Pay Scheme in Ireland

The purpose of this consultation is to seek your views on what form a statutory sick pay scheme should take in Ireland.

The background to this initiative is set out in this consultation paper with an opportunity to provide your views on important issues related to the scheme, including the appropriate minimum rate of payment, the minimum duration the scheme should cover, eligibility requirements, waiting days, supports for employers and reintegration programmes for people recovering from illness.

The document provides space for your responses to the questions set out.

Your Name:

Organisation (if applicable):

Telephone Number:

E-mail:

Please indicate if this submission is made in a personal capacity or on behalf of your institution, organisation or group.

Name of institution, organisation or group covered by this submission:

**CIPD Ireland, the professional body for HR and L&D with 6,000 members in Ireland.**

**As part of this consultation process, we surveyed and consulted our members and have included key findings under the relevant sections. We assume that current arrangements for Covid-19 illness and isolation periods will be sustained and have not addressed this.**

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Respondents are requested to make their submissions by e-mail to:

[statutorysickpayconsultation@enterprise.gov.ie](mailto:statutorysickpayconsultation@enterprise.gov.ie)

**The closing date for submissions is Friday 18th December 2020.**

For telephone queries please contact Chris Byrne at 087 4093817

## Background

The Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar, T.D., has committed to the establishment of a statutory sick pay scheme to bring Ireland in line with other OECD countries. This will build on the improved social protections for workers over the last five years, including paternity benefit, parental leave benefit and the extension of social insurance benefits to the self-employed and those in the gig economy.

The Government recognises that this has been a very difficult year for employers, with ongoing Covid-19 restrictions and Brexit looming on the horizon. The intention is to develop a scheme that is fair and affordable and that does not place an undue burden of costs on employers.

The Tánaiste is committed to publishing the general scheme of a Bill by March 2021, with a view to having the Bill enacted in the second quarter of 2021 and up and running before the end of the year.

The scheme will be developed in close consultation with all relevant stakeholders, to include unions, employers, employees and other Government Departments and bodies. Engagement has already commenced with the social partners through the Labour Employer Economic Forum (LEEF) sub-group on employment regulation and legislation and now the Department would like to hear your views.

## Definitions and how they apply to Ireland

- *Sick leave* concerns the right to be absent from work during sickness and return to one's job when recovered. There is no provision in law for entitlement to sick leave in Ireland – any sick leave entitlement is set out in the contract of employment. Collective bargaining has of course achieved sick leave safety nets for very many workers in Ireland.
- A *sickness benefit* is provided by the social protection system and is paid as a fixed rate of previous earnings, or a flat-rate amount. This is called Illness Benefit in Ireland and is based on Pay Related Social Insurance (PRSI) contributions.
- *Sick pay* is the continued, time limited, payment of (part of) the worker's salary by the employer during a period of sickness. It should be seen in the context of the contract of employment between employer and employee.  
In Ireland employers may provide for sick pay as part of the contract of employment.
- *Statutory sick pay* is the money that an employer must by law pay to an employee who is unable to work because of illness.

## Current Supports

There is no statutory sick pay (SSP) in Ireland, however many employers provide sick pay during illness without any statutory obligation to do so. Illness benefit is a short-term payment in Ireland made to insured contributors who are unable to work due to illness. Current arrangements provide

that payment of illness benefit begins from the seventh day of the illness. No payment is made for the first six days, known as “waiting days” (the number of waiting days will reduce to three days as part of measures introduced under Budget 2021). Waiting days have been a long-standing feature of the social insurance system and are a feature of social security schemes in other countries also.

Illness Benefit entitlement continues as long as a person is unfit for work, subject to a maximum of two years, provided that they have at least 260 weeks’ PRSI contributions paid. If they have an entitlement but have fewer than 260 paid contributions, Illness Benefit ceases after 52 weeks. If a worker is receiving sick pay from an employer, he or she may be required to sign over any illness benefit to the employer.

The Illness Benefit scheme was temporarily enhanced to deal with the circumstances presented by the Covid-19 pandemic. The goal is to support people to not attend work by protecting their income, addressing their financial concerns when they should be in isolation. Significantly, there are no waiting days associated with the enhanced illness benefit, so the payment from the first day of illness allows them to comply with medical advice to self-isolate to mitigate the spread of the disease, while having their income protected. The payment is made for a maximum period of 2 weeks where a person is a probable source of infection of Covid-19 and up to 10 weeks where a person has been diagnosed with Covid-19.

The rate of the enhanced Illness Benefit payment for Covid-19 is €350 per week, with additional payments possible in respect of a qualified adult and qualified children. However, even the enhanced Illness Benefit payment is less than many people earn in work and there can be a reduction in income while sick.

## Statutory Sick Pay in other EU Member States

Almost all EU Member States have legislation in place to implement statutory sick pay. Ireland is in a minority of countries with no provision for statutory sick pay.

In most countries, employees may by law, collective agreement or at the discretion of the employer, be entitled to sick pay, either for an initial shorter period of absence or for the entire duration of sick leave. Most EU Member States provide a double payment arrangement, with a period paid by the employer (in full or in part) followed by benefits paid by the social protection system. Where sick pay is only for an initial shorter period of absence, it is usually followed by sickness benefit for the entire duration of sick leave.

### ***Statutory Sick Pay in Summary:***

- 21 out of 28 countries have statutory sick pay
- 4 countries have some circumstances where sick pay is paid by the employer.
- 3 countries including Ireland have no statutory sick pay.

- In most of the countries, beneficiaries do not pay social security contributions while on sick pay or sickness benefits.
- Some countries provide for a maximum period of 2 weeks' sick pay while others provide much longer periods of sick pay. This can be more than a month in Austria (6 to 12 weeks), Croatia (42 weeks), Italy (max 180 days), Luxembourg (77 days), Poland (33 days) and the Netherlands (104 weeks maximum). In the UK, Statutory Sick Pay is paid by the employer in case of sickness for at least 4 consecutive days up to a maximum of 28 weeks.
- In most of the countries the amount of the statutory sick pay is calculated as a percentage (a compensation rate) of the gross wage (daily or monthly) and varies from 25% to 100%.

## Other Important Points to Consider

1. The introduction of statutory sick pay scheme (SSP) would be a positive step in Ireland, bringing us into line with all other EU countries.
2. Many employees already have an entitlement to sick leave (paid or unpaid) included in their contracts of employment.
3. It would give some protection to the most vulnerable employees in low-paid and precarious employments who are less likely to have a sick pay scheme provided by their employer.
4. OECD research suggests that increasing the role of employers in relation to sick pay also serves to stimulate a greater focus within companies, and indeed public sector bodies, on absentee management (e.g. absentee rates in the Netherlands dropped from 10% to 4% in the period following the introduction of SSP). Statutory sick pay would engage employers more directly in the management of sick leave and create an incentive for them to engage in return to work planning with their employees.
5. The experience of other countries is that the longer the period of sick pay, the more employers engage; and also, the more they make efforts to improve health and safety in the workplace in an attempt to reduce levels of staff sick leave.
6. From a competitiveness perspective, there are benefits from removing an implicit incentive for a sick person to work to ensure that they continue to be paid. Labour market policies like this would likely improve healthcare outcomes and make Ireland a more attractive place to live and work.
7. The Government recognises that many businesses have faced an extremely difficult year with ongoing closures due to Covid-19 restrictions, Brexit is also on the horizon and it is the intention that a Statutory Sick Pay Scheme will be fair and affordable for employers.
8. It is acknowledged that it would impose additional costs on employers and introduce more complexity in the regulatory environment for employers, particularly for those firms which did not already operate a sick pay scheme.
9. There are potential additional costs for firms or industries with a higher incidence of absenteeism.
10. The cost of SSP will depend on the rate of sick pay mandated and the duration for which it is mandated.

11. SSP is a break from the voluntary terms and conditions that many employers afford their employees in contracts of employment. SSP is intended as a floor rather than ceiling and the scheme is not intended to override sick pay terms in the context of collective agreements or contracts of employment that may be more favourable.

## Publication of Submissions and Freedom of Information

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2018. However, please note the following:

- The information provided in the submission form will be shared with relevant Government Departments and State organisations during the review process.
- The Department will publish the outcome of the reviews and the submissions received under this consultation on its website, and
- as information received by the Department is subject to the Freedom of Information Act, such information may be considered for possible release under the FOI Act. The Department will consult with you regarding such information before making a decision should it be required to disclose it.
- If you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive.

### **Note regarding responses:**

**Respondents are encouraged to keep their responses within the box accompanying each question. Please answer any questions that are relevant to you or your organisation.**

## Question 1: Minimum rate of payment

What is a suitable and appropriate minimum rate of payment?

CIPD Ireland believes it is time for Ireland to introduce a statutory sick pay, acknowledging that it will increase business costs and recognising it is the ethical and responsible approach to take. It will have most impact on employees in vulnerable and low paid jobs. Overall we recommend its introduction at the rate of basic pay for a maximum two-week period.

CIPD Ireland recommends that statutory sick pay should be related to the pay of the employee in their individual employment relationship/collective agreement. It should consist of normal basic pay paid through the standard payroll process, excluding any premia or allowances. For those on variable hours it would pay the average of the previous 13 weeks. Directly connecting it to current rates of pay will minimise disruption to the payroll administration process.

In our recent HR Practices survey, 50% replied that it should be paid at 100% of pay, and 30% believed it should be capped at 75%. Conscious that it is vulnerable employees in low-paid and precarious employments who are least likely to have a sick pay scheme already provided by their employer, we propose that it should be at 100% of normal pay. The other suggestions we received (8%) often referred to relating it to social welfare payments and the need to ensure the process minimises the risk of abuse. For those with short hours or on low pay, any additional family supports should continue to be provided for under the social welfare scheme.

### **CIPD HR Practices in Ireland: Preliminary results Dec 2020**

**Question:** If statutory sick pay is introduced, what proportion of normal pay do you think employees should be paid?

Proportion of normal pay	Yes
100% of normal pay	50%
Capped at 75% of normal pay	30%
Capped at 50% of normal pay	11%
Capped at 30% of normal pay	1%
Other	8%

*This HR Practices survey received over 400 responses though not all respondents answered all questions. The majority of respondents already have a sick pay scheme in place*

## Question 2: Duration of payment

*What duration of absence should be covered by statutory sick pay?*

*Under any SSP scheme, employees will be covered for a certain period of absence paid by the employer (in full or in part) followed by illness benefits paid by the social protection system. In other EU member States, statutory sick pay coverage ranges from 15 days or less to up to 2 years.*

CIPD Ireland recommends that statutory sick pay should be paid from the first day of illness and cover two weeks of medically certified illness. Any additionally consecutive period should be covered under the social protection illness benefit scheme. An employer should not become legally liable for a second statutory sick payment until the employee has been back in continuous work for 8 weeks. Intervening periods should be covered by State illness benefit. An exemption or reduced waiting period will be required where an employee is disabled under the Employment Equality Acts or other scheme.

Members are very aware of the additional costs and the financial impact on business and the scheme needs to have tight limits, and not to threaten business viability especially for the SME sector and small business. Therefore employers would pick up the cost of the first two weeks and then the current State scheme will come into place. Payment would be made for maximum two week period, and be dependent on receipt of medical certificates for the full sick period after two days. Medical certification should be required on the third day of illness. Day 1 and Day 2 of sick would not require medical certification once the employee returns to work on Day 3.

Members are very conscious that the messaging around this has to be very careful. There is a real fear of abuse of any statutory sick pay scheme, though for small numbers. Employers will need to bring in robust policies/processes to manage and deal with any false claims. While positioning payment for a maximum two-week period, and no medical certificate required where the employee is only ill for 2 days, it has to be made clear that illness has to be real and genuine and abuse will not be tolerated. Members have called out the need for government to put specific support and training in place for the SME sector and small businesses to build their capacity to manage absence more effectively and to provide training for inexperienced managers to have the right conversations about sick absence, returning to the workplace and how abuse will be dealt with.

Many employer sick pay schemes provide sick pay for longer periods, and this should continue to be encouraged. The Statutory sick pay scheme will also increase the costs of most such schemes where they provide a top-up to illness benefit and will now incur the cost of basic pay.

The way in which Statutory sick pay is linked to other social protection benefits and leaves, such as any of the parenting or carers' leaves needs to be clear and straightforward, and considered through the lens of a small business who has to understand and apply these correctly for their employees.

We note across European countries, where sick pay from the employer is for an initial short period of absence, it is usually followed by State sickness benefit for the entire duration of sick leave.

### Question 3: Waiting days

*Should there be a minimum period that the employee must be out sick before statutory sick pay applies?*

*Under the current Illness benefit system, Illness benefit is paid after a period of 6 days which are known as waiting days (the number of waiting days will be reduced to a period of 3 days from end February 2021 as part of measures introduced under Budget 2021)*

To support the health and wellbeing of employees, particularly vulnerable employees, CIPD Ireland recommends that statutory sick pay would not have a waiting period, but would only be for a maximum of 2 weeks. It is important to put a cap on the potential cost of SSP, especially for small employers and this is done by restricting the amount of time covered, ensuring the employee is back working continuously for 8 week period before an additional SSP entitlement, and additional illness periods are covered by Illness Benefit.

Covid19 benefits should remain.



## Question 4: Certification of Illness

*Should statutory sick pay only apply to illnesses that have been certified by a medical professional or medical body?*

Yes. Employers would be liable for statutory sick pay for a maximum two week period, and payment would be dependent on receipt of medical certificates for the full period once illness is longer than 2 days. A medical certificate has to be presented on the third day of illness. Day 1 and Day 2 of sick leave would not require medical certification, but once sick absence goes into the third day, a medical certificate would be required for the full period of illness.

These parameters recognise that the cost of a medical visit would only be incurred if the employee is ill for more than two days. It will also require a second medical visit at the end of the two week of illness to get a Certificate of Incapacity for Work completed for social welfare purposes. This is also the point when a a rehabilitation intervention could be introduced to support both employer and employee.

The statutory sick pay scheme has to give employers the right to require a fitness to work certificate in advance of return to work.

## Question 5: Length of service

Should an employee be required to have worked for an employer for a certain period before they are entitled to avail of statutory sick pay? (e.g. an employee would complete six months service before such an entitlement applies, or fully complete the probation period as specified under their employment contract)

Yes. 84% of our CIPD HR Practices in Ireland respondents (Preliminary results Dec 2020) agree that an employee should have worked for an employer for a minimum period before they are entitled to statutory sick pay. We recommend that this period is aligned with the most standard period of probation, successful completion of 6 months service, and during that period, employees absent during illness would be entitled to State illness benefits.

Employers see real value in using sick pay as an engagement and retention tool. Employers may opt to choose shorter periods of time but 6 months successful service should be required to be entitled to Statutory sick pay. This approach is necessary to align with our recommendation that there would be payment at 100% of basic pay.

This service requirement will facilitate the management of those on variable pay, as the sick pay amount should be the average of basic pay over the previous 13 weeks. It will also need tighter management of the probation period by many SMEs, as employees need to be informed of the consequences of poor performance.

## Question 6: Earnings threshold

Should an employee have to satisfy a minimum earnings threshold to avail of statutory sick pay? Should any other eligibility requirements apply?

No, we believe that there should be no earnings threshold for employees to receive statutory sick pay. Our proposal outlines this payment comes into force when an employee has 6 months service so their pay pattern will have been established and statutory sick pay is only be incurred by the employer for 2 weeks.

If alternative mechanisms are proposed, it is likely that a minimum pay threshold could be required to reduce the financial and administrative burden.

## Question 7: Employer supports

Should financial supports be put in place for employers who genuinely can't afford to pay the rates of SSP? What is the best way to establish if employers genuinely can't afford to pay?

The HR Profession is very aware of the difficulties some companies may face, especially SMEs. It is critical for the government to have supports in place for business who genuinely cannot afford to make this payment and who have employees who are genuinely ill. The employee performance contribution is significant in such organisations and access to a similar rate of pay as statutory sick pay (max 2 weeks at 100% of basic pay) compared to those in more profitable organisations should be available through a State support scheme. Such organisations are likely will have to bear the cost of a replacement employee. In general, this is likely to be a low cost to the State as it expected to cover mainly low-paid workers.

These companies are also the organisations least likely to have full-time HR support or a way to replace people on sick leave. This State support could be aligned with other business supports to develop the viability of the enterprise. A sector by sector review will highlight the sectors most at risk, likely to be those in retail, hospitality and care where many employees are in more precarious employment.

## Question 8: Rehabilitation programmes

Should rehabilitation and reintegration programmes, for employees who have been absent due to long term illnesses, be introduced along with SSP?

Rehabilitation and reintegration are absolutely necessary to minimise sick absence, and long-term sick absence in particular. The government needs to take a clear role in introducing the framework for such an assessment and intervention process. A significant analysis was carried out [by Dame Carol Black](#) in the UK demonstrating the positive impact on individuals and their capacity to be sustained in the workplace, apart from the reduced financial cost to employers and the State

*She argues that, if sickness absence rates are to be minimised, all employing organisations should have access to expert advice on whether and how an individual can be supported to work.*

This should start early in the illness cycle, and ideally access to such programmes should commence during the discussion with the medical practitioner when the employee visits after two weeks continuous as illness to get a Certificate of Incapacity for Work completed for social welfare purposes. The interventions have to engage with employers on what accommodations can be put in place to support a return to the workplace as well as long term management of any illness. This process has to recognise, a key learning from the UK, that interventions have to be able to provide supports addressing life stressors around financials, mental health and relationships, and are not all about physical illness. The learnings from the Department of Education and Skills's intervention to better manage its sick leave levels can also be drawn on here.

The introduction of a rehabilitation and reintegration scheme has to be used as a benefit to employers when they start to incur additional costs of statutory sick pay.

## Any other comments:

CIPD Ireland believes it is time for Ireland to introduce a statutory sick pay, acknowledging that it will increase business costs and recognising it is the ethical and responsible approach to take. It will have most positive impact on employees in vulnerable and low paid jobs. Overall we recommend its introduction at the rate of basic pay for a maximum two-week period. This will provide supports to those not currently covered by any company sick pay scheme and restrict the financial risk to two weeks basic pay after 6 months service.

The introduction of a Statutory sick pay scheme will put a clear focus on absence management, a positive development. We argue for supports and training be put in place for SMEs and small business who do not have access to the same level of professional HR expertise. There is a wide concern over the perception and management of abuse, and tools to minimise this are critical. CIPD Ireland would welcome the opportunity to share the success of our UK intervention whereby HR advisors have been made available to small business to support them in their immediate response to HR issues.

Statutory sick pay should not be positioned as a stand alone intervention. Its power is in having a purpose to financially support those in low paid and vulnerable employment and more widely to provide a framework of early assessment and intervention to tackle the issue and cost of illness and absence in the labour force. As our labour force ages, this can be a timely initiative to educate and support employers on accommodations to keep people at risk of absence, engaged in the workforce.

Success will be dependent on

- a limited time-bound scheme, we advise two weeks
- financial supports for employers who genuinely cannot afford pay
- rehabilitation scheme to reduce sick absence and its negative impact on a national basis
- a clean integration with other social protection benefits and leaves, considered through the lens of small business who have to understand and apply these correctly for their employees
- a review mechanism that is outside the political arena

We recommend a reassessment when the scheme has been implemented and teething problems sorted in a formal three to five year review. This should be taken out of the political arena with a model such as the Low Pay Commission