

Sick pay – how much are you entitled to, and does absence from work due to ill health put your job at risk?

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If you need time off from work due to illness, you may be entitled to sick pay.

There are two types of sick pay:

- Company Sick Pay (also called contractual or occupational sick pay)
- Statutory Sick Pay (“SSP”).

If your employer runs their own sick pay scheme it is a 'company sick pay scheme' and you should be paid what you are due under that. This will depend on what is included in your employment contract. There is no obligation on an employer to run such a scheme.

If you are not entitled to anything under a company scheme or you have exhausted your company sick pay, your employer should still pay you SSP if you are eligible.

Company sick pay

Your employer may offer a sick pay scheme that is more generous than SSP. Your employer can offer any scheme that does not fall below the legal minimum. It does seem to be the case that the larger your employer, the more generous the company sick pay tends to be. This is probably down to the fact that your absence can be more easily covered by the more extensive resources of a larger employer.

Details of your company sick pay entitlement should be included in your contract of employment or written statement of employment particulars. If your company doesn't offer a scheme, they should say so.

Company sick pay schemes vary from employer to employer. A typical sick pay scheme usually starts after a minimum period of service (e.g. a three month probationary period). You would then receive your normal pay during any period that you are off work due to illness, up to a specified number of days or weeks. Employers should apply any company sick pay scheme fairly and whether or not you are a full or part time employee (see below). If they fail to do so, you may have a claim for discrimination.

Statutory sick pay

In the absence of a contractual provision, employees are entitled to receive SSP from the employer. The limit in entitlement is generally 28 weeks in a 3 year period.

The qualifications for SSP are that an employee must:

- have 4 or more consecutive days of sickness (including Sundays and holidays) where he is incapable of doing work.
- notify the absence to the employer.
- supply evidence of incapacity (such as self-certificate or doctor's certificate)

There are a number of excluded employees who are not entitled to receive SSP. These include those taken on for a specified period of no more than 3 months and employees who are pregnant and go off sick during the maternity pay period. This is not an exhaustive list.

Any contractual salary paid to an employee for a day of sickness is to be offset against the SSP due for the same day- in other words you don't get your company sick pay and statutory sick pay for the same day!

The weekly SSP rate is a standard rate set by government. In 2009-10, the weekly rate amount to £79.15 and the daily rate is calculated on a pro rata basis from this.

Proof of sickness required by your employer

Your employer will almost certainly require proof of your illness which is usually in the form of a self- certification or a medical note from your GP for longer periods of absence. An employer cannot require an employee to produce a medical certificate for the first 7 days of sickness.

Work related illness

If your employer is responsible for your illness you may have the right to make a personal injury claim, whether you are still employed or not. This applies to both a physical or psychological injuries such as stress. You should speak to a lawyer or trade union representative if you are considering this.

What if I work part-time, freelance or through an agency?

You cannot be discriminated against because you work on a part-time basis. This means you are entitled to the same company sick pay, but this will be on a pro-rata basis. If you are freelance, you would not normally expect to receive company, or statutory sick pay as you would not be considered to be “an employee”.

If you are an agency worker, you would almost certainly not receive company sick pay from the end client who you are working for although there are exceptional circumstances where you could be deemed to have acquired “employee status” where you have worked exclusively for the same employer for a long period of time through an agency.

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There are many other factors that govern whether you acquire employee status, including:

- your employer provides work within set hours and pays you for being available to work
- you have to accept the work provided by your employer and are not free to turn work down
- your employer controls what you do and lays down how and when you do it
- you have to carry out the work personally, and cannot send someone else to do it on your behalf
- your employer supplies the tools or other equipment for the job

What happens where an employer dismisses an employee as a result of the employee's sickness?

Where there are cases of the employee's long term ill-health, which makes the future performance of the contract of employment impossible, the contract may be considered to have been "frustrated" and the employee will in these circumstances be deemed not to have been dismissed in the eyes of the law. This situation is, however, extremely rare.

If an employer is to safeguard itself against a claim for unfair dismissal, it should go to some length to find out the current medical position which would involve consultation with the employee's medical advisors and possibly have an employee medically examined. If the employer can show that it has taken these necessary steps and has properly informed itself of the state of employee's state of health and prognosis, and following such prognosis the employer makes a perfectly reasonable decision to dismiss the employee, the employer is likely to have little comeback.

Where the sickness consists of persistent short absences by unconnected minor ailments, the employee should ideally be told what level of attendance he is expected to attain and that dismissal may follow if there is no sufficient improvement. An employer should be careful to adhere to the correct disciplinary procedures (such as warnings) as a Tribunal could well find that a dismissal is unfair on procedural grounds, even if ultimately, the same decision would have been made had the correct procedures been followed.

The Tribunal will also consider whether the ill-health or sickness was caused by the employer's actions. This may well have a bearing on whether the ultimate decision to dismiss is deemed to be fair or unfair.

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