

Statutory Sick Pay- A guide for temporary workers

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The Recruitment and Employment Confederation (REC) is the leading trade association for employment agencies and businesses. All members of the REC must pass a compliance test and abide by our Code of Professional Practice. This guide has been produced for REC members for the information of workers.

1. Qualifying Conditions

If you are employed by another business (such as an umbrella company or your own limited company), that company will be responsible for any Statutory Sick Pay (SSP) you may be entitled to. If you have a contract directly with an agency and you are too sick to work, you will be entitled to claim SSP from the agency in the following circumstances:

- you must have done some work under the contract;
- you are actually engaged on an assignment when you become sick;
- your average earnings in the 8 weeks immediately before you become sick are over the lower earnings limit (LEL) for National Insurance (NI) contributions (please visit the HMRC website for the current LEL);
- you are unable to work due to sickness for at least 4 'qualifying days' in a row. A 'qualifying day' is a day when you would ordinarily be required to work. If you do not have a normal working pattern, your contract may state that you must be unable to work for at least 4 consecutive Wednesdays. SSP will be payable from the fourth 'qualifying day' of sickness onwards;
- you can provide evidence of your sickness. Within the first 7 days, this means providing self-certification of your sickness and after 7 days you must provide a doctor's note to the agency (see information on fit notes below);
- you are over 16;
- you are employed in the UK or an EEA country and are subject to the UK social security system;
- you have not claimed any incapacity benefit, maternity allowance, invalidity pension or severe disablement allowance within the last 57 days;
- you have not been participating in a trade dispute either immediately before or during your sickness;
- you are not within the Statutory Maternity Pay period or Maternity Allowance period; and,
- you are not in legal custody.

2. Period of Entitlement

SSP is payable until one of the following occurs:

- if you are on a contract for services, your assignment is terminated (your agency should not terminate your assignment to avoid paying SSP but may terminate it if the client no longer requires your services);
- your contract expires or is brought to an end (as above, your agency should not terminate the contract avoid paying SSP);
- you return to work or are capable of working;
- you have received 28 weeks of SSP;
- you have been incapable of working for periods which together amount to more than 3 years;
- you become entitled to Statutory Maternity Pay or Maternity Allowance; or,
- you are taken into legal custody.

SSP is usually paid on your normal payday in the same way as your normal earnings. SSP is subject to tax and NI contributions. However if you only receive SSP, it may be that your earnings are not high enough to pay tax. If you cannot get SSP or SSP has ended your agency must fill in form SSP1 and give this to you. On the form, the agency must say why SSP has not been paid or why it is ending and the last date of payment. Form SSP1 is used to support a claim for Employment and Support Allowance (ESA). Further details on ESA can be found at: <https://www.gov.uk/employment-support-allowance>.

3. Statement of Fitness for Work

Your doctor will issue a fit note to provide evidence of the advice the doctor has given you about your fitness for work. The fit note allows doctors to advise when you “may be fit for work” with some support, or that you are “not fit for work”.

The fit note should record details of the functional effects of your condition, including suggesting ways to help you return to work, so that you and the agency can consider how to facilitate your return.

For further details on the fit note, please see:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/349912/fitnote-patients-employees-guidance.pdf

4. SSP Amount

The first 3 ‘qualifying days’ of sickness will be unpaid, with SSP becoming payable from the fourth ‘qualifying day’ onwards. For the current rate of SSP, please see:

<https://www.gov.uk/statutory-sick-pay/what-youll-get>

5. Further Information

If you would like further information you can contact the HMRC employee helpline on 0300 200 3500.

REC Legal

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REC is the largest trade association for recruitment agencies and businesses. We provide legal advice to REC corporate members. Whilst we cannot advise their clients or temporary workers, we have prepared this factsheet as an introduction to Statutory Sick Pay. This document is not a substitute for legal advice on related matters and issues that arise and should not be taken as providing specific legal advice on any of the topics discussed.

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