Statutory Sick, Statutory Maternity and Statutory Paternity Pay

Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP) Statutory Paternity Pay (SPP) and Shared Parental Pay (ShPP) are important regulations to understand as they enforce minimum legal requirements on employers. Each operates in a different way.

This factsheet sets out the main principles of the regulations and what an employer needs to consider.

Statutory Sick Pay (SSP)

SSP applies to all employers, regardless of size and represents the minimum payments which should be paid by law.

It is possible to opt out of the scheme but only if an employer's occupational sick pay scheme is equal to or more than SSP. There would still be a requirement to keep appropriate records, etc.

We have outlined the general principles below but first we need to explain some of the special terms used.

Glossary of terms

Period of incapacity for work (PIW)

A PIW consists of four or more calendar days of sickness in a row. These do not have to be normal working days.

Linking

Where one PIW starts within eight weeks of the end of a previous PIW the periods can be linked.

Qualifying days (QDs)

These are usually the employee's normal working days unless other days have been agreed.

SSP is paid for each qualifying day once the waiting days have passed.

Waiting days (WDs)

The first three QDs in a PIW are called WDs. SSP is not payable for WDs.

Where PIWs are linked it is only the first three days of the first PIW which are WDs.

Waiting days were ignored if the sickness started before 25 March 2022 and they were off sick because of COVID 19.

Who qualifies for SSP?

All employees who, at the beginning of a PIW or linked PIWs, have had average weekly earnings above the Lower Earnings Limit (LEL) of £123.

Employees must have notified you about their sickness - either within your own time limit or within seven days.

They must give evidence of their incapacity. Employees can self-certify their absence for the first consecutive seven days; thereafter, form Med3 (Fit Note) is required from their General Practitioner.

How much SSP is payable?

The weekly rate of SSP is £109.40 for 2023/24 but it is computed at a daily rate.

The daily rate

The daily rate may vary for different employees. It is calculated by dividing the weekly rate by the number of qualifying days in a week. For example an employee with a five day working week would have a daily rate of £21.88 for 2023/24.

Only QDs qualify for SSP and remember the first three days (WDs) do not qualify.

Maximum SSP

The maximum entitlement is 28 weeks in each period of sickness or linked PIW.

Employers are not able to recover SSP paid for sickness absences.

Pay as You Earn (PAYE) and records

SSP is included in gross pay and PAYE is operated as normal.

Employers should monitor sickness absence and maintain detailed records as these will be required for PAYE purposes.

Statutory Maternity Pay (SMP)

SMP is paid to female employees or former employees who have had or are about to have a baby.

The payment of SMP is compulsory where the employee fulfils certain requirements.

The requirements

SMP is payable provided the employee has:

- started her maternity leave
- given 28 days notice of her maternity leave (unless with good reason)
- provided medical evidence with a form (MATB1)
- been employed continuously for 26 weeks up to and including her qualifying week
- had average weekly earnings (AWE) above the LEL in the relevant period.

It is important to note that mothers have a legal entitlement to take up to 52 weeks off around the time of the birth of their baby, whether or not they qualify for SMP. This means that mothers can choose to take up to one year off in total.

The amount payable

The rates of SMP, SPP, statutory shared parental pay and statutory adoption pay are £172.48per week (or 90% of the person's average weekly earnings if that is less).

SMP is payable for a maximum of 39 weeks. The date the baby is due, as shown on the MATB1 certificate, determines the maternity pay period entitlement and not the date the baby is born. The rates of SMP are as follows:

- first six weeks at 90% of AWE (see below)
- up to a further 33 weeks at the lower of:
- 90% of AWE
- £172.48 for 2023/24.

SMP is treated as normal pay.

Average weekly earnings (AWE)

AWE need to be calculated for two purposes:

- to determine if the employee is entitled to SMP (earnings must be above the LEL)
- to establish the rate of SMP.

The average is calculated by reference to the employee's relevant period. This is based on an eight week period up to the end of the qualifying week, which is 15 weeks before the baby is due. In some instances, subsequent pay rises have to be taken into account when calculating SMP. Earnings, for this purpose, are the same as for Class 1 NICs and include SSP.

Recovery of SMP

92% of SMP paid can be recovered by deduction from the monthly PAYE payments.

Employers may qualify for Small Employers' Relief (SER). SER is 100% of SMP plus 3% compensation.

To qualify for SER, the current limits are:

- total gross Class 1 NICs for the employee's qualifying tax year must be less than £45,000
- the employee's qualifying tax year is the last complete tax year that ends before the start of her qualifying week.

Glossary of terms

Week baby due

The week in which the baby is expected to be born. This starts on a Sunday.

Qualifying week (QW)

The 15th week before the week the baby is due.

The week the baby is due and the QW are easy to establish using software or online calculators which are available through gov.uk basic PAYE tools.

Maternity Pay Period (MPP)

The period of up to 39 weeks during which SMP can be paid.

MATB1

Maternity certificate provided by a midwife or doctor. This is available up to 20 weeks before the baby is due. SMP cannot be paid without this.

Ordinary Statutory Paternity Pay (OSPP)

OSPP is paid to partners who take time off to care for the baby or support the mother in the first few weeks after the birth. OSPP was previously known as SPP.

It is available to:

- a biological father
- a partner/husband or civil partner who is not the baby's biological father
- a mother's female partner in a same sex couple.

The partner must have:

- given 28 days' notice of their paternity leave (unless with good reason)
- provided a declaration of family commitment on form SC3
- been employed continuously for 26 weeks up to and including their qualifying week
- had average weekly earnings above the LEL in the relevant period.

The amount payable

OSPP is payable for a maximum of two weeks: it must be taken as a block either one week or a complete fortnight but not two single weeks at the following rates:

- the lower of:
- 90% of AWE
- £172.48 for 2023/24.

OSPP is treated as normal pay.

The calculation of AWE and the recovery of OSPP are subject to the same rules as for SMP.

Fathers have the right to take unpaid leave to attend up to two antenatal appointments.

Adoptive parents

To qualify for Statutory Adoption Pay (SAP), an employee must meet the same earnings and service criteria as an employee seeking to qualify for SMP. An employee must provide his or her employer with evidence of the adoption and a declaration that he or she has elected to receive SAP. HMRC form SC4 provides a declaration form that can be used. A matching certificate from the adoption agency must be produced to the employer. SAP is paid at the same rates as SMP and follows the same rules with regard to recovery.

Shared Parental Leave (SPL)

SPL is available to parents whose babies are due on or after 5 April 2015. In the case of adoptions SPL applies in relation to children matched with a person or placed for adoption on or after 5 April 2015.

Employed mothers are still entitled to 52 weeks of maternity leave. The mother can curtail her right to SMP and leave and opt to take SPL and Shared Parental Pay (ShPP). SPL and ShPP will be available provided the parents satisfy the eligibility requirements. The main elements of the scheme are:

- In the 52 week period there will be two weeks' compulsory Statutory Maternity Leave (SML) (four weeks if they are manual workers) which the mother must take
- Eligible parents will then be able to share the remaining leave and pay in the form of ShPP and SPL between themselves as they choose
- Fathers are still entitled to two weeks of OSPP basic paternity leave
- Mothers with partners (who must also meet the qualifying conditions) are able to end the mother's leave and pay and share the untaken balance as SPL and ShPP
- Employees who take SPL are protected from less favourable treatment as they will have the right to return to the same job if the total leave taken is 26 weeks or less in aggregate, even if the leave is taken in discontinuous blocks
- Any subsequent leave will attract the right to return to the same job, or if that is not reasonably practicable, a similar job
- It is up to the parents how they share SPL – they can take it in turns or take time off together, provided they take no more than 52 weeks of this leave, combined in total
- Additional paternity leave and pay was abolished for babies due from 5 April 2015
- ShPP is calculated in the same way as SMP.

Plans to extend SPL to grandparents

Proposals have been announced to extend SPL to allow grandparents to take time off work. The system of shared grandparental leave will allow a mother to share her leave with one nominated working grandparent. SPL is currently limited to the mother's partner. No start date has been set for this extension.

How we can help

As the scheme payments are statutory it is important that rules are adhered to and we will be more than happy to provide you with assistance or any additional information required. Please do not hesitate to contact us.

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