

ADVICE NOTE: Sickness and Pay

Sick Pay

All employees (subject to certain excluded categories) are entitled to receive statutory sick pay (SSP) from their employer provided they meet certain criteria:

- They must be an employee;
- They must be too ill to undertake their work on any day for which they claim SSP;
- They must be absent from work for at least 4 consecutive days (including Sundays and Bank Holidays). This period of 4 consecutive days is known as a period of incapacity for work (PIW).
- They must supply evidence of their incapacity. For the first 7 days of absence this can be in the form of a self-certificate. For periods of incapacity of 8 days or more, this evidence must be in the form of a GP Fit Note.

If an employee is off for two periods which are separated by 8 weeks (56 days) or less, then the employee does not need to be absent for 4 consecutive days in the second period of absence in order to receive SSP.

It is not only permanent employees who may be able to receive SSP. Someone who is employed on a short-term fixed-term contract can also receive SSP, even if the contract is for a period of less than 3 months. Someone who also undertakes work for the Council via an agency is entitled to be paid SSP by the Council. For the purposes of SSP, agency workers are classed as employees.

The limit of entitlement to SSP is 28 weeks.

The current rate of SSP is £81.60. The maximum payable over 28 weeks is therefore £2,284.80.

SSP will initially be paid directly to the employee through payroll, but the Council may be able to recover some of the SSP if the amount paid is more than 13% of the total Class 1 NICs the Council has paid in an income tax month. In this case, the Council will be able to recover the excess from HMRC.

Fit Notes

From 6 April 2010, employees must evidence sickness of 7 days or more with a 'Fit Note'.

In addition to declaring that someone is unfit for work, a GP is now able to declare that a patient is:

1. Fit for some work, or
2. Fit for work taking account of changes that can be made to an employee's role or workplace to facilitate a return to work.

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If an employee is given a Fit Note which advises changes or adjustments to an employee's role or workplace, these may include;

- a phased return to work;
- altered hours;
- amended duties; or
- workplace adaptations.

For example, a GP may recommend a phased return to work where the employee has been absent from work for a long period of time and needs to become used to the working environment over a staggered period.

Again, the Council may have had an employee who has been absent for reasons of stress or anxiety which may be exacerbated by travelling through rush hour traffic. Therefore, the GP may suggest that the employee returns to work but works hours which avoid peak time traffic.

Sickness absence due to a physical condition may prompt a GP to recommend amended duties. For example, a Sexton may be unable to use an electric strimmer for a period following a shoulder operation but can still use the sit-on mowers and undertake some manual work.

An example of a workplace adaptation may be moving the employee's workstation to the ground floor following back problems and difficulty in climbing stairs.

The Council is not obliged to carry out the recommendations outlined by a GP on a Fit Note, however, if the Fit Note states that the employee is only fit to work provided the adjustments are in place, unless these adjustments are made, the employee will be deemed unfit to work and will therefore remain off sick and therefore remain entitled to receive sick pay. Should an employee return on a phased basis, it should also be borne in mind whether to pay the employee for the hours worked or to pay full contractual pay to encourage a quicker return to work.

Any medical capability dismissal which the Council undertakes without having first attempted to make adjustments and facilitate an employee's return to work may be deemed unfair and the employee may also have a claim for disability discrimination so recommended adjustments should always be taken into consideration.

National Agreement on Pay and Conditions of Service ('Green Book' Provisions)

If the Council abides by Green Book provisions, then an employee will be entitled to sick pay above statutory sick pay provisions.

The intention of Green Book provisions is to maintain normal pay during defined periods of absence due to sickness, disease, accident or assault.

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Under Green Book provisions, absence caused by normal sickness is separate from absence through industrial disease, accident or assault arising out of or in the course of employment with a local authority, so absence relating to normal sickness is not aggregated with periods of absence through industrial disease, accident or assault.

Under Green Book provisions, periods of absence in respect of normal sickness, such as flu, as opposed to periods of absence caused by industrial disease, accident or assault arising out of or in the course of employment, should not be offset against the other for the purposes of calculating entitlements under the scheme.

Under the Green Book sickness scheme, employees are entitled to receive sick pay for the following periods:

During 1 st year of service	1 month's full pay and (after completing 4 months service) 2 months half pay
During 2 nd year of service	2 months' full pay and 2 months' half pay
During 3 rd year of service	4 months' full pay and 4 months' half pay
During 4 th and 5 th year of service	5 months' full pay and 5 months' half pay
After 5 years service	6 months' full pay and 6 months' half pay

A local authority has the discretion to extend the period of sick pay in exceptional circumstances.

Any entitlement to sick pay under this scheme will be on a rolling twelve month period.

If an employee is entitled to full pay, then this will be inclusive of SSP. However, if an employee is entitled to a period of half pay, then this half pay will be in addition to SSP provided the total payable to the employee does not exceed normal pay.

If an employee is absent due to contact with an infectious disease, assault or injury arising out of or in the course of employment he or she is entitled to receive normal pay and any absence due to this should not be taken into account under the scheme.