



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.

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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:

The submission is made on behalf of RGDATA, the representative body for the independent retail grocery sector in Ireland

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

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?

The introduction of statutory sick pay will require regulation around the rate that an employer pays his or her employees under the scheme. Options to consider in this regard include:

- A fixed minimum rate of payment that would apply to employees.
- A fixed percentage of an employee's weekly earnings. The same percentage rate would be fixed for all employees, but the actual rate of payment received would then vary based on an employee's earnings. (Amongst EU member states who use this system the percentage can range from 25-100%)
- A payment rate based on the current illness benefit rates, potentially with increases for adult or child dependents.
- A payment rate that is tapered in line with different income bands.

The suitable and appropriate minimum rate of payment for any SSP scheme will be dependent on a range of factors, in particular the ultimate design of the scheme. Picking a figure out of the air, without having any regard for the cost and operational implications for employers, is a meaningless and premature exercise.

There are a couple of policy principles that should apply to the fixing of a suitable and appropriate minimum rate of payment when the design of the scheme has been settled;

- i. **It should be at a level that is affordable for the employer.**
- ii. **It should also recognise that an employer, particularly in the retail sector, will need to fund a replacement employee during a period of sickness – customers will continue to need to be served.**
- iii. **It should be structured in a way that facilitates an early return to work by the employee.**
- iv. **It should recognise that the cost of meeting absence due to sickness should be a shared burden between the Employer and the State and not be a cost solely imposed on the Employer.**
- v. **Illness Benefit under the PRSI system should continue to be available to workers after an initial qualifying period in terms of service and for specific days. Where an employer pays SSP beyond any initial qualifying period, Illness Benefit should be remitted to the employer to recoup costs.**
- vi. **Where an employer pays SSP to an employee, any such payment should not be subject to Employer PRSI.**
- vii. **The SSP should have effective controls to prevent any abuse of the Scheme.**
- viii. **There will also need to be some mechanism to facilitate exceptional events such as a global or national pandemic**
- ix. **There should also be robust mechanisms to support employers who cannot afford to pay any SSP.**

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.

The duration of absence to be covered by any statutory sick pay is also a factor of the overall design of the scheme and cannot be specified without any guidance on the potential cost of the scheme for employers. However the following policy principles should apply to the calculation of any duration of absence payment;

- i. **The duration should be for a period which is affordable for an employer and also recognise that different sizes and types of undertaking will have different capacity and affordability levels.**
- ii. **Any duration of payment also needs to recognise the payments that have been made by both employers and employees to PRSI schemes, which were made in the expectation that these schemes would provide illness benefit paid for by the State. This could be achieved by designing any scheme so that illness benefit kicks in after a cumulative period of absence covered by SSP in the previous 12 months.**
- iii. **The duration of any SSP payments should be subject to an overall cap in the amount of payments that can be made in a year. This would not preclude an employer extending the minimum period, but creating an excessive minimum duration each year, either on its own or in a combination of days over a 12 month period could risk being abused and viewed as an entitlement rather than a benefit.**
- iv. **The duration of a SSP needs to be viewed in the context of the impact on the employer and the relevant business. An employer in the retail sector will be facing substitution costs to cover the loss of manpower for the duration of a period of absence covered by SSP.**

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)

Again the overall design of the SSP scheme will need to be taken into account before commenting on specific elements or aspects.

For instance where the proposal is for a SSP to apply for the first 3 days of any absence over a 12 month period before Illness benefit is paid the extent of any waiting period might be reduced accordingly. However if the design of the SSP Scheme provided that SSP would apply for an extended period before illness benefit is paid, the extent of any waiting days would need to be adjusted.

Question 4: Certification of Illness

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

Again this very much depends on the overall design of the Scheme – for instance if the SSP Scheme applied for the first three days of any absence in a 12 month period, then casual absences might not require certification. However if the SSP Scheme is intended to apply for an extended period, then both the SSP and Illness Benefit would need to be certified.

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)

There are many elements of statutory entitlements which are service based and there is no objective reason as to why service period should not apply for eligibility for a SSP Scheme – again the detail of the Scheme would need to be assessed before offering a definitive view on this aspect as to the length of service required.

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?

It is difficult to comment on the specifics of this question without more information on the detail of what is proposed.

The key factor from a business perspective will be the impact on the costs of doing business and employing staff. The specific design of the Scheme will need to take account of potential cost impacts on businesses to see how they can meet the additional overheads in the context of prevailing and anticipated economic conditions. From this perspective (at the end of 2020) there is considerable uncertainty about many aspects of our domestic and economic conditions for the next 12 – 36 months, as businesses continue to grapple with COVID -19, Brexit and trading during challenging economic conditions . This is not the time to be increasing business costs and in particular labour costs.

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?

If a SSP Scheme is introduced, then there should be supports in place to assist employers that genuinely cannot afford to pay SSP to employees, either fully or in part.

Businesses face many different challenges based on their location, size, configuration, levels of debt, recent trading experience and levels of competition. Within the retail sector, most operators in the retail grocery sector operate on very low margins and any increase in business costs go straight to the bottom line. Labour costs are the highest costs for independent retailers who give considerable employment nationally- with close to 100,000 people working in independently owned stores. Their stores are also labour intensive, unlike the low employment format operating by some retailers, whose employment level per square metre is a scintilla of the contribution made by retailers.

If a SSP is established, it is key that any supports for employers who cannot afford to pay the rates is determined by a self assessment process. The experience of self assessment returns for Revenue and the recent EWSS provide ample comfort that a self assessment regime, with subsequent and risk based checks can work effectively. Strong penalties for any breach of the rules around the provision of supports will ultimately ensure compliance.

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?

From the perspective of RGDATA, the organisation does not believe that such programmes are either required or desirable. In such instances the position of the employees is governed by their employment agreements with employers. In a retail environment, where an employee has been absent due to long term illness, the employer will be keen to bring them back to work if they are capable and willing to work. Concluding such arrangements is best left to the parties involved given the issues involved (capacity to work, health and well being, existence of adequate work).

Any other comments:

It is important that the question of introducing a SSP is adopted from a position where it is recognised that the vast majority of employers have extremely good relationships with their employees and want to retain and reward them as part of a common enterprise. However it is also important to recognise some important considerations that apply;

- i. Businesses generally have been through a torrid 12 months and face another period of extreme uncertainty. Keeping any cost increases at a minimum level is a real priority for most businesses to survive.
- ii. There is not a one size fits all approach for businesses. Some businesses are highly profitable, operate in diverse markets and employ relatively few. Others are subsidiaries of international conglomerates, while most Irish retail businesses are SMEs, employing less than 50 people, working in a high cost and low margin environment. In terms of designing any SSP it is important to recognise and make provision for different scales and types of business structures and operations.
- iii. In order to make a meaningful input to the design and impact of any SSP it will be important to know the general elements of what is proposed. Commenting on specific aspects in isolation from a general scheme is meaningless.
- iv. It is also important that the State should not see the opportunity afforded by the SSP as a chance to reduce the cover provided by the Exchequer for Illness Benefit under the PRSI Scheme – this is a contract of insurance which has been funded by both employer and employee contributions and should be honoured as such.
- v. In terms of structuring any future SSP it would be very helpful to have some indicative detail of what is proposed at the earliest possible opportunity so that an impact assessment can be carried out to determine the likely consequences for businesses.
- vi. Critically, it is very important to recognise that employment costs impact on employment numbers. Measures which increase the cost of employment also act to disincentivise the recruitment of staff given the finite resources available to fund labour costs.
- vii. Finally, if the Government is going to legislate to bring forward measures which have the effect of increasing the costs of business, it is incumbent on the Government to examine what measures can be taken to reduce other operating costs. The proposal to introduce a new SSP comes at a time when the Government is looking at a new Living Wage and mandatory pension schemes. Businesses are not just a receptacle for increased State imposed business costs – any increase in costs damages competitiveness, attacks viability and damages investment as well as impacting on margins. There are plenty of areas where the State can play a role in reducing other operating costs, which could be offset against the increased costs imposed through any new SSP. These areas include Insurance Costs, Commercial Rates, regulated energy charges, and the cost of the regulatory burden are all areas where Government controls the levers of costs and can do more.