



## 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:

Restaurants Association of Ireland trade body representing Restaurants, Cafés, and Gastropubs in Ireland

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

[statutorysickpayconsultation@enterprise.gov.ie](mailto: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.

**Answer:**

## 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.

**Answer:**

No more than 2 working weeks should be paid by the employer followed by illness benefit from the state. In the case of part time employees this should be calculated by taking the average number of hours worked in the previous 13 weeks, similar to bank holiday calculations.



### 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)

**Answer:**

The minimum period that the employee is out sick from work before statutory sick pay applies should be 3 days in line with the Illness benefit system that will be in place from end of February 2021.

## Question 4: Certification of Illness

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

**Answer:**

Yes, sick pay, as is the case with State Illness Benefit must be certified by a registered medical professional body.

They should also be registered in Ireland and there should be a standardised form that is linked to the medical professional with specific areas required to be completed, not unlike the current IB1 form.

## 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)

**Answer:**

The length of service should be either a stated probation period (at the discretion of the individual employer) or if not stated then a period of no more than 2 years, in line with the state illness benefit.

## 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?

**Answer:**

- No minimum earning requirements but a minimum number of hours in the case of part time employment. Should only apply to those in Band C to H of the Employment Miscellaneous Provisions Act (Banded Hours) so will not apply in the case of an employee working on average less than 16 hours per week.
- Should apply to 18 to state pension age (as may be amended)

## 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?

**Answer:**

Whilst in principle we acknowledge the need for employees to have support in the instance of being unable to work due to ill health, it cannot be denied that employers in certain sectors and the restaurants and hospitality sector that we in particular represent are simply trying to survive currently. In 2020 Restaurants have experience between 2 and 4 (depending on county) significant restrictions on trade. Most are barely staying afloat with the existing government supports, including Wage Subsidy Schemes. With various reports including Tourism Ireland indicating the sector will not recover to 2019 levels until 2024, it is not the time to explore a blanket implementation of statutory sick pay.

## 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?

**Answer:**

Return to work forms should become a mandatory element of good HR practice upon an employee returning to work following long term sick leave. There should also be standardised templates for engaging with employees whilst on sick leave. Many employers wish to do right by sick employees off work but due to being unaware of the particular nature of an employee's sickness are unsure if they can engage with the employee, to offer assistance etc.

Any other comments:

