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## Statutory Sick, Statutory Maternity and Statutory Paternity Pay

Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP) and Statutory Paternity Pay (SPP) 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.

### 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 (£102 in 2011/12).

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 for the 2011/12 tax year is £81.60 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 normally have a daily rate of £16.32 for 2011/12.

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.

#### Recovery of SSP

Employers falling within the limits of the percentage threshold scheme can recover some of their SSP.

The general principle is that if in a tax month the SSP due is more than 13% of gross Class 1 national insurance contributions (NIC) the employer is entitled to a refund of the excess.

#### PAYE and records

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

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A record of payments for each employee will be needed for the completion of the PAYE end of year forms, where the employer has claimed a recovery of SSP using the percentage threshold scheme.

## 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 (MATBI)
- been employed continuously for 26 weeks up to and including her qualifying week
- had average weekly earnings (AWE) above the Lower Earnings Limit 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

SMP is payable for a maximum of 39 weeks. The date the baby is due, as shown on the MATBI 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% AWE (see below)
- up to a further 33 weeks at the lower of:
  - 90% of AWE
  - £128.73 per week for 2011/12

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 Lower Earnings Limit)
- 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. 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 NIC 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 for 2011/12 (previously 4.5%).

To qualify for SER, the current limits are:

- total gross Class 1 NIC 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 15<sup>th</sup> week before the week baby due.

The week baby due and QW are easy to establish from HMRC SMP tables or online calculators.

### Maternity Pay Period (MPP)

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

### MATBI

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 Statutory Paternity Pay.

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 Lower Earnings Limit in the relevant period.

### The amount payable

OSPP is payable for a maximum of 2 weeks, it must be taken as a block either 1 week or a complete fortnight but not 2 single weeks at the following rates:

- the lower of:
  - 90% of AWE
  - £128.73 for 2011/12

OSPP is treated as normal pay.

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

## Additional Statutory Paternity Pay (ASPP) and leave

Employees can start their additional paternity leave any time from 20 weeks after the child is born. The leave must have finished by the child's first birthday. A minimum of two weeks and a maximum of 26 continuous weeks' leave can be taken.

For an employee to qualify for additional statutory paternity leave they must:

- be the father of the baby and/or the husband or partner (including same-sex partner or civil partner) of a woman who is due to give birth or who has received notification that they have been matched with a child on or after 3 April 2011
- have, or expect to have, the main responsibility for the baby's upbringing, apart from any responsibility of the mother
- have at least 26 weeks' continuous employment with the employer ending with the qualifying week
- continue to work for you from the qualifying week into the week before they wish to take additional paternity leave - weeks run Sunday to Saturday
- be taking the time off to care for the baby

The baby's mother must also:

- be entitled to statutory maternity leave, SMP or maternity allowance
- return to work at least two weeks after the child's birth, but with at least two weeks of unexpired statutory maternity leave entitlement remaining.

ASPP is payable to eligible workers who meet the eligibility criteria for additional paternity leave and:

- they are taking time off to care for their child during their partner's 39 week SMP period
- their partners have returned to work

The current rate is the lower of either:

- the standard weekly rate - £128.73 for 2011/12
- 90 per cent of their average weekly earnings

## 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 lower rate of SMP and follows the same rules with regard to recovery.

## How we can help

As the schemes 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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