

Technical factsheet T16 – Statutory Sick Pay (SSP)

This factsheet provides an overview of Statutory Sick Pay (SSP) and who can receive it. It explains how SSP affects entitlement to Employment and Support Allowance (ESA).

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Overview of Statutory Sick Pay (SSP)

■ What is SSP?

SSP provides a measure of earnings replacement for employees unable to work because of short-term illness or disability. The SSP scheme is administered and paid for by employers. They have a statutory liability to pay SSP for up to 28 weeks to any employee:

- who is incapable of work under their contract of service for four or more days in a row and
- satisfies the qualifying conditions.

The DWP are responsible for SSP policy and HMRC are responsible for administration and compliance.

SSP cannot be claimed and paid at the same time as ESA. If a person has a day of entitlement to SSP, this cannot also be a day of entitlement to ESA.

Depending on circumstances a customer may be entitled to claim IS at the same time as SSP to top up the SSP payment

■ Entitlement to SSP – Which customers can qualify for SSP?

SSP should be paid to all employees who meet both of the following conditions:

- employees who are sick for at least four or more days in a row, including weekends, bank holidays and non-working days. This is known as the Period of Incapacity for Work (PIW).
- employees with average gross weekly earnings of at least equal to the Lower Earnings Limit (LEL).

An employee is a person whose earnings attract liability for Class 1 National Insurance contributions, or would if their earnings were high enough.

Earnings are averaged over an eight week period before their sickness began.

Restrictions that prevented payment of SSP to Agency Workers whose contracts were for 3 months or less have now been removed.

Employers and SSP

■ **Disputes – What if an employee disagrees with their employer’s decision not to pay SSP?**

If an employee disagrees with their employer’s decision not to pay SSP, they can raise a dispute through the HMRC office to decide the matter.

For details of the complaints process, contact the HMRC National Insurance Enquiry Line or go to the HMRC website.

■ **Problems with claiming ESA – what problems with claiming ESA may arise?**

ESA cannot be paid where there is possible entitlement to SSP. If an ESA claim cannot be progressed because SSP appears to be payable, employees should make reasonable efforts to discuss this with their employer. Normally there should be evidence of:

- at least three attempts at contact, or
- three discussions with the employer.

If the employee cannot resolve the matter, the claim will be referred through Jobcentre Plus (JCP) to the HMRC Disputes Team as a Benefit Involved Case (BIC) to be resolved. The BIC file should include:

- employer details
- employee details
- a summary of the facts, and
- copies of any correspondence (including form SSP1), communications and attempts at contact.

■ **Form SSP1 – what is it and how does it work?**

Form SSP1 is issued by employers to employees if SSP is ending or if it cannot be paid. If it is known in advance that the customer will receive the maximum period of 28 weeks of SSP the employer can issue form SSP1 up to six weeks before the end of SSP.

If an employee continues to receive some form of pay from their employer after 28 weeks e.g. occupational sick pay, they may still claim ESA. They will need a form SSP 1 from their employer.

Form SSP1 is divided into five parts:

- Part A includes information about the employee
- Part B states the date from which SSP has been ended or cannot be paid and the reason why. At least one box must be completed to explain why SSP has ended/cannot be paid
- Part C is about medical certificates
- Part D includes the employer's declaration that all the supplied information is correct
- Part E contains reasons why they cannot get SSP.

SSP is paid for no more than 28 weeks. After this if the employee still has Limited Capability for Work (LCW) they will need to claim ESA. The employer will complete and issue form SSP1 to the employee.

If an employee has more than one employer, a form SSP1 is required from each employer.

The completed form SSP1 should be sent to the Benefit Delivery Centre (BDC) as soon as ESA is claimed, as the claim to ESA will not be processed until the information is received.

Effect of SSP on ESA Entitlement

■ How does SSP affect entitlement to ESA?

ESA cannot be paid during any period when there is entitlement to SSP, and can only be paid when SSP stops or is not payable. For ESA purposes, the important date is the last date for which entitlement to SSP ceases.

Also note that entitlement to ESA can affect SSP in the following circumstances:

- ESA 12-week linking provision - if a customer is entitled to return to ESA, they are not entitled to SSP
- ESA 104-week linking is a similar provision that will remove entitlement to SSP
- if a customer has an Incapacity Benefit (IB) linking provision, this will continue to exclude them from SSP and IB will be payable.

■ Overpayment of SSP – what happens when SSP is overpaid?

If an employer pays SSP when it is not due, the employee should be issued with form SSP30, preferably after speaking with the employer to agree the overpaid period. This form comprises:

- Part A - completed by the employer, confirming that they have overpaid SSP.
- Part B - completed by the employee, indicating that they wish to claim ESA for the period of overpayment.

The employer may consider recovery of the incorrectly paid SSP from the employee, but this is a matter between the employer and employee.

■ What are the time limits for a customer claiming ESA?

The normal three-month time limits for claiming benefit apply.

The time limit is calculated from either:

- the date the employer issued the form SSP1, in cases where there is no entitlement to SSP or
- the date the claim was received if SSP was payable.

■ **SSP1 – What date of claim applies?**

If the ESA claim is received within the three month time limit, then the Date of the claim is the day following the last day of SSP.

Example 3

The employee received SSP for the period up to and including 29 October 2008. ESA is claimed from 30 October 2008. The customer submits form SSP1 to the BDC on 13 November 2008. The claim is within the time limits and can be considered as taking effect from 30 October 2008.

Example 4

The employer notifies the customer that their contract of employment ended on 10 January 2010. Form SSP1 is issued on 10 January 2010, ESA is claimed from 16 September 2009 and the claim is received on 07 February 2010. SSP is paid up to 15 September 2009. The claim was received by the BDC outside the time limit and can only be backdated to 07 November 2009.

The normal three-month time limit will still apply even when an employer overpays SSP and the employee claims ESA from the day after SSP should have ended.

■ **SSP1 – What happens when there is no entitlement to SSP?**

There may be cases where no entitlement to SSP exists, and an employer delays issuing form SSP1 so the claim is made more than three months after the date of entitlement. In such situations, the customer should not be penalised so you can ignore any days up to and including the day the employer has signed their part of form SSP1. The claim is treated as being made on this date provided the customer makes their claim to ESA within three months of the date the employer informed them that they were not entitled to SSP.

Example 5

The employer notifies the customer that there is no entitlement to SSP on 07 November 2008. The first day of LCW is 30 October 2008. The customer submits a claim for ESA on 20 January 2009. The claim is within the time limits and can be considered from 30 October 2008.

Example 6

The employer notifies the customer on 07 February 2009 that there is no entitlement to SSP. The first day of LCW is 30 January 2009. The customer submits a claim for ESA on 20 July 2009. The claim is received outside the time limit and can only be considered from 20 April 2009.

Example 7

The employer notifies the customer that there is no entitlement to SSP on 15 May 2009. The first day of LCW is 30 January 2009. The customer submits a claim for ESA on 22 May 2009. Although the employer issued form SSP1 to the customer more than three months after the first day of incapacity, the claim can be considered from 30 January 2009.

Disclaimer

This leaflet is only a guide and does not cover every circumstance. We have done our best to make sure that the information in this leaflet is correct as of December 2008. It is possible that some of the information is over simplified, or may become inaccurate over time, for example because of changes to the law. Names in the examples have been used for illustrative purposes only. The rates mentioned in these factsheets are applicable to December 2008 and may change thereafter.