



Thomas More Chambers

Statutory Sick Pay (SSP) Changes in Response to Covid-19

Precis of changes:

- SSP for coronavirus now paid on first day of incapacity, rather than fourth.
- Incapacity covers employees who are directly sick, as well as those self-isolating because a member of their household is showing coronavirus symptoms.
- Also covers those particularly vulnerable employees who have been advised by Public Health England to 'shield' themselves.
- Small and medium businesses (250 employees or less) will be able to reclaim 14 days of SSP paid to employees from the Government.

This article outlines the changes to the SSP framework that have been introduced in response to the COVID19 pandemic.

Summary of SSP rules prior to the pandemic

The rules on SSP require that an employee be absent from work due to incapacity. Incapacity is defined in section 151(4) of the Social Security Contributions and Benefits Act 1992 as covering those situations where an employee is "*incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do so*" under a contract of employment.



The period of incapacity for work is four consecutive days where the employee is incapable or deemed to be incapable to work. The first three days are counted as 'waiting days'.

If an employee is sick for seven or more consecutive days, the employer can ask for evidence of this, which is usually provided in the form of a 'fit note'.

SSP itself is the *minimum* level of pay required by statute for such employees. Many employers provide higher rates of sick pay under the contract of employment. Contractual sick pay is not affected by the changes.

The UK Government has brought in changes to the SSP system outlined above by way of [the Statutory Sick Pay \(Coronavirus\) \(Suspension of Waiting Days and General Amendment\) Regulations 2020](#). These Regulations came into force on 28 March 2020.

The changes

These Regulations makes two major changes to the rules for qualifying for SSP.

First, the concept of 'incapacity' has been expanded. For the first time ever, SSP can be paid to people who are not themselves ill. While it covers employees who are displaying any of the symptoms of coronavirus, it also covers all employees who are self-isolating because a member of their household has symptoms. Members of this second group are deemed to be incapacitated for the purpose of claiming the benefit.

This encompasses all those who are self-isolating "*in such a manner as to prevent infection or contamination with coronavirus*". As required by Government guidance, this period of self-isolation for affected members of a household covers 14 full days.

The Schedule to the 2020 Regulations is clear, "*however mild*" the symptoms of any member of the household, an employee will become eligible for SSP. The Schedule defines the specific coronavirus symptoms as a continuous cough, a high temperature, both, or any other symptom as specified at a later date by the relevant chief officers.



It should be noted that, at the time of writing, other suggested symptoms of Covid-19 such as loss of taste or smell would not qualify under the 2020 Regulations, as they have not been specified by the relevant officers.

By the [Statutory Sick Pay \(General\) \(Coronavirus Amendment Regulations\) 2020](#) the Government has also made eligible for SSP all those particularly vulnerable employees who have been advised by Public Health England to 'shield' themselves for 12 weeks. These Regulations came into effect on 13 March 2020.

Second, normal entitlement to SSP does not normally begin until an employee has been off work due to incapacity for three days. Day four is when the employee usually becomes eligible for the benefit.

The Regulations disapply the 'waiting days' rule and SSP can be claimed from day one. There are strong policy reasons for the Government to encourage workers who may have been exposed to Covid-19 to stay at home and follow other Public Health England guidance. Paying SSP from the first day could be seen as a decision to incentivise employees to not come to work with symptoms.

Traditional fit notes have also been replaced. The typical route to authenticate a period of incapacity was to obtain a fit note from the GP. The Confederation of British Industry (CBI) recently called for the requirement to be abolished. Owing to the pressures of the situation the Government, on 20 March 2020, launched [online isolation notes](#). Where evidence of self-isolation is required, the Government stated that these should be obtained through NHS 111 online.

The rate that SSP is paid at rose on 6 April 2020 to £95.85 per week, a planned rise unrelated to the pandemic.

Who remains ineligible?

The following groups are ineligible for SSP: the self-employed and those earning below the lower earnings limit (£118 per week). A 2019 Government consultation suggested that up to 2 million workers may not meet this earnings limit, many of whom



work in the so-called 'gig economy'. This position remains unchanged by the 2020 Regulations.

Instead, the Government has extended eligibility for Universal Credit or Contributory Employment and Support Allowance to these groups.

Small and medium businesses

One of the most important and practical developments relating to SSP to bear in mind is the expected measure allowing small and medium businesses to reclaim two weeks' worth of SSP paid out to employees who have claimed it because of coronavirus. The reason for the two weeks cap is probably because this covers the 14 days of self-isolation if a member of the household displays symptoms of Covid-19.

Small and medium businesses are those with 250 or fewer employees. (as of 28 February 2020). These businesses will be able to back-date claims to 13 March 2020. As with other Government schemes, such as the forthcoming Employee Retention Scheme, keeping records will be essential for businesses.

As at today's date, 14 April 2020, this proposal has not yet been implemented in law. The power to do it is contained in the Social Security Contributions and Benefits Act 1992 which gives a power to the Secretary of State to make orders specifying circumstances in which employers can reclaim SSP from the Government. The official guidance currently online states that HMRC 'expects' the law to change and promises to update the guidance once it has done.

14 APRIL 2020

**MANUS EGAN
PATRICK WISE-WALSH (Pupil)
THOMAS MORE CHAMBERS**



In these unprecedented times the Thomas More Chambers Employment Law Team understands the importance of working closely with all our professional clients to best serve the needs of our mutual clients under difficult circumstances.

The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues, including those arising from the Covid-19 pandemic. We are well used to working remotely and can arrange for confidential telephone or video conferences and meetings on a variety of platforms with you and our mutual clients. In addition, we all are well used to paperless working and to dealing with remote hearings and are always happy to assist in setting them up.

Equally important during these times is an appreciation of the practical reality of the court system and what it can currently offer and the priority being given to urgent business in relation to children and domestic violence. We can provide urgent advice in relation to whether an application is likely to come within the criteria to enable an urgent hearing to be obtained.

The Thomas More Chambers Employment Law Team is able to assist instructing sources on any employment law issues arising from the coronavirus crisis. If you need such assistance, please contact Craig Brown, Senior Civil Clerk on 020 7404 7000 or at cbrown@thomasmore.co.uk.

No responsibility for the accuracy and correctness of this article, or for any consequences of relying on it, is assumed by any member of Thomas More Chambers. The information and commentary does not, and is not intended to, amount to legal advice and the writers do not intend that it should be relied upon. You are strongly advised to obtain specific personal advice from a lawyer about any legal proceedings or matters and not to rely on the information or comments in this bulletin.

