



## HR Broadcast – Challenging SSP

Very often I get asked the question; do I have to pay statutory sick pay (SSP)? My answer is usually (but not always) the same - yes!

If an employee meets the SSP eligibility requirements, in most circumstances it has to be paid. However, there are some situations where entitlement can be challenged.

In normal situations, when an employee is off sick for at least four days in a row and they meet the eligibility criteria, the employer will start paying statutory sick pay (SSP) from the fourth “qualifying day” of sickness absence. The first three days are classed as “waiting days”, and you do not have to pay SSP on these days unless the employee has been off sick and receiving SSP in the last eight weeks.

However, there are a few circumstances where you can withhold SSP;

1. Where your employee has failed to comply with your sickness absence reporting requirements. Your employee must tell you they are sick within a time limit that you can set, either in the contract of employment, in your staff handbook or by a standalone policy document (or within seven days if a time limit has not been set). Most well-drafted sickness absence policies will require the employee to report their sickness absence on the first day at the earliest possible opportunity but for SSP purposes you cannot insist they tell you in person.

2. Where your employee was late in telling you about their incapacity, unless there is a good reason for the delay. It is important to note that this relates to reporting sickness absence internally and not providing the evidence to support it, such as a fit note. After seven days off sick you can ask your employee for a fit note from their doctor but you cannot withhold SSP if they're late sending this to you. They may simply have been unable to get an earlier appointment with their doctor.
3. Where you have sufficient evidence to doubt that the employee's incapacity is genuine. This is a tricky one because you must have reasonable grounds for believing this and you cannot rely on gossip. It is possible that there is a genuine explanation as to why they are out and about; going for a walk does not mean they are necessarily fit for work. I have come across cases where an employee has two jobs and they were unfit to do one job but fit to do another. Likewise, being off work with sickness does not always prevent an employee from going to the pub, using a gym or doing their shopping. You have to be sure of the facts.

If you do decide to stop paying SSP to your employee, then advice should be taken and they are then entitled to a written statement from you explaining your decision.



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However, as you might expect, where you refuse to pay SSP to an employee and they disagree with your decision, they do have an appeal mechanism. This is the form of seeking a formal decision on their entitlement to SSP from HMRC. The employee must phone HMRC's Statutory Payment Disputes Team. You need to be aware that HMRC has the power to impose a civil penalty on you of up to £3,000 for a refusal or failure to pay SSP where it was properly due. Therefore please take great care before you withdraw SSP, make sure you have a very good reason for taking this action, make sure that you have your facts correct and ensure that you send a well-documented letter to your employee stating your reasons.