

Statutory Sick Pay

Statutory Sick Pay (SSP): Frequently Asked Questions for employees with variable hours and different contracts



Department
for Work &
Pensions

Scenario 1: Variable Hours or Zero-Hours Employees

An employee is on a zero-hour contract. Their working hours and days vary from week to week depending on what the employee accepts.

Gov.uk Guidance:

You only need to pay SSP for qualifying days. These are the days that your employee normally works (their contracted working days). You can decide not to use contracted working days, for example, if your employee works a different pattern each week.

If you cannot agree the qualifying days with your employee, they are worked out as follows:

- if you and your employee agree which days they are required to work under their contract, those days are the qualifying days
- if you both agree that there are no working days in any week, Wednesday becomes the qualifying day
- if you cannot agree which days are working days in a particular week, every day is a qualifying day except days you both agree no employees would be required to work

Further guidance:

- [Work out your employee's Statutory Sick Pay manually - GOV.UK](#)
- [Statutory Sick Pay: how different employment types affect what you pay - GOV.UK](#)
- [SPM110600 - Statutory Sick Pay \(SSP\): general information - qualifying days \(QDs\) - HMRC internal manual - GOV.UK](#)

Q1. Are qualifying days based on future scheduled work, historical working patterns, or the employment contract?

Answer:

This will usually depend on the contract. Where qualifying days are specified in the contract, those days should be used. This will mean that if the employee has agreed the days on which they work (e.g. are on the rota) then those days will be their qualifying days. This applies even if they are put on the rota after they fall ill.

Where qualifying days are not specified, qualifying days should be determined using the relevant SSP rules (guidance outlined above). If the employee and employer have agreed the days the employee is required to work, those days will generally be their qualifying days. If, for example, the rota is released before the employee falls ill and they are not scheduled to work, then the Wednesday is their qualifying day. If the rota has not yet been released when they fall ill and they are subsequently removed, then every day of the week will be the qualifying day (except those where no other employee works).

Q2. Do employees with no fixed working days automatically have qualifying days every day of the week?

Answer:

Not necessarily. Qualifying days should be determined according to the employee's contractual arrangements and any agreed work patterns. Where no specific qualifying days have been agreed, the default SSP rules (outlined above) should be applied.

Q3. Can an employee receive SSP for a day on which they were not scheduled to work?**Answer:**

Potentially, depending on how qualifying days are determined. Eligibility for SSP is based on qualifying days rather than simply whether work was scheduled on a particular day. If the rota is released before the employee falls ill and they are not scheduled to work, then the Wednesday is their qualifying day (and that is the day on which they would be entitled to SSP if they called in sick).

If the rota has not yet been released when they fall ill and they are subsequently removed, then every day of the week will be the qualifying day (except those where no other employee works).

Q4. Does the employer have to pay SSP if an employee goes off sick on a particular day they agreed to work that is not one of their normal contractual qualifying days?**Answer:**

If the contract includes specific provision regarding qualifying days then, provided there is at least one qualifying day in the week, those are the days the employee is due SSP.

Q5. Can qualifying days be based on hours an employee accepted work rather than days worked?**Answer:**

Qualifying days must always be based on days, not hours.

Q6. What records should be kept to show that qualifying days were recorded correctly?**Answer:**

There is no set way that qualifying days should be recorded, this can be verbally agreed or written down in some form.

Q7. Are zero hours workers ever eligible for SSP when they don't have assigned hours?**Answer:**

Employees without guaranteed hours may still qualify for SSP if they meet the relevant eligibility conditions and qualifying days can be established under SSP rules. If the employee has agreed the days in which they work (i.e. are on the rota) then those days will be the qualifying days. This applies even if they are put on the rota after they fall ill.

Q8. Are qualifying days determined the same for zero hours staff that work one day and then go off sick?**Answer:**

Yes. The same principles for determining qualifying days apply.

Q9. How should agreements around working arrangements be evidenced?**Answer:**

This should be recorded in a manner that is accessible to both employer and employee, this evidence may be requested by HMRC if there is a dispute regarding SSP payment.

Messages sent using informal messaging platforms can be used as evidence.

Scenario 2: Guaranteed Hours with Additional Variable Work

An employee is on a guaranteed hours contract, meaning they are contracted to work a minimum number of hours but regularly works additional hours on a voluntary or flexible basis. This means their hours works are usually higher than agreed in their contract.

Q10. Should SSP entitlement be based on contracted hours, agreed hours, or actual earnings?**Answer:**

SSP entitlement and calculations are based on actual earnings in accordance with SSP rules and average weekly earnings calculations.

Scenario 3: Complex Pay Arrangements

An employee's pay includes multiple components such as; pay for time with the people they support, travel allowance to cover travel costs (like mileage) and payments that cover sleep-ins. For some of the hours they work, they receive enhanced pay for unsocial hours.

Q11. What counts as earnings when calculating SSP entitlement?**Answer:**

Broadly speaking, 'earnings' means gross earnings and includes any remuneration or profit derived from a person's employment. This would include any payments that would attract Class 1 National Insurance contributions.

Mileage payments and salary sacrifice do not contribute towards the AWE.

However, all other elements should be combined into one average weekly earnings calculation.

Scenario 4: Rotating or Multi-Week Working Patterns

An employee follows a rota pattern that differs from week to week.

Q12. Can qualifying days vary across different weeks in a rota cycle?**Answer:**

Yes, if an employee works a rota system covering several weeks the Qualifying Days in each week of the rota may be different. However, the employee and employer may agree (in their contract) that the same days in every week are Qualifying Days.

Q13. Can the daily SSP rate vary between weeks?**Answer:**

Yes. The daily rate of SSP depends on the number of qualifying days in a particular week and therefore can vary week by week.

Q14. If an employee has agreed qualifying days but would not normally work on some of those days, is SSP still payable?**Answer:**

If the employee is sick on an agreed qualifying day and all other eligibility conditions are met, SSP may be payable on that day.

Scenario 5: Zero Hour Employees, e.g. “Bank” Staff

An employee undertakes work on an ad hoc basis and may have long periods without accepting or being offered work.

Q15. Are zero-hour employees such as ‘bank’ staff treated the same way as other employees with variable or zero-hours arrangements? How are qualifying days and pay determined?**Answer:**

Where bank staff are employed under similar contractual arrangements as zero-hour contract employees, the same SSP principles generally apply, including the approach to determining qualifying days.

Q16. If a zero-hour employee/‘bank’ staff member has worked for three months and goes off sick, do you have to pay SSP? Do you have to pay SSP whether or not they have scheduled and agreed work?**Answer:**

Yes. Bank staff will be entitled to SSP from their first day of employment with an employer once some work has been done under that contract. For an employee with less than 3 months service, SSP continues until the end of any period the employee agreed to work. For an employee with 3 months or more service, an employee is treated as having a permanent contract, unless their contract says otherwise. This means that eligibility continues for the entire period of incapacity for work, with some exceptions.

Scenario 6: Assignment-Based Working Arrangements

An employee accepts individual assignments or placements and may have extended periods between them. Payment of SSP depends on the contractual arrangements and whether there is a continuing employment relationship. The specific circumstances of the employment arrangement should be considered in each case.

Further guidance can be found: [Statutory Sick Pay: how different employment types affect what you pay - GOV.UK](#)

Scenario 7: Overnight or Sleep-In Working Arrangements

An employee undertakes overnight duties and receives a combination of allowances and pay for work performed. They are paid an allowance for sleeping nights plus an hourly rate for any hours where they have to be awake and working. They may go several weeks without working and then work a few weeks in a row.

Q17. Does an overnight shift count as more than one qualifying day?**Answer:**

No. A single shift would not normally create more than one qualifying day. An employee who works overnight covering two days will only receive SSP for the first day assuming they return to work for their next shift.

Q18. Can overnight allowances count as earnings for SSP purposes?**Answer:**

If the payments are subject to Class 1 National Insurance contributions, they are generally included in earnings for SSP calculations.

Q19. Are bank staff treated as permanent employees even when they don't accept work? Can they call in sick even when they have no work allocated?

Answer:

This will depend on their circumstances. Bank staff will be entitled to SSP from their first day of employment with an employer once some work has been done under that contract.

General Questions

Q20. Is it correct that that people who work fewer days get paid more SSP? And people working multiple jobs could receive SSP from each employer?

Answer:

The amount an employee receives in SSP is the weekly rate, divided by the number of qualifying days in a week and multiplied by the number of qualifying days the individual is off sick.

Those with multiple employers have always been able to receive SSP from multiple employers, assuming that they are incapable of work with them, this has not changed.

Q21. Why can some part-time employees receive a higher proportion of their usual earnings through Statutory Sick Pay than full-time employees?

Answer:

The way SSP is calculated can lead to differences in entitlement between those who work fewer days and those who work more days each week. This arises from the long-standing structure of SSP and the way it operates. Employees can have very different working hours, shifts and contractual arrangements. The current approach provides a simple and consistent system that can be applied across a wide range of working patterns. While this means the impact of SSP can vary in specific circumstances, it ensures that entitlement is clear and straightforward for both employers and employees.