

## Chapter 9

### STATEMENT OF FITNESS FOR WORK (DOCTOR'S NOTES), SICK PAY AND STATUTORY SICK PAY

**Section 1** : **Statement of Fitness for Work  
The Health and Work Service**

**Section 2** : **Sick Pay**

**Section 3** : **Statutory Sick Pay**

#### 9.1 Statement of Fitness for Work

A doctor can advise an employee that they:

are unfit for work or

may be fit for work

“May be fit for work” will mean that the doctor thinks that the patient’s health condition may allow them to work if they get suitable support from their employer.

The Government’s advice on this can be accessed at [www.dwp.gov.uk/fitnote](http://www.dwp.gov.uk/fitnote)

#### **Not fit for work**

This means that the doctor has assessed that the employee is not fit to work – this is the same as the old sick note.

#### **May be fit for work taking account of the following advice**

The doctor has assessed that the employee’s condition does not necessarily stop them from returning to work – for instance that they can return to work but may not be able to complete all their normal duties or may need an adjustment such as amended working hours.

The doctor may suggest the following as a way of helping the employee get back to work:

- a phased return, being a gradual increase in the intensity of work or their working hours
- altered hours, perhaps being reduced hours or a changed start time
- amended duties, for example, removing heavy lifting for someone with a back problem and/or
- workplace adaptations, for example, moving someone to work on the ground floor when they normally have to go up steps

Where an employer does not understand or is unsure as to how to act upon recommendations from a doctor on the Statement then the employer should discuss it with the employee as the employee may have more information. The employer could also seek advice from the employee’s GP or may decide to seek advice from an occupational health specialist. The NTF can put trainers in contact with an occupational health specialist.

### **Period of “may be fit for work”**

The doctor can state on the form the period that the advice covers – which during the first 6 months of sickness can be up to a maximum of 3 months. If the advice is that it covers a number of days, this will be the calendar period, not working days.

If the employee is able to return to their normal duties either during this period or at the end of the period they do not need to obtain another Statement from their doctor.

The doctor may also put down precise periods.

### **Whether employee needs to see the doctor again**

The Statement contains provision for the doctor to state whether or not they need to see the employee again. If the doctor does not need to see the employee again then it would normally be the case that the employee will return to work or their usual duties at the end of the Statement period.

### **Employer's action on receiving a “may be fit for work statement”**

The employer should meet with the employee and see if the changes suggested by the doctor can be made.

If the changes can be made the employer should:

- agree what changes are being made
- agree a return to work date
- agree a date to review
- discuss effect on pay (if applicable)
- discuss effect on RIABS (if applicable)
- carry out a revised workplace risk assessment based on the evidence from the doctor
- record the above in writing

If after meeting with the employee, the employer cannot make the changes to support the employee in a return to work, the employer should

- use the Statement as if the doctor has advised “not fit for work” and pay the employee appropriately for sickness absence (note the employee does not need to return to the doctor for a new statement to confirm this)
- agree a date with the employee to review the situation depending on why the employer cannot make the adaptations or adjustments

### **Can an employer refuse to follow the doctor's recommendations**

The employer should consider the recommendations but if the employer cannot reasonably make the adaptations or adjustments to help a return to work or because there are industry or sector guidelines or regulations that the doctor may not be aware of, then the employer will not have to make the adjustments or adaptations.

However, employers do need to be aware that ignoring a GP's recommendations or failing to properly consider the recommendations could lead to a claim for constructive and/or unfair dismissal, personal injury and/or disability discrimination.

Under the Equality Act, it is unlawful not to make any reasonable adjustment that may enable a disabled person to return to work or to continue working. Information on the Equality Act can be found in Chapter 12 of this guide and also on the Department of Work and Pensions website ([www.dwp.gov.uk](http://www.dwp.gov.uk)) .

Employers should seek advice from the NTF or other specialist adviser if they are unable to make a workplace adjustment to enable an employee to return to work as outlined in the doctor's recommendations

### **Employee returning before the end of an “unfit for work statement”**

If an employee decides that they are able to return before the end of a statement period where a doctor has advised that they are not fit for work, then it is up to the employer to agree with the employee that it is appropriate for the person to return to work. The employee does not need to wait until the end of the Statement period.

It should be noted that the new form does not include an option for doctors to advise someone that they are fully fit for work. If any employer feels that they need a medical opinion stating that an employee is fit to carry out their role safely, then the employer will need to arrange that privately on a paid basis with a GP or with an occupational health specialist. The NTF can put trainers in contact with an occupational health adviser.

### **Insurance**

An employer's liability insurance should not prevent employees who may be fit for work from returning – if an individual trainer has any concern on this, then they should contact their insurer.

### **Pay whilst working under a “may be fit for work statement”**

See paragraphs 9.2.1 and 9.2.2 below.

## **9.1.1 The Health and Work Service**

The Government is introducing a new Health and Work service, in some areas in late 2014 and across the country in 2015. This will provide occupational health advice and support for employees, employers and GPs with the aim of helping those with a health condition to return to work.

There will be two elements to the service. The first is assessment once an employee has reached or is expected to reach 4 weeks of sickness absence they will normally be referred by their GP for an assessment by an occupational health professional who will look at the issues preventing the employee from returning to work. The second element will be advice through a phone line and website.

Following an assessment, the employee will receive a return to work plan with recommendations to help them return to work more quickly and information on how to get appropriate health and advice.

Currently there is some occupational health advice from Government services, contact details as follows:

- England – Health for Work website only
- Scottish Healthy Working Lives Adviceline – 0800 019 22 11
- Healthy Working Wales Adviceline – 0800 107 0900

## **9.2 Sick Pay**

An employer has a legal obligation to pay Statutory Sick Pay (SSP) and to keep records. For more information on SSP see section 3 of this chapter.

The NTF/NASS agreement (**Chapter 1 Appendix 1**) sets out the agreed terms on sick pay for stable staff and these are explained at points 9.2.1 and 9.2.2 below. :

### **9.2.1 Employee off due to illness**

If the employee has been with the employer for under 6 months, then SSP only is paid for up to a maximum of 28 weeks. The weekly rate of SSP with effect from 1<sup>st</sup> April 2010 is £79.15. See section on SSP for details of eligibility. This is paid from the fourth day of absence. The rate of SSP goes up on 1<sup>st</sup> April each year although it did not increase in April 2010.

If at the start of the absence, the employee has been with the employer for 6 months or more, then the employee is entitled to normal wages for one month's sickness absence in any one year. The three qualifying days still apply before the normal wages are paid. Once that entitlement has been used up, the employee reverts to SSP only.

Where an employee is ill and the doctor has issued a "may be fit for work statement" then:

If the employee would be entitled to normal wages if off ill, then logically the employee should be paid their normal wages for the reduced hours or restricted duties, as otherwise there is little incentive for the employee to return to work. It is important that employers manage this appropriately.

If the employee would only be entitled to SSP if off ill (i.e. where the employee has less than 6 months service or has already used up their entitlement to normal wages whilst off sick), it is for the employer and employee to agree how the employee will be paid – whether it will be normal pay or whether the employee will just be paid for the hours worked. It is advisable to record what has been agreed in writing.

Where in such a case the employee is off due to an accident outside of work which has been caused in the employer's reasonable opinion by the employee being involved in fighting, drunken behaviour or abuse of drugs, the employer can refuse to pay normal wages and just pay SSP.

If the period of absence is linked under the SSP regulations to a previous absence, then the three qualifying days for normal wages do not apply.

These are the minimum requirements and employers can pay normal wages for longer if they wish – trainers should be consistent and non-discriminatory if deciding to pay wages for longer.

### **9.2.2 Employee off due to accident at work**

Regardless of how long the employee has worked for the employer, the employee will be entitled to one month of normal wages if off injured for that length of time. After one month, SSP only is payable by the employer. The three waiting days do not apply when the employee is off due to an accident at work.

Alongside this, the employer should submit a claim to the Racing Industry Accident Benefit Scheme which tops up the individual's wages whilst they are off as a result of an accident at work.

When submitting the RIABS form, the employer should enclose a note from the employee authorising that the RIABS money be paid to the employer for the period during which normal wages are being paid. In this way the employer receives partial reimbursement of monies paid whilst the employee is off injured.

In the event of an employee being issued with a "May be fit for work" note by their GP, RIABS will respond in one of two ways:

1) If the employer is unable to adapt work duties and hours, then RIABS will accept the claim for weekly benefits as being for Temporary Total Disablement, and payment will be made in full subject to all other qualifying criteria.

2) If the employer is able to adapt work duties and hours, but this results in a reduction of the employee's net weekly wage, RIABS will pay the difference between pre accident and post accident net wage. Again, this is subject to qualifying criteria. This applies both to new claims, and ongoing claims where the employee is recovering and the doctor has changed the type of note issued.

It is essential that the claims managers, SLS Crawford, are kept fully advised on claims where persons are working but at reduced capacity to ensure that benefit payments are adjusted accordingly

### **9.2.3 Conditional and apprentice jockeys**

The same conditions apply with regard to the employer paying normal wages whilst off sick or injured as outlined above. Any holder of a jockey's licence who has not had more than 74 rides in the previous season is covered by RIABS for accidents at work other than for race riding accidents or when he or she is at the races in a race riding capacity. Such accidents will be covered by the Professional Riders Insurance Scheme (contact number 01635 45707)

Where an apprentice or conditional has had 75 rides in the previous season, he or she will not be covered by RIABS for any accident at work and instead will be covered by PRIS.

### **9.2.4 Position if employer doubts the genuineness of a self certification certificate**

The employer is entitled to investigate the matter and decide whether or not to accept it.

### **9.2.5 Position if an employer doubts the genuineness of a doctor's statement**

The employer is entitled to investigate the matter but unless there is other proper medical evidence or medical opinion the doctor's certificate should be accepted as genuine.

If an employer decides that a claim is unjustified the employer may withhold SSP but must give the employee a statement showing for which days the employer is paying SSP and how much, for which days it is being withheld, and the reason for it being withheld. See section 9.4 of this chapter on SSP for further details.

## **9.3 Other Absence**

Such as a failure to return from leave or where the absence is unauthorised, not for sickness or injury and there is no good reason for the absence, the employer should consider whether there are grounds for disciplinary action and if so the normal disciplinary procedure should be used.

### **9.3.1 Sick leave and holiday entitlement**

#### **Sickness and pre-booked holiday**

A recent (2009) European case has stated that a worker's entitlement to paid annual leave is different from a period of sick leave as annual leave is designed to allow a worker to relax whilst sick leave is to allow a worker to recover from illness.

It is recommended that employers allow an employee to reschedule holiday which coincides with a period of sickness to avoid being at risk of a claim from any employee who has not been permitted to re-schedule holiday if they have been sick during a holiday. See chapter 16 for detailed information.

### **Long term sick leave – holiday entitlement**

Statutory holiday accrues whilst an employee is on sick leave and there are special rules applying when an employee is on long term sick leave which can result in holiday being carried over from one holiday year to another. See chapter 16 for detailed information.

## **Section 3: Statutory Sick Pay**

### **9.4 Statutory sick pay overview**

Statutory sick pay (SSP) is an earnings replacement for employees who are off work through illness/injury and the employer has a legal obligation to pay it to employees who satisfy the qualifying conditions.

There is now a Statutory Sick Pay calculator available on H M Revenue and Custom's website at [www.hmrc.gov.uk/calcs/ssp.htm](http://www.hmrc.gov.uk/calcs/ssp.htm). This calculator helps an employer work out whether an employee is entitled to SSP and if so provides a schedule of weekly payments to be made. It also helps work out if the employer is entitled to recover any of the SSP paid.

Employers should decide for which days SSP will be payable ("the qualifying days") which will usually be normal working days and to decide on rules for notification of sick absence. It should be made clear to the employees what must be produced by them as evidence of incapacity when they fall sick (see chapter 10, sample sickness absence policy).

For SSP purposes an employer cannot insist that an employee notifies him in person, earlier than the first qualifying day, by a fixed time on the first day, more often than once a week during the sickness or on a special form. For yard management reasons you can request that notification be made by a certain time or as soon as possible.

The following guidance intends to provide an overview of the administration of sick pay. More detailed guidance regarding employer obligations can be found at the HMRC website and in particular the HMRC E14 Employers Helpbook at [www.hmrc.gov.uk](http://www.hmrc.gov.uk).

#### **9.4.1 Qualifying conditions**

In addition to full time employees, part time, temporary, agency and casual employees may be entitled to SSP if they satisfy the qualifying conditions.

The qualifying conditions are :

- that the employee has advised the employer of their sickness
- be employed by the organisation and have done some work under their contract
- be sick for four or more days in a row (this is the "period of incapacity for work" "PIW")
- have average weekly earnings of at least the lower earnings limit for National Insurance contribution purposes (£111 per week for 2014/2015) regardless of whether or not they are required to pay NICS
- have earnings on which the employer is liable for pay employer's Class 1 NICs or would be liable to pay but for their age or level of earnings

#### **9.4.2 Notification by employee**

Self-certification normally covers the fourth to seventh days of absence but it may cover from the first to seventh day at the discretion of the employer.

Doctor's certificates cover absence from the eighth day onwards.

#### **9.4.3 No SSP liability**

There is an exclusion of SSP liability if on the first day of PIW an employee:

- a is not personally ill - unless he is deemed incapable of work. For example, convalescence, a carrier of or contacts with infectious diseases or precautionary reasons;
- b has already had 28 weeks worth of SSP from the employer and this new spell of sickness links to the last one
- c was not entitled to SSP last time they were sick for any reason and this spell of sickness links to that one
- d was getting incapacity benefit (IB) from the DWP within the last 8 weeks, or started or returned to work for you after getting IB from the DWP and they are a Welfare to Work beneficiary who is sick within the first 104 weeks of starting or returning to work.
- e is a new employee and has not yet done any work;
- f has already received 28 weeks SSP from the previous employer and there is a gap of 56 days or less;
- 6 is involved in strike
- h is in legal custody;
- i is in receipt of maternity pay or maternity allowance;
- j receives a normal weekly earning of below the lower earnings limit (see paragraph 9.4.1).

After first four days, if the above exclusions apply, the employer must complete the exclusion form (SSP1) and send it to the employee within seven days.

#### **9.4.4 The sick pay period**

Statutory sick pay should only be paid once the employee has been sick for at least four calendar days in a row up to a maximum of 28 weeks.

If a PIW starts within eight weeks of a previous PIW, the periods are linked and count as one period of sickness, i.e. the employee does not have to wait for the qualifying days.

#### **9.4.5 Notification to employee that SSP is being stopped**

If an employer stops paying SSP to an employee who is still off sick, the employer must complete form SSP1 and send it to the employee immediately. The employee will then be able to use this form to claim employment and support allowance.

If the employer knows that an employee will be off for more than 28 weeks, the employer should send the form SSP1 to the employee up to six weeks before the end date for SSP to enable the employee to claim the employment and support allowance as soon as possible.



#### **9.4.6 Administration of SSP**

Payments can be by bank transfer, cash or by cheque on the normal pay day and at the normal pay intervals.

If the employee delays notifying the employer that he is absent due to sickness or injury SSP can be withheld for the number of QDs late (but days withheld do not count towards the 28 weeks) if the employer does not accept that there was good cause for the delay.

Holiday pay and contractual sick pay may be offset against SSP.

SSP is liable to tax and National Insurance contributions from both employer and employee.

The employer's liability to pay SSP is limited to 28 weeks in any one PIW or series of linked PIW (even if those weeks cross a tax year).

SSP can only be paid in respect of qualifying days. The daily rate is the appropriate weekly rate divided by the number of qualifying days in the week beginning with Sunday.

#### **9.4.7 Recovery of SSP**

From 6<sup>th</sup> April 2014, the Percentage Threshold Scheme whereby employers could recover some SSP is abolished.

Employers will still be able to make claims for reimbursement of SSP paid for sickness periods up to 5<sup>th</sup> April 2014 under the percentage threshold scheme until the end of the 2015/2016 tax year.

#### **9.4.8 Record Keeping and Forms**

The requirement to record keep for SSP purposes has been abolished. However employers will still be required to keep sickness records for PAYE purposes but can use a system which suits their organisation. Records also need to be kept so as to deal with any queries from employees over sick pay and to manage absences. It is likely to be useful to have records which show dates of PIWs, dates of SSP not paid (with reasons), details of QDs in each PIW, details of SSP paid, notification, self-certification, doctor's certificates etc.

If an employee has claimed certain State benefits within 57 days of going sick he should give the employer a DWP form. The employer should contact the DWP office before paying any SSP (although this circumstance will normally lead to exclusion).

If an employee leaves and has had an entitlement to SSP in the previous eight weeks, he should be given a "leaver's statement" (a form provided by the DWP) which he will give to his new employer. If he falls sick again within eight weeks of the last period of entitlement the new employer will take the leaver's statement into account in calculating his own maximum liability.

Where an employee is excluded from receiving SSP he should be given Form SSP1 Change over Form which should be available from the HMRC.

#### **9.4.9** If an employee falls sick outside of the European Economic Area or they go outside of the EEA during a period of sickness, they are entitled to SSP provided that they satisfy all the relevant qualifying conditions as above. This applies to employees who are on holiday, those seeking treatment abroad and those sent temporarily to work abroad by their employer.

An employer is not liable to pay SSP to an employee who is outside of the UK if there is no liability to pay Class1 National Insurance on behalf of them. If SSP is payable and then the employer's liability to pay Class 1 National Insurance contributions ceases, the employee continues to be entitled to SSP until her or her entitlement stops for another reason, for example, because the employee has received the maximum 28 weeks entitlement.