



## Public Consultation on the introduction of a Statutory Sick Pay Scheme in Ireland

The purpose of this consultation is to seek your views on what form a statutory sick pay scheme should take in Ireland.

The background to this initiative is set out in this consultation paper with an opportunity to provide your views on important issues related to the scheme, including the appropriate minimum rate of payment, the minimum duration the scheme should cover, eligibility requirements, waiting days, supports for employers and reintegration programmes for people recovering from illness.

The document provides space for your responses to the questions set out.

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Please indicate if this submission is made in a personal capacity or on behalf of your institution, organisation or group.

The Migrant Rights Centre Ireland (MRCI) is a national organisation working to promote the rights of migrant workers and their families at risk of exploitation, social exclusion and discrimination. Since 2001, MRCI has been working with migrant workers in unregulated and precarious employment - low pay, poor working conditions, low sick pay cover, insecure immigration status. We work with meat factory workers, mushroom workers, cleaners, restaurant and hotel workers, care, homecare, childcare workers and fishers. The majority of Irish employers in these sectors, do not pay sick leave because there is no statutory requirement to do so.

There is an expectation by employers that an employee would claim Illness Benefit if they are sick and out of work. However, Illness Benefit has many criteria, and newly arrived migrants from Non-EEA countries or without any tax contribution history in another EEA state, would not qualify for Illness Benefit as they can't simply meet the PRSI contributions criteria. This leaves newly arrived migrant workers to Ireland and workers entering the labour market for the first time, unable to access **ANY** form of illness benefit. This exposes them to working while sick, and to potential long term health complications. As some people will return to their home countries, it is these countries

who will have to foot the bill for long-term illness, or in cases where healthcare is limited, life expectancy could be reduced.

This submission makes reference workers in the agri-food sector (meat processing, mushrooms, fruit and fishers), care workers including homecare, hospitality and cleaning.

Respondents are requested to make their submissions by e-mail to:

[statutorysickpayconsultation@enterprise.gov.ie](mailto:statutorysickpayconsultation@enterprise.gov.ie)

**The closing date for submissions is Friday 18th December 2020.**

For telephone queries please contact Chris Byrne at 087 4093817

## Background

The Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar, T.D., has committed to the establishment of a statutory sick pay scheme to bring Ireland in line with other OECD countries. This will build on the improved social protections for workers over the last five years, including paternity benefit, parental leave benefit and the extension of social insurance benefits to the self-employed and those in the gig economy.

The Government recognises that this has been a very difficult year for employers, with ongoing Covid-19 restrictions and Brexit looming on the horizon. The intention is to develop a scheme that is fair and affordable and that does not place an undue burden of costs on employers.

The Tánaiste is committed to publishing the general scheme of a Bill by March 2021, with a view to having the Bill enacted in the second quarter of 2021 and up and running before the end of the year.

The scheme will be developed in close consultation with all relevant stakeholders, to include unions, employers, employees and other Government Departments and bodies. Engagement has already commenced with the social partners through the Labour Employer Economic Forum (LEEF) sub-group on employment regulation and legislation and now the Department would like to hear your views.

## Definitions and how they apply to Ireland

- *Sick leave* concerns the right to be absent from work during sickness and return to one's job when recovered. There is no provision in law for entitlement to sick leave in Ireland – any sick leave entitlement is set out in the contract of employment. Collective bargaining has of course achieved sick leave safety nets for very many workers in Ireland.
- A *sickness benefit* is provided by the social protection system and is paid as a fixed rate of previous earnings, or a flat-rate amount. This is called Illness Benefit in Ireland and is based on Pay Related Social Insurance (PRSI) contributions.

- *Sick pay* is the continued, time limited, payment of (part of) the worker’s salary by the employer during a period of sickness. It should be seen in the context of the contract of employment between employer and employee.  
In Ireland employers may provide for sick pay as part of the contract of employment.
- *Statutory sick pay* is the money that an employer must by law pay to an employee who is unable to work because of illness.

## Current Supports

There is no statutory sick pay (SSP) in Ireland, however many employers provide sick pay during illness without any statutory obligation to do so. Illness benefit is a short-term payment in Ireland made to insured contributors who are unable to work due to illness. Current arrangements provide that payment of illness benefit begins from the seventh day of the illness. No payment is made for the first six days, known as “waiting days” (the number of waiting days will reduce to three days as part of measures introduced under Budget 2021). Waiting days have been a long-standing feature of the social insurance system and are a feature of social security schemes in other countries also.

Illness Benefit entitlement continues as long as a person is unfit for work, subject to a maximum of two years, provided that they have at least 260 weeks’ PRSI contributions paid. If they have an entitlement but have fewer than 260 paid contributions, Illness Benefit ceases after 52 weeks. If a worker is receiving sick pay from an employer, he or she may be required to sign over any illness benefit to the employer.

The Illness Benefit scheme was temporarily enhanced to deal with the circumstances presented by the Covid-19 pandemic. The goal is to support people to not attend work by protecting their income, addressing their financial concerns when they should be in isolation. Significantly, there are no waiting days associated with the enhanced illness benefit, so the payment from the first day of illness allows them to comply with medical advice to self-isolate to mitigate the spread of the disease, while having their income protected. The payment is made for a maximum period of 2 weeks where a person is a probable source of infection of Covid-19 and up to 10 weeks where a person has been diagnosed with Covid-19.

The rate of the enhanced Illness Benefit payment for Covid-19 is €350 per week, with additional payments possible in respect of a qualified adult and qualified children. However, even the enhanced Illness Benefit payment is less than many people earn in work and there can be a reduction in income while sick.

## Statutory Sick Pay in other EU Member States

Almost all EU Member States have legislation in place to implement statutory sick pay. Ireland is in a minority of countries with no provision for statutory sick pay.

In most countries, employees may by law, collective agreement or at the discretion of the employer, be entitled to sick pay, either for an initial shorter period of absence or for the entire duration of sick leave. Most EU Member States provide a double payment arrangement, with a period paid by the employer (in full or in part) followed by benefits paid by the social protection system. Where sick pay is only for an initial shorter period of absence, it is usually followed by sickness benefit for the entire duration of sick leave.

***Statutory Sick Pay in Summary:***

- 21 out of 28 countries have statutory sick pay
- 4 countries have some circumstances where sick pay is paid by the employer.
- 3 countries including Ireland have no statutory sick pay.
- In most of the countries, beneficiaries do not pay social security contributions while on sick pay or sickness benefits.
- Some countries provide for a maximum period of 2 weeks' sick pay while others provide much longer periods of sick pay. This can be more than a month in Austria (6 to 12 weeks), Croatia (42 weeks), Italy (max 180 days), Luxembourg (77 days), Poland (33 days) and the Netherlands (104 weeks maximum). In the UK, Statutory Sick Pay is paid by the employer in case of sickness for at least 4 consecutive days up to a maximum of 28 weeks.
- In most of the countries the amount of the statutory sick pay is calculated as a percentage (a compensation rate) of the gross wage (daily or monthly) and varies from 25% to 100%.

## Other Important Points to Consider

1. The introduction of statutory sick pay scheme (SSP) would be a positive step in Ireland, bringing us into line with all other EU countries.
2. Many employees already have an entitlement to sick leave (paid or unpaid) included in their contracts of employment.
3. It would give some protection to the most vulnerable employees in low-paid and precarious employments who are less likely to have a sick pay scheme provided by their employer.
4. OECD research suggests that increasing the role of employers in relation to sick pay also serves to stimulate a greater focus within companies, and indeed public sector bodies, on absentee management (e.g. absentee rates in the Netherlands dropped from 10% to 4% in the period following the introduction of SSP). Statutory sick pay would engage employers more directly in the management of sick leave and create an incentive for them to engage in return to work planning with their employees.
5. The experience of other countries is that the longer the period of sick pay, the more employers engage; and also, the more they make efforts to improve health and safety in the workplace in an attempt to reduce levels of staff sick leave.
6. From a competitiveness perspective, there are benefits from removing an implicit incentive for a sick person to work to ensure that they continue to be paid. Labour market policies like

this would likely improve healthcare outcomes and make Ireland a more attractive place to live and work.

7. The Government recognises that many businesses have faced an extremely difficult year with ongoing closures due to Covid-19 restrictions, Brexit is also on the horizon and it is the intention that a Statutory Sick Pay Scheme will be fair and affordable for employers.
8. It is acknowledged that it would impose additional costs on employers and introduce more complexity in the regulatory environment for employers, particularly for those firms which did not already operate a sick pay scheme.
9. There are potential additional costs for firms or industries with a higher incidence of absenteeism.
10. The cost of SSP will depend on the rate of sick pay mandated and the duration for which it is mandated.
11. SSP is a break from the voluntary terms and conditions that many employers afford their employees in contracts of employment. SSP is intended as a floor rather than ceiling and the scheme is not intended to override sick pay terms in the context of collective agreements or contracts of employment that may be more favourable.

## Publication of Submissions and Freedom of Information

Any personal information, which you volunteer to this Department, will be treated with the highest standards of security and confidentiality, strictly in accordance with the Data Protection Acts 1988 and 2018. However, please note the following:

- The information provided in the submission form will be shared with relevant Government Departments and State organisations during the review process.
- The Department will publish the outcome of the reviews and the submissions received under this consultation on its website, and
- as information received by the Department is subject to the Freedom of Information Act, such information may be considered for possible release under the FOI Act. The Department will consult with you regarding such information before making a decision should it be required to disclose it.
- If you wish to submit information that you consider commercially sensitive, please identify that information in your submission and give reasons for considering it commercially sensitive.

### **Note regarding responses:**

**Respondents are encouraged to keep their responses within the box accompanying each question. Please answer any questions that are relevant to you or your organisation.**

## Question 1: Minimum rate of payment

What is a suitable and appropriate minimum rate of payment?

The introduction of statutory sick pay will require regulation around the rate that an employer pays their employees under the scheme. Options to consider in this regard include:

1. A fixed minimum rate of payment that would apply to employees.
2. A fixed percentage of an employee's weekly earnings. The same percentage rate would be fixed for all employees, but the actual rate of payment received would then vary based on an employee's earnings. (Amongst other EU member states who use this system the percentage can range from 25-100%)
3. A payment rate based on the current illness benefit rates, potentially with increases for adult or child dependents.
4. A payment rate that is tapered in line with different income bands.

The Migrant Rights Centre Ireland (MRCI) would be in favour of introducing a fixed percentage of an employee's weekly earnings. The same percentage rate would be fixed for all employees, but the actual rate of payment received would vary based on an employee's earnings – see below. Employees would be in receipt of Illness Benefit (IB) and an employee that is receiving IB should sign it over to the employer. Employee's social security contributions while on sick pay or IB should be credited to them. Employees should be certified by a medical professional or medical body to be eligible for SSP.

Payment should be made at;

- 100% of wages for a period up to 6 weeks or full amount of IB (whichever is greater)
- 80% of wages for a period from 6 up to 8 weeks or full amount of IB (whichever is greater)
- 70% of wages for a period from 8 up to 12 weeks or full amount of IB (whichever is greater)
- 60% of wages for a period from 12 to 26 weeks or full amount of IB (whichever is greater)
- Workers absent from work more than 26 weeks due to illness, to receive IB payment for minimum period of 1 year up to 2 years regardless number of PRSI contributions made – this is to protect seasonal workers, newly arrived migrants worker, people entering the labour market for the first time.

There is an inherit problem with the criteria for accessing IB. This disproportionately affects newly arrived migrant workers and people entering the labour market for the first time. This can have a multiplier effect for low income households, single income households working in low paid work, where savings do not exist, forcing people into the SWA system and in some cases depended on exceptional needs payments, with its own sets of criteria.

MRCI recommends that workers do not fall below a Minimum Essential Standard of Living (MESL) threshold. This means that as the SSP tapers off after 26 weeks, that illness benefit provides an adequate income for people and takes into account family and dependent circumstances.

## Question 2: Duration of payment

What duration of absence should be covered by statutory sick pay?

Under any SSP scheme, employees will be covered for a certain period of absence paid by the employer (in full or in part) followed by illness benefits paid by the social protection system. In other EU member States, statutory sick pay coverage ranges from 15 days or less, to up to 2 years.

Despite the fact that most EU Member States provide a double payment arrangement, with a period paid by the employer (in full or in part) followed by benefits paid through the social protection system, where sick pay is only for an initial shorter period of absence, it is usually followed by illness benefit for the entire duration of sick leave. MRCI recommends a 'mixed', employer-social welfare payment arrangement.

Payment should be made at;

- 100% of wages for a period up to 6 weeks or full amount of IB (whichever is greater)
- 80% of wages for a period from 6 up to 8 weeks or full amount of IB (whichever is greater)
- 70% of wages for a period from 8 up to 12 weeks or full amount of IB (whichever is greater)
- 60% of wages for a period from 12 to 26 weeks or full amount of IB (whichever is greater)
- Workers absent from work more than 26 weeks due to illness, to receive IB payment for minimum period of 1 year up to 2 years regardless number of PRSI contributions made – this is to protect seasonal workers, newly arrived migrants worker, people entering the labour market for the first time.

The 'mixed' employer-social welfare payment arrangement would give employees the financial security during sick leave, and would also put less financial pressure on employers.

Employees should be certified by a medical professional or medical body to avail of the SSP.

MRCI recommends that workers do not fall below a Minimum Essential Standard of Living (MESL) threshold. This means that as the SSP tapers off after 26 weeks, that illness benefit provides an adequate income for people and takes into account family and dependent circumstances.

### Question 3: Waiting days

Should there be a minimum period that the employee must be out sick before statutory sick pay applies? Under the current Illness benefit system, Illness benefit is paid after a period of 6 days, which are known as waiting days (the number of waiting days will be reduced to a period of 3 days from end February 2021 as part of measures introduced under Budget 2021)

Through our work, we know that workers cannot afford to be sick. They often do not take time off work to get better, even if they are experiencing, for example symptoms of a flu, cold or other illnesses. Many will continue to go to work ill or self-medicated, so as to either not lose their employment or wages. This can often result in workers becoming ill for longer and needing more than one day to recover, along with working while sick, which impacts their performance and productivity. This has long term impacts on the health of a worker.

MRCI recommends these be introduced in tandem with each other;

1. That the **waiting day requirement for Illness Benefit be permanently removed.**
2. That all employees are eligible to have at least **3 self-certified sick days** a year – these do not require a medical certificate.
3. The SSP, would have a **waiting period of 3 days** similar to the majority of other EU countries. An employee can use its self-certified days against SSP waiting days, which is 3 in one year.



## Question 4: Certification of Illness

Should statutory sick pay only apply to illnesses that have been certified by a medical professional or medical body?

MRCI recommend that all employees are eligible to have at least **3 self-certified sick days** a year – these do not require a medical certificate. Absences up to **2 days** would not need to be covered with certificates issued by a medical professional or medical body. Giving people these days without financial loss, allows workers a chance to get better sooner, and prevents longer term sickness, which is of benefit to both the employee and employer.

Absences due to illnesses that exceed **2 days** would need to be certified by a medical professional or medical body. We know that many people on low wages, who do not qualify for a medical card, find it difficult to pay for a GP and indeed many migrant workers do not have a GP.

Right now, if a person is out sick, and has no sick pay work scheme, but is able to meet ALL the criteria for illness benefit, that person still has no income whatsoever in the 1<sup>st</sup> week of sickness; for the 2<sup>nd</sup> week they receive only €169.17 and from the 3<sup>rd</sup> week the person will be paid at the rate of €203. Even if the person does not have a sick pay scheme, employers require weekly medical certificates. This is costly for workers. The first medical certificate can cost up to €40 - €60, dependent on where a person lives. For subsequent certificates this can cost up to €30 to €60. With the proposed 3 waiting days, the person will get €150 for the 1<sup>st</sup> week, and €203 from week two.

Payment for doctors coupled with the cost of living - rent, food, heat, medication, etc, leaves people with very little to live on and recuperate on. This does not give a Minimum Essential Standard of Living (MESL) and can drive people into further poverty and puts sick people at risk of homelessness, and becoming seriously ill, which in the long run puts pressure on the health system. SSP and Illness benefit should be treated as part of a commitment to primary care and as preventative approach to workers health and wellbeing. Illness benefit should not fall below the Minimum Essential Standard of Living (MESL).

## Question 5: Length of service

Should an employee be required to have worked for an employer for a certain period before they are entitled to avail of statutory sick pay? (e.g. an employee would complete six months service before such an entitlement applies, or fully complete the probation period as specified under their employment contract)

- MRCI recommends that no length of service is required or that a very short length of service applies (2-4 weeks)
- MRCI believes that all workers should be allowed to safe and healthy workplaces, including seasonal workers and where contract of employment might be issued for a short time period and may vary from a couple of weeks to couple of months only. Fixed term contracts, in particular those for one year or less should have **no length of service required**.
- There should be **no requirement for any length of service for absences resulting from accidents/incidents** that occur at work or for occupational illnesses.
- Workers on probation period should also be eligible to avail of SSP.

## Question 6: Earnings threshold

Should an employee have to satisfy a minimum earnings threshold to avail of statutory sick pay? Should any other eligibility requirements apply?

**No minimum earning threshold should apply for the SSP.**

A minimum level for illness benefit should not fall below the Minimum Essential Standard of Living, the standard of living below which no one should be expected to live

During the Covid-19 pandemic the Government introduced the Pandemic Unemployment Payment, and recognized that €350 is the bare minimum for a worker to meet their basic financial needs. This approach should be applied in all cases, for all workers, to ensure that they do not fall below the Minimum Essential Standard of Living (MESL).

An examination of a maximum level of Illness Benefit, for example, at replacement levels of 50%, 60% and 70% up to average yearly earnings for full-time employment or using sector/industry specific benchmarks could be undertaken.

## Question 7: Employer supports

Should financial supports be put in place for employers who genuinely can't afford to pay the rates of SSP? What is the best way to establish if employers genuinely can't afford to pay?

A clause that includes an inability to pay could be triggered under specific criteria. This must be robust and not provide an incentive for employers to circumvent their responsibilities, but equally is a safeguard for those who are struggling.

## Question 8: Rehabilitation programmes

Should rehabilitation and reintegration programmes, for employees who have been absent due to long term illnesses, be introduced along with SSP?

It can be difficult for workers to re-integrate into the workforce and employment if they have been out of work for long term illness. This could include people returning to work part-time for a period of time and to be given light duties for a period of time and at the doctor's recommendation. MRCI recommends that workplaces introduce workplace rehabilitation process policies. Policies should aim to provide guidance and support to an injured worker to enable safe and timely return to work after an injury or illness.

The rehabilitation process is about finding the best ways for the worker to remain at work and engaged with the workplace while keeping their valuable work skills. Rehabilitation aims to return the worker to the job they had before their injury. If the worker is unable to return to their pre-injury job soon after their injury, a temporary duties program should (this may include temporary modifications and/or restrictions of a person's normal job tasks, with the aim to return to full duties over a period of time) be developed to enable the worker to return to work safely over a period of time.

Workplace rehabilitation is beneficial to both the injured worker and the employer. It allows workers to recover faster; minimises disruption to family, social and working life; improves physical conditions and confidence about returning to work; and can enable earlier return to productive work providing for job and financial security. It also helps workers deal with an injury or illness and return to a normal work routine. Employers retain rather than lose skilled workers, and are able to control the cost of work injury e.g. by getting workers back to work in a safe and timely manner, reducing the costs of replacing staff.

Introduce a state supports for workers and employers to enable workers to return to work after being out for long term sickness (8+ weeks). This is particularly relevant as workers may return to work on part-time basis and is moved off illness benefit, but may not yet be earning a full-time wage, so that the worker is earns a Minimum Essential Standard of Living.

## Any other comments:

There are number of specific sectors in the Irish economy which are more prone to health and safety violations and put workers lives, livelihoods and income at risk due to the nature of the work. A recent study into conditions for meat factory worker carried out by MRCI, reveals serious and very concerning health and safety practices for meat factory workers. It revealed that almost **60% of the workers surveyed said they had been injured whilst working at a meat plant in Ireland.** This includes regular (sometimes daily) lacerations and bruises as well as repetitive strain and chronic back pain. People have also experienced skin disorders, eye injuries, bone fractures, loss of fingers and limbs, burns, and respiratory problems.

Workers explained that these injuries occur because of faulty tools or machinery; none or limited training on health and safety or on how to use equipment properly; lack of protective measures or equipment; exposure to toxic chemicals; high noise levels. **According to our research, 90% of meat processing companies do not offer sick pay to their workers in the event of injury or illness.**

### *Meat Worker Quotes*

*"After years working in the same line, the same position day-in day-out, that's why you get such bad back pain."*

*"Most of the time if people are working on machinery, they are not being trained – there's no guidelines on the machinery on what the operator must do."*

*"If someone gets injured at work, there is no ambulance or work vehicle – what they do is they'll get someone, another worker, to take you to the hospital, but that person is not licensed to take you – should anything happen to you in that vehicle who is responsible? Not the company."*

Another report into the experience of **Fishers in the Irish fishing fleet**, revealed long hours, poor health and safety and the dangers of working in fishing,

- 80.7% of respondents worked more than 60 hours per week.
- 65.3% worked over 100 hours per week.
- 40% do not feel safe at work. The fishers' safety concerns centre on the lack of rest breaks and rest days. Consequently, exhaustion makes them prone to work accidents. Another hazard is the lack of safety equipment on boats, particularly in times of bad weather conditions.
- 36.6% of those surveyed have either personally sustained injuries or witnessed others injured while at work; such injuries include crushed limbs and serious wounds.

In one case a worker developed hypothermia but did not inform his employer as he was worried he would lose his job. Another man sustained serious wounds but could not get medical attention until he got back on land which was four days later. One of the workers witnessed his peer going overboard and drowning. Some employers were very supportive of fishers who had been injured, and had provided significant financial support to the families of those who had lost their lives at sea. Other employers did not pay fishers when they were injured, and in some instances even denied the fishers ever worked for them.