



Entitlement, payment, records and WRC exposure

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Topics



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- Statutory Sick Leave
- Company v Occupational Sick Pay Scheme
- Calculation Complications
- Payroll, Revenue & Social Welfare
- Managing Absences & Compliance



The Sick Leave Act 2022 introduced a legal minimum entitlement to employer-paid sick leave.

It applies where an employee does not already receive sick-pay benefits that are, overall, more favourable.

Current position:

Provides employees with 13 weeks continuous service with minimum number of sick days per year where they are unable to work due to injury or illness



The Statutory Minimum

Five

paid sick days

- Available in each calendar year
- Applies to full-time and part-time employees
- Days may be consecutive or separate
- Only covers days the employee would ordinarily work
- Unused days expire at year end

The legal entitlement does not automatically increase without a Ministerial Order.



Eligible Employees

Covers employees:

- Working under a contract of Service
- A person holding office or in service of the State (member of the Garda Síochána or The Defence Forces or Civil Servant)
- A Harbour Authority or the Health Service Executive or a member of staff of an education and training board

Eligibility and Service

The employee qualifies when

- 13 weeks' continuous service is complete
- Illness or injury prevents attendance
- A valid medical certificate is supplied
- The absence falls on a normal working day

Also covered

- Employees on probation
- Apprentices and trainees
- Agency workers where employee status applies

Multiple employers

The employee may qualify separately with each employer after completing the service requirement with each one.

Continuous service



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Service is continuous unless dismissed or voluntarily leave

Service is continuous when an employee leaves their job and returns to work for the same employer within **26 weeks**

Their previous service will count towards their continuous service.

Their service will be treated as if it had not been broken

Re-instatement or Re-engagement after dismissal or transfer of business does not break continuity of employment

Include: First 26 weeks of Lay off, Sickness, Injury, Absents agreed
Protected leave – Maternity, Paternity, Parents etc.



Medical certification

DAY 1

Certification is required from the first statutory sick day.

The certificate must confirm

- The employee is unfit for work
- The reason is illness or injury
- The relevant day or period of incapacity
- A registered medical practitioner issued it

The Act does not require the employer to pay the doctor's fee.



Sick leave extending into a new calendar year

Since 1 January 2024, an employee cannot begin a new statutory sick-leave entitlement in January where:

- They were already absent through illness on their last normal working day in the previous year, and that previous day was covered by statutory sick leave, Illness Benefit or Injury Benefit.
- The employee must return to work before they can begin a new period of statutory sick leave.
- This prevents an employee from receiving statutory sick pay more than once for the same continuous period of illness.

Example:

An employee becomes ill in December and remains continuously absent into January. They cannot claim a new set of statutory sick-leave days simply because a new calendar year has begun



Daily statutory sick pay

70% × normal daily earnings

Maximum payment: €110 per day

Example A

Daily earnings €120

$$\text{€120} \times 70\% = \text{€84}$$

Payment: €84

Example B

Daily earnings €180

$$\text{€180} \times 70\% = \text{€126}$$

Payment capped at €110

Variable hours and pay



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Average hourly rate

Relevant earnings in the reference period

Hours worked in the reference period

Then calculate

Average hourly rate × scheduled hours

Take 70%, subject to the €110 cap

Regular fixed allowances may form part of normal pay. Overtime premiums and commission are generally excluded.

Calculating the daily payment

Statutory sick pay is:



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$70\% \times \text{normal daily earnings}$

The payment is capped at **€110 per day**.

Example 1: Payment below the cap

Normal daily earnings: €120

$$€120 \times 70\% = €84$$

Statutory sick pay = **€84**

Example 2: Payment above the cap

Normal daily earnings: €180

$$€180 \times 70\% = €126$$

As the calculated amount exceeds the daily cap,
statutory sick pay = **€110**

Example 3: Five-day absence

Normal daily earnings: €160

$$€160 \times 70\% = €112$$

The payment is capped at €110:

$$€110 \times 5 = €550$$

Total statutory sick pay = **€550**



More favourable company schemes

A company scheme may replace the statutory entitlement when the overall benefits are more favourable.

Service needed

Shorter period

Paid days

More days

Payment rate

Full pay

Daily cap

No cap

Certification

Less strict

Waiting days

None

Employees do not normally receive five extra statutory days on top of a more favourable company scheme.



An employer must maintain records showing:

- The employee's period of employment;
- The dates and times of statutory sick leave taken; and
- The rate of statutory sick pay paid to the employee.
- These records must be retained for four years.

Failure to maintain the required records is an offence and may result in a fine of up to €2,500



Employers should also keep:

- Medical certificates securely;
- Payroll calculations;
- Details of sick days used and remaining;
- Communications relating to the absence; and
- Evidence supporting the application of any company sick-pay scheme.

Medical information is sensitive personal data and must be handled in accordance with data-protection requirements. Access should be limited to those who genuinely need it.

Penalisation protections



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An employee must not be penalised or threatened with penalisation because they:

- Exercise their statutory sick-leave rights;
- Propose to exercise those rights;
- Make a complaint relating to statutory sick leave; or
- Give evidence or support another employee's complaint.

Penalisation could include:

- Dismissal;
- Suspension or lay-off;
- Demotion;
- Loss of promotion or training opportunities;
- Reduced pay or working hours;



- Unfavourable changes to duties or location;
- Disciplinary action or reprimands;
- Intimidation or coercion; or
- Treating properly certified statutory sick leave as unauthorised absence.

An employee taking statutory sick leave must generally be treated as if they had not been absent. Their employment rights continue during the leave.

WRC exposure

An employee may bring a complaint to the Workplace Relations Commission where an employer:

- Refuses statutory sick leave;
- Underpays statutory sick pay;
- Applies unlawful waiting days;
- Refuses to recognise a valid medical certificate;
- Penalises the employee; or
- Otherwise breaches the Sick Leave Act.



A complaint should normally be submitted within six months of the alleged breach. This may be extended to 12 months where the employee can show reasonable cause for the delay.

A WRC Adjudication Officer may:

- Direct the employer to comply with the legislation; and/or
- Award compensation of up to four weeks' remuneration.

A WRC decision may be appealed to the Labour Court.

Knowledge check

1. How many statutory sick days currently apply?

5 days

2. What service must an employee complete?

13 weeks

3. What percentage of normal daily earnings applies?

70%

4. What is the maximum daily payment?

€110

5. How long must the employer retain records?

4 years

Exercises



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Coffee Break



Company v Occupational Sick Pay Scheme



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- Contractual and Discretionary Sick pay
- Custom and Practice, service tiers
- Full pay, half pay and Illness Benefit

Two ways to describe a company sick pay



- Contractual: The employee receives the stated benefit when the conditions are met
- Discretionary: the employer considers whether to pay in each case.

Both require clear rules of notification, certification duration and payroll.



Contractual Scheme

A sick pay scheme is **contractual** where the employee has a contractual entitlement to payment when the conditions of the scheme are satisfied.

The entitlement might arise from:

- The written contract of employment;
- A collective agreement incorporated into the contract;
- A staff handbook or sick pay policy that forms part of the contract;
- or
- potentially, an established term arising through custom and practice.



Example

An employee's contract states:

"Employees who have completed one year's service are entitled to a maximum of 10 days' company sick pay at full basic pay in any 12-month period."

Provided the employee meets the relevant conditions, the employer generally cannot simply decide not to pay because it does not wish to do so.

Discretionary Scheme



Under a discretionary arrangement, the employer retains discretion over whether company sick pay, particularly any payment above the statutory entitlement, will be made.

For example:

"The company may, at its discretion, provide sick pay in excess of statutory sick pay."

However, describing a payment as "discretionary" does **not necessarily give an employer unlimited freedom**. Discretion should be exercised fairly, consistently and in accordance with the employment contract and applicable employment/equality law.



How Discretion May Be Affected by Custom and Practice

A workplace practice may potentially become an implied contractual term where it is:

Certain + Consistent + Well-established + Known/accepted

For example,

suppose an employer's handbook says:

"Company sick pay is entirely discretionary. "However, for the last 12 years, every eligible employee who produced a medical certificate has automatically received up to 10 days' full sick pay."

Service-Related Tiers

Many occupational schemes become more generous as an employee's service increases

Continuous Service	Company Sick Pay
Under 6 months	Statutory entitlement only
6 months–2 years	2 weeks full pay
2–5 years	4 weeks full pay
5+ years	8 weeks full pay + 4 weeks half pay

The rationale is that occupational sick pay is an additional employee benefit and may be linked to length of service.

Probationary Treatment



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A common provision is:

"Company sick pay is not available during the probationary period."

This requires careful consideration.

An employer may restrict access to its **enhanced occupational benefit** during probation, subject to the terms of the contract and applicable law.

Probation does **not itself remove statutory sick leave rights**.

An employee who has completed the statutory service requirement may qualify for statutory sick leave even though they are still on probation.

The current statutory service requirement is **13 weeks**.



Example: Aoife

- Started employment: 1 January
- Probation: 6 months
- Company sick pay: available after successful completion of probation
- Becomes sick in May
- Properly medically certified

Aoife may not yet qualify for the enhanced company scheme, depending on its lawful terms, but she has passed 13 weeks' service and may therefore qualify for statutory sick leave

Example:
4 weeks full pay followed by 4 weeks half pay

Full Pay

The employer continues the employee's normal salary, subject to the rules of the scheme.

For example:

Normal weekly basic pay = **€800**

Full sick pay = **€800**

Half Pay

After the full-pay period has expired, the employee may move to half pay.

Normal weekly basic pay = €800

Half pay = **€400**



Employers should define clearly what is meant by "full pay" and "half pay".

Questions can arise around whether the calculation includes:

- basic salary;
- regular allowances;
- overtime;
- commission;
- shift premiums;
- bonuses.

A good sick pay policy should specify the basis of calculation

Offsetting Illness Benefit



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Where an employee is absent for a longer period, they may qualify for Illness Benefit from the Department of Social Protection

- Subject to the relevant PRSI and eligibility requirements.
- An occupational scheme may be designed so that the employee does not receive full occupational sick pay plus Illness Benefit on top.
- Instead, the employer's payment may be reduced by the relevant social welfare benefit.
- .



Example
Assume

Normal weekly salary = **€800**

Occupational scheme guarantees full pay.

Illness Benefit received = **€250**

The scheme could provide:

Employer sick pay: €550

Illness Benefit: €250

Total income: €800

Interaction with Statutory Sick Leave



Employees do not necessarily receive:

Company Sick Pay + Statutory Sick Pay

Where the employer operates an occupational scheme that provides benefits that are, **overall, more favourable** than the statutory scheme

The Sick Leave Act recognises that more favourable arrangement

Question	Check
How much service is required?	Compare with statutory 13 weeks
Are there waiting days?	Check when payment begins
How many paid days/weeks are provided?	Compare duration
What rate is paid?	Full pay, half pay, percentage etc.
Is there a daily/weekly cap?	Compare monetary benefit
Is certification required?	Check policy requirements
What is the reference period?	Calendar year/rolling year etc.
What happens during probation?	Check statutory rights separately
Is Illness Benefit offset?	Policy should explain this
Is sick pay contractual or discretionary?	Check contract/policy wording
Is the policy followed consistently?	Consider custom and practice
Are records maintained?	Statutory sick-leave records must be retained for 4 years

Review Question
ABC Ltd Sick Pay Scheme



Employees who have successfully completed six months' service are entitled to 15 working days' certified sick leave on full basic pay in any calendar year.

Employees with more than five years' service receive 30 days' full pay followed by 20 days' half pay.

No company sick pay is payable during probation.

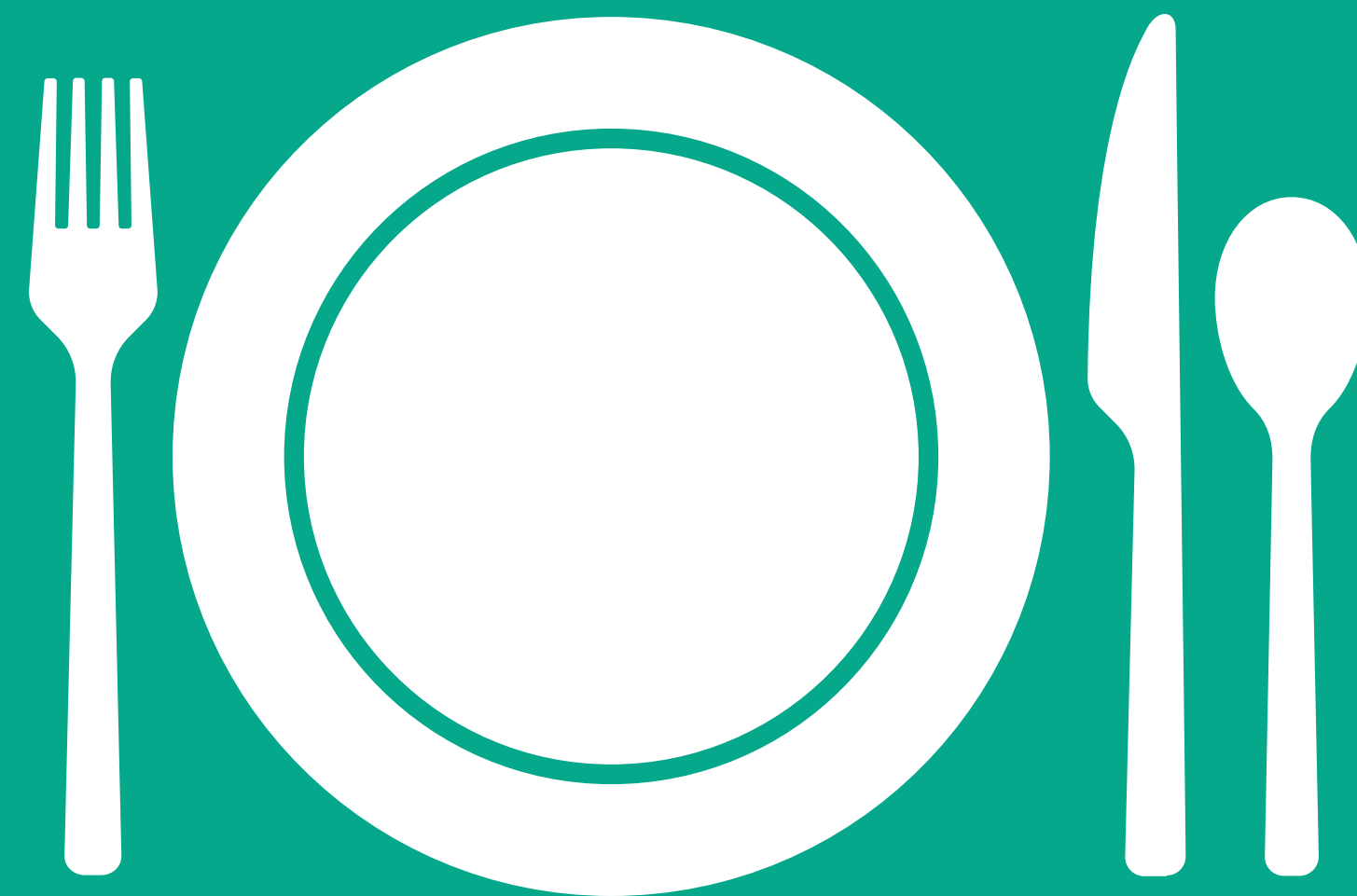
Illness Benefit received by the employee will be offset against company sick pay.

All payments under the scheme are described as being at management discretion.



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Lunch



Calculation Complications, Payroll, Revenue & Social Welfare

Example – Full-Time Employee

Normal working day = 8 hours

Hourly rate = €15

Normal daily earnings =

Statutory sick pay =

Example – Part-Time Employee

Mary normally works:

Day	Hours
Monday	8
Tuesday	8
Wednesday	Not working
Thursday	5
Friday	5

Example – Variable - Hours Employee

For employees whose pay is not calculated in the more straightforward manner covered by the Regulations, the legislation provides for an average hourly rate based on a 13-week reference period

Example

Assume an employee's relevant earnings over the previous 13 weeks were:

€7,020

Hours worked:

450 hours



Shift Premium and Allowances

Do I just use basic pay?

For the 13-week averaging calculation, the Regulations refer to the employee's average hourly rate including a regular bonus or allowance where the amount does not vary according to the work done

Example

Employee normally receives:

Basic pay: **€15.00 per hour**

Regular fixed allowance: **€1.50 per hour equivalent**

Regular Overtime

For the 13-week averaging provision in the Statutory Sick Leave Regulations, **overtime is expressly excluded**.

Need to identify the earnings that are relevant under the statutory calculation.

Example

Employee regularly earns:

Basic pay:	€600
Overtime:	€150
Total weekly earnings:	€750

It would be incorrect to automatically assume that the SSL calculation should be based on the full €750.

Regular overtime does not automatically mean that it forms part of the statutory sick-pay averaging calculation.

Commission



Commission can create the same confusion.

The statutory 13-week averaging provision specifically excludes commission.

For example:

Basic salary = €600 per week
Average commission = €250 per week

The fact that the employee normally earns €850 does not automatically mean that €850 should be used to calculate statutory sick leave

Bonuses



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Bonuses require more careful analysis.

The Regulations allow certain **regular bonuses** to be reflected in the average hourly rate.

The precise nature of the bonus therefore matters.

Ask:

Is it paid regularly?

Is it a fixed amount?

Does it vary according to work performed?

Is it performance-related?

Is it genuinely a bonus or simply part of ordinary remuneration

Averaging Methods



The key reference period for the relevant variable-pay calculation is generally **13 weeks immediately before the statutory sick leave day**.

Where the employee did not work during that period, the Regulations provide for looking back to the relevant 13-week period ending when the employee last worked.

A useful formula is:

1. **Relevant earnings ÷ relevant hours = average hourly rate**
2. **Average hourly rate × hours due to be worked on sick day = normal daily earnings**
3. **Normal daily earnings × 70% = SSL**
4. **Apply the €110 daily cap**

Payroll, Revenue and Social Welfare



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How Employer Sick Pay Is Taxed

Sick pay paid by the employer is treated as employment income.

The employer deducts: PAYE + USC + PRSI

in the normal way. Revenue specifically states that payments made by an employer while an employee is absent due to illness are subject to Income Tax, PRSI and USC

Employer sick pay = normal taxable payroll pay

Illness Benefit – Different Tax Treatment

Illness Benefit paid by the Department of Social Protection is:

Charge	Treatment
Income Tax	Taxable
USC	Not liable
Employee PRSI	Not liable

Who Collects the Tax on Illness Benefit?



The employer does **not** simply add the employee's Illness Benefit to taxable payroll.

DSP provides the details of the employee's Illness Benefit claim directly to Revenue.

Revenue then adjusts the employee's:

Tax Credits

and

Standard Rate Cut-Off Point

and makes an updated **Revenue Payroll Notification (RPN)** available to the employer.

The employer should therefore always use the **latest RPN**.

Important Payroll Rule

The employer should **not include the Illness Benefit itself in the payroll submission to Revenue**

Company Sick Pay Plus Illness Benefit



An occupational sick-pay scheme may provide that Illness Benefit is **offset against the employer's sick-pay payment**.

For example:

Normal weekly salary = **€700**

Illness Benefit = **€250** (*illustrative amount*)

Company scheme guarantees normal salary.

Employer-funded portion:

€700 – €250 = €450

The crucial payroll point is that the employer should not treat the €700 as normal taxable wages if €250 represents Illness Benefit.

Revenue's 2026 guidance states that where a sick-pay scheme operates, the employer should tax **only the pay-related portion of the salary**



Example – Illness Benefit Paid Directly to Employer

An employee normally earns **€500 per week**.

The employer receives **€200 Illness Benefit** from DSP.

For payroll purposes:

Normal salary entitlement: €500

Less Illness Benefit: €200

Pay-related taxable salary: €300

The €200 Illness Benefit should **not** be included in the calculation of PAYE, USC or PRSI by the employer.

Revenue deals with the Income Tax liability on the Illness Benefit through the employee's RPN



Illness Benefit Paid Directly to Employee

The position can also arise where DSP pays Illness Benefit **directly to the employee**, but the company sick-pay scheme requires it to be taken into account.

Revenue gives a 2026 example where an employee receives Illness Benefit directly and subsequently hands it over to the employer.

The employer reduces the taxable employer pay by the relevant Illness Benefit amount and applies the **latest RPN**.

This means payroll staff need good communication between:
Employee → Employer → DSP → Revenue

Common Payroll Errors

Error	Problem
Taxing employer sick pay without USC or PRSI	
Charging USC on Illness Benefit	
Charging PRSI on Illness Benefit	
Adding IB to payroll as normal gross pay	
Continuing to use an old RPN	
Using all overtime in the 13-week SSL average	
Automatically including commission	
Using basic pay only without checking allowances/bonuses	



Step 1 – Is the employee entitled to statutory sick leave?

Step 2 – What hours were they due to work?

Step 3 – Establish normal daily earnings using the correct method.

Step 4 – Check what bonuses/allowances are included and exclude overtime/commission where required.

Step 5 – Calculate 70%.

Step 6 – Apply the €110 daily maximum.

Step 7 – Process employer sick pay through payroll for PAYE, USC and PRSI.

Step 8 – Keep Illness Benefit separate and use the latest Revenue RPN.

Managing Absence and Compliance



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1. Frequent Short-Term Absence
2. Long-Term Absence and Occupational Health Referrals
3. Annual Leave During Sick Leave
4. Public Holidays Falling During Sick Leave
5. Disability and Reasonable Accommodation
6. Capability and Ill-Health Dismissal
7. Medical Certification



Scenario:

Emma has worked for a company for six years. During the last 12 months she has had eight separate periods of certified absence. She has now been absent continuously for seven weeks. Her latest certificate says she will remain unfit for another four weeks.

Her manager says:

"This has gone on long enough. Can we just dismiss her for excessive absence?"

Identify the steps that should happen **before dismissal is considered**:



Thank you

Questions??