**Sick Leave Act 2022**

The Sick Leave Bill was passed by the Oireachtas in July 2022. Once the Bill has been enacted, the scheme is due to come into legislation later in 2022.

The new scheme will start with 3 days' paid sick leave per year in year one, rising to 5 days in year two, 7 days in year three, and employers will eventually cover the cost of 10 days in year four.

Sick pay will be paid by employers at a rate of 70% of an employee’s wage, subject to a daily maximum of €110. It can be revised over time by ministerial order in line with inflation and changing incomes.

An employee must obtain a medical certificate to avail of Statutory Sick Pay, and the entitlement is subject to the employee having worked for their employer for a minimum of 13 weeks. Once entitlement to sick pay from their employer ends, employees who need to take more time off may qualify for Illness Benefit from the Department of Social Protection subject to PRSI contributions.

Statutory entitlement to sick pay will be phased in as part of a 4-year plan and will initially be for 3 days per year once the Bill is enacted. This will effectively fill the gap in coverage caused by Illness Benefit waiting days. Closing the gap of current waiting days before being able to access Illness Benefit will minimise the numbers of sick employees presenting for work.

This Scheme compares favourably with the Sick Pay Scheme in Northern Ireland which pays only £96.35 per week. The daily earnings threshold cut-off point will also ensure that employers do not face excessive costs in relation to employees who are on high salaries.

This is the perfect opportunity to take the time to review your company’s Absence or Sick Leave Policy. Outside the inclusion of the Statutory Sick Pay inline with legislation, it is recommended to enter into a collaborative Consultation process with any other changes to the absence/sickness policy. If your company’s current sickness/absence policy or equivalent is fit for purpose then ISME’s recommendation is to simply add the Addendum outlining the new Statutory Sick Pay procedure below.

**Considerations to address when reviewing your Sick Pay/Absence Policy;**

1. **Dental/Optical/Medical Appointments -** Procedure around how these are managed
2. **Notification Procedure –** Acceptable methods,is What’s App acceptable?
3. **Hybrid or Remote working –** Notification Procedures
4. **Confidentiality still stands**
5. **What information do we require from the employee**
6. **Decision in relation to Medical Certification –** this will be a key consideration due to the fact that in order for the claim SSP the employee must give a Medical Cert on Day 1 of Absence. This is however separate to your company’s internal notification procedures.
7. **Probation Period different procedures? –** note that in order to claim SSP the employee must have a minimum 13 weeks service.
8. **Illness Benefit –** direct to the Employee? Direct to employer & topped up?
9. **Consistent approach of how employer engages with employees absent for a longer amount of time –** facilitate that the employer can engage whilst they are absent – try and do all we can to facilitate their return/reasonable accommodations
10. **Facilitate the right to arrange an Occupational Health Advisor**

**Protections and record keeping**

Records of statutory sick leave must be kept by the employer for a period of four years. For each such employee, this is to include the amount of service of the employee, the dates and times of statutory sick leave and the rate of payment made. The introduction of a Statutory Sick Pay (SSP) Form – to be placed on the employee’s file for record keeping of 4 years. ISME has collated two forms to assist you;

* **SSP Form**
* **Return to Work Form (including SSP Record)**

Employees may not be penalised for exercising their right to avail of Statutory Sick Pay. During a period of absence on statutory sick leave, employees will be treated as if they had not been absent and no employment rights will be affected. Absence on statutory sick leave is  not to be treated as part of any other leave. An employer may require that any period of probation, training or apprenticeship be suspended during the statutory sick leave period and be completed by the employee at the end of that period.

**Employer exemptions**

There is provision for the Labour Court to exempt an employer from the obligation to pay SSP. The exemption cannot exceed one year and cannot be less than three months. The Labour Court will require agreement between the employer with the majority of the employees and the employer's business must be experiencing severe financial difficulties. The Labour court may still grant an exemption if agreement is not reached with the employees if it is satisfied that the employer has informed the employees of its financial difficulties; attempted to reach an agreement; and that if it were compelled to pay SSP the sustainability of the business would be affected or a material number of employees would be laid off or made redundant.

**Employee complaints**

The Act provides that, where an employee believes that their employer has failed to comply with the provisions of the legislation in relation to statutory sick pay, the employee can make a complaint to the Workplace Relations Commission (the **WRC**). A decision of the WRC under the legislation may include an award of compensation of up to four weeks' remuneration.

Employers should review their relevant sickness and absence policy, or its equivalent to ensure compliance with the Act. Employers must also ensure that they have a system in place for keeping proper records of the statutory sick leave taken by each employee. Such records must be retained for a period of four years and an employer who without reasonable cause fails to keep records shall be guilty of an offence and liable on conviction to a fine of 2,500.

ISME advise that members use their current Sick Leave Policy as a foundation. See below suggested wording for when sick pay comes into legislation – this will need to be amended year on year until it settles at 10 days.

**Suggested Wording outlining Statutory Sick Pay Scheme Process:**

*The company pays sick pay in line with the Statutory Sick Pay Scheme providing the employee has at least 13 weeks service. You will be paid for a maximum of 3 days per year, at a rate of 70% of normal daily rate, or €110 per day, whichever is the lesser amount. In order to claim SSP an original certificate from a qualified Medical Practitioner must be submitted to your Reporting Manager on the first day of absence.*

*Accordingly, you may need to submit a claim to the Department of Social Protection in order to apply for Illness Benefit, after 3 days of illness. It is the employer’s legal obligation that a Statutory Sick Pay Record be completed on your return to work and filed on your employment file for a 4 year period.*