Changes to statutory sick pay

Employment Tax | Personal tax



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We’re all aware that things are changing daily in respect to COVID-19. This article was correct at the time of writing on 18 March.

On 11 March, newly appointed chancellor Rishi Sunak in his first Budget announced a range of measures intended to counter the effects of coronavirus with a three-point plan to provide support for public services, individuals and businesses. Since then, the coronavirus crisis both in the UK and internationally has continued to develop with alarming rapidity, and the government is now issuing daily updates.

Less than a week after the Budget, on 17 March, the chancellor announced further measures of government support (see Box 1). He stresses that the government's measures will continue to be increased when needed by as much as necessary.

However, these measures need to be implemented. Given the immediacy of the implementation dates, it is unsurprising that obtaining clarity about the details and practicalities of implementation are proving challenging in some areas. Kate Upcraft , who is a member of the cross-government statutory payments' forum, shares her experiences of the changes to statutory sick pay (SSP).

The government announced that changes in respect to the payment of SSP would be effective on 13 March.

Regulations have been laid down in The Statutory Sick Pay (General) (Coronavirus Amendment) Regulations 2020, confi rming that for the next eight months COVID-19 would be treated as a deemed incapacity. You should note that this legislation only applies in Great Britain and at the time of writing no corresponding legislation has been laid in Northern Ireland, although it is expected to be.

SSP rules before 13 March 2020

SSP is an inappropriate title. It implies to employees that this is funded by the government, as other statutory payments are. This isn't the case and it hasn't been funded, even for the smallest employers, since 2014. It is instead essentially a floor to company sick pay (and perhaps would be bett er referred to as a nati onal minimum sick pay). SSP is £94.25 per week for 2019/20 and will be increased to £95.85 per week from 6 April 2020. There is no need to show it as SSP on payslips as long as the statutory minimum is paid.

SSP is not payable for the first three days of absence, known as waiting days. These must be qualifying days, which are set by the employer to reflect the employee's work pattern (i.e. whether five days a week, seven days a week or shift patterns). It is vital to record all days of absence, including non-working days, so that a continuous period of absence is recorded which enables payroll software to calculate the first three qualifying days as waiting days.

Employees are not required to provide any medical evidence for the first seven calendar days of absence, and can instead self-certify.

Employees who have 56 days or less after the last day of an absence and before the first day of the next absence are treated as being continuously sick, known as ‘linked absence’. Employers only have to pay SSP for 28 weeks in one period, or linked periods, of absence. An employee must then return to work for more than 56 days for a new entitlement to 28 weeks’ SSP to begin.

SSP rules after 13 March 2020

A week before the Budget, the prime minister announced that employers would be required to pay employees affected by coronavirus from day one of sickness. On 14 March 2020, DWP announced that emergency legislation would be effective retrospectively from the 13 March 2020. Businesses are now required to pay eligible employees a minimum of SSP from day one of absence due to coronavirus, rather than from the standard fourth day of absence. Of course, employers can choose to pay SSP or full pay from day one of sickness at any ti me, but there was no requirement to do so unti l 13 March. These are statutory rules for minimum SSP payments.

Companies with fewer than 250 employees will also be reimbursed for up to 14 days of SSP payments made to each eligible employee unable to work because of COVID-19. Eligible businesses which pay higher rates of sick pay to employees will be able to claim reimbursement for the SSP element of that pay.

These new measures will apply to all companies with fewer than 250 employees on 28 February 2020. However, it has not yet been determined how the size of a company will be assessed but it seems most likely that the connected companies/chariti es rules will be used, which advisers will be familiar with in respect to eligibility for employment allowance. It will certainly not be calculated upon the basis of individual PAYE schemes; i.e. if a company runs multi ple PAYE schemes each for under 250 employees.

Which employees are eligible?

This applies to all those who are not working due to COVID-19 following government advice. It refers both to employees being told to self-isolate, and also to anyone who is self-isolating to care for someone who has COVID-19. However, employees are only eligible if they have any SSP allowance left in a current period of absence. This is not an additional entitlement. This applies to everyone who is impacted by the requirement to remain at home due to coronavirus; therefore, eligible employees

aged over 70 and those with underlying health conditions will qualify for these rules, as these groups are now required to stay at home for 12 weeks (see bit.ly/2IYkmqp). This will clearly mean that a much larger group of employees is impacted.

How will businesses secure reimbursement?

There appears to be no quick fix at time of writing in terms of how businesses will secure reimbursement under these new rules. Many very small businesses qualify for Small Employers' Relief, which means they can reclaim reimbursement for 103% of statutory maternity pay, statutory paternity pay and shared parental pay through the RTI system. Such businesses can also apply to HMRC to pay them in advance if they need to secure advanced funding for these payments (see bit.ly/2x83QBi).

You would think it would be relatively straightforward for HMRC to deploy a similar system for SSP reimbursements, but it seems this is not the case so isn't likely to be adopted for these purposes. Instead, government has concluded that it will be easier to develop a separate method and is exploring the development of a standalone system to allow eligible businesses to reclaim the relevant SSP. This is a work in progress.

Other circumstances for absence The above only deals with the statutory obligation to pay SSP. However, there are other situati ons where the employee might not come in or be asked to refrain from coming to work:

- If the employee voluntarily chooses not to perform work under their contract of employment, there is no obligation to pay SSP, salary or any occupati onal sick pay.
- However, if the employer imposes a restriction on people performing work under their contract of employment, i.e. by asking them not to come into work, the employer should pay full pay. This would be the same if the employer wanted employees to perform their work under a contract of employment but from home.

Other tax issues

With more employees working at home, employers may be asked about additi onal costs and equipment. From 6 April 2020, the homeworking allowance provided for in ITEPA 2003 s 316A goes up to £6 per week/£26 per month (up from £4 per week/£18

per month in 2019/20). This can be paid tax and NI free for anyone with a ‘homeworking arrangement’ and doesn’t need to be pro-rated for part-time staff or those not working at home full time. The requirement to work at home at the employer’s behest due to COVID-19 will meet the terms of the exempti on. If an employer does not reimburse such costs, an employee can keep records of expenses incurred such as heati ng, lighti ng or business telephone calls and make a s 336 claim for tax relief.

Allowing an employee to take home employer owned equipment such as a laptop is not a benefit in kind (as per ITEPA 2003 s 316) as long as any private use is insignificant. For any employees without a company mobile phone, it may make sense to provide one to all staff working remotely as this can be provided for both business and personal use, whereas reimbursing a personal mobile phone requires the employer to establish the costs of business calls, as rental and private calls cannot be covered. This would also apply to providing a taxi to work for employees who don’t want to use public transport. HMRC has not announced any relaxati on on such reimbursement being taxable expenses.

OTHER BUDGET MEASURES TO SUPPORT BUSINESSES

A number of other measures to support businesses were announced in the Budget 2020 and have been subsequently amended to increase their reach:

- a 12 month business rates holiday for all retail, hospitality and leisure businesses in England;
- small business grant funding of £10,000 for all businesses in receipt of small business rate relief or rural rate relief;
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000;
- the Coronavirus Business Interruption Loan Scheme to support long-term viable businesses which may need to respond to cash-fl ow

pressures by seeking additi onal finance; and the

- HMRC Time To Pay Scheme.