

## Statutory sick pay is on the horizon: what do employers need to know?

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### Introduction

On 9 June 2021, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar TD (the “Tánaiste”), approved the drafting of The Sick Leave Bill 2021 (the “Bill”), which will provide all workers in Ireland with a statutory entitlement to be paid during periods of illness or injury.

Currently in Ireland, there is no legal requirement for employers to pay their employees while they are on sick leave. As such, entitlement to sick pay may arise pursuant to an employee’s contract of employment or company policy. Where sick pay is not provided by an employer, the State pays Illness Benefit in certain circumstances. As a result, for a variety of reasons, employers may choose not to pay their staff who are absent from work due to illness or injury.

In March 2020, as the pandemic set in and cases of COVID-19 began to rise, many employees became acutely aware of this issue. This was highlighted when employees who were considered a close contact of a positive COVID-19 case, were reluctant to take unpaid sick leave.

### How will the statutory sick pay scheme under the proposed Bill will work?

The scheme will be phased in over a four-year period as follows:

- three paid sick days in 2022,
- five paid sick days in 2023,
- seven paid sick days in 2024 and
- ten paid sick days in 2025.

This phased approach is to provide employers with the time necessary to adjust to these changes,

given that they will eventually be required to cover the cost of up to ten paid sick days per year for all employees.

The rate of sick pay under the scheme will be fixed at 70% of their wage and will be taxed by the employer in the usual way. This has been capped at a daily rate of €110. This daily cap is based on 2019 mean annual earnings of €40,889.16 and can be revised at any time by ministerial order, so that inflation and changing rates of income can be taken into account. This cap has been set to ensure that excessive costs are not placed on employers, particularly those who may need to hire replacement staff at short notice.

Prior to availing of the scheme, employees must obtain a medical certificate certifying their illness/injury and must have worked for the employer for a minimum of six months.

The State will not top up salary during sick leave but, subject to PRSI contributions, employees may qualify for illness benefit from the Department of Social Protection if they need to take more time off after their entitlement to sick pay from their employer ends.

## **What are the benefits of the scheme?**

The Bill is expected to provide a minimum level of protection to low paid employees who may not have an entitlement to an adequate company sick pay scheme. The Tánaiste has stated that the intention behind the Bill is to “make sure that every worker, especially lower paid workers in the private sector, have the security and peace of mind of knowing that if they fall ill and miss work, they won’t lose out on a full day’s pay”. [1]

The Government carried out a regulatory impact assessment [2] (the “RIA”) of the proposed Bill and have listed the other benefits. These are expected to include reducing employee turnover; a potential reduction in absenteeism; providing a safer working environment; reducing the spread of infectious illnesses and diseases; and giving employees a better quality of life.

For employers who currently provide sick pay for their staff, the new legislation will expressly state that the new statutory scheme will not prevent them offering better terms to employees and will also not prevent trade unions from negotiating better terms through a collective agreement.

In introducing the Bill, the Tánaiste stated that the introduction of statutory sick pay for all employees in Ireland will be “one of the positive legacies of the pandemic” as it will assist in building a “more inclusive economy and fairer society”. [3]

## **What does statutory sick pay mean for employers?**

While statutory sick pay will not be introduced until 2022, employers, especially those who do not currently pay their employees during sick leave, will need to bear these new obligations in mind and make amendments to the relevant policies and to contracts of employment.

The RIA states that the scheme is expected to be as straightforward and simple as possible so as to reduce costs and administrative burdens for employers. The RIA also states that significant costs will not be imposed on employers on foot of the Bill. However, with that said, there are inevitable costs attached to the sick pay scheme which employers will have to consider from 2022 as there will be no compensation scheme for employers to assist them in fulfilling their employee's entitlements.

*For further advice on the Sick Pay Bill 2021 and the proposed statutory sick pay scheme please contact Bláthnaid at [blathnaid.evans@ogier.com](mailto:blathnaid.evans@ogier.com)*

[1] <https://www.irishlegal.com/article/statutory-sick-pay-to-be-phased-in-from-2022>

[2] <https://enterprise.gov.ie/en/Legislation/Sick-Leave-Bill-2021-RIA.html>

[3] <https://www.irishlegal.com/article/statutory-sick-pay-to-be-phased-in-from-2022>

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