

Statutory sick, maternity and paternity pay



An outline of an employer's obligations to pay statutory payments such as Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP), Shared Parental Pay (ShPP) and Statutory Adoption Pay (SAP). As the scheme payments are statutory, it is vital that rules are adhered to. At Firmvalue Payroll Limited we can provide you with assistance or any additional information required.

Statutory Sick Pay (SSP), Statutory Maternity Pay (SMP), Statutory Paternity Pay (SPP), Shared Parental Pay (ShPP) and Statutory Adoption Pay (SAP) are important regulations to understand as they enforce minimum legal requirements on employers. Each operates in a different way.

This factsheet sets out the main principles of the regulations and what an employer needs to consider.

Statutory Sick Pay (SSP)

SSP applies to all employers, regardless of size and represents the minimum payments, which should be paid by law.

It is possible to opt out of the scheme but only if an employer's occupational sick pay scheme is equal to or more than SSP. There would still be a requirement to keep appropriate records, etc.

We have outlined the general principles below but first we need to explain some of the special terms used.

Glossary of terms

Period of incapacity for work (PIW)

A PIW consists of four or more calendar days of sickness in a row. These do not have to be normal working days.

Linking

Where one PIW starts within eight weeks of the end of a previous PIW the periods can be linked.

Qualifying days

These are usually the employee's normal working days unless other days have been agreed. SSP is paid for each qualifying day once the waiting days have passed.

Waiting days

The first three Qualifying Days in a PIW are called Waiting Days. SSP is not payable for Waiting Days. Where PIWs are linked it is only the first three days of the first PIW which are Waiting Days.

Who qualifies for SSP?

All employees must have an employment contract and have been sick for four or more days, including non-working days. At the beginning of a PIW or linked PIWs, they must also earn an average of at least £123 per week to be eligible.

Employees must have notified you about their sickness - either within your own time limit or within seven days.

A fit note (sometimes called a sick note) must be issued by the employee's doctor or a hospital.

How much SSP is payable?

The weekly rate of SSP is £99.35 for 2022/23 but it is calculated at a daily rate.

The daily rate

The daily rate may vary for different employees. It is calculated by dividing the weekly rate by the number of qualifying days in a week. For example, an employee with a five-day working week would have a daily rate of £19.87 for 2022/23.

Maximum SSP

The maximum entitlement is 28 weeks in each period of sickness or linked PIW. Your employee is no longer eligible for SSP if they have a continuous series of linked periods that last more than three years.

Employers are not able to recover SSP paid for sickness absences.

Pay as You Earn (PAYE) and records

SSP is included in gross pay and PAYE is operated as normal.

Employers should monitor sickness absence and maintain detailed records as these will be required for PAYE purposes.

Statutory Maternity Pay (SMP)

SMP is paid to employees or former employees who have had or are about to have a baby. The payment of SMP is compulsory where the employee fulfils certain requirements.

SMP requirements

SMP is payable provided the employee has:

- Started maternity leave.
- Given 28 days' notice of maternity leave (unless with good reason).
- Provided medical evidence with form (MATB1). Your employee can obtain MATB1 from their midwife or doctor no more than 20 weeks before their due date.
- Been employed continuously for 26 weeks up to and including her qualifying week, which is the 15th week before the expected week of childbirth.
- Had average weekly earnings (AWE) above the Lower Earnings Limit in the relevant period.

It is important to note that mothers have a legal entitlement to take up to 52 weeks off around the time of the birth of their baby, whether or not they qualify for SMP. This means that mothers can choose to take up to one year off in total.

The amount payable

The date the baby is due, as shown on the MATB1 certificate, determines the maternity pay period entitlement and not the date the baby is born. SMP is paid for 39 weeks and is paid at two rates:

- For the first six weeks, an employee receives 90% of their average pay. The average pay is based on your employee's earnings when you are approximately 18 to 26 weeks' pregnant.
- After the first six weeks, you get a flat rate of £156.66 per week (April 2022 – April 2023) for 33 weeks or 90% of your average earnings if that is less.

SMP is treated as normal pay.

Average weekly earnings (AWE)

AWE need to be calculated for two purposes:

- To determine if the employee is entitled to SMP (earnings must be above the Lower Earnings Limit).
- To establish the rate of SMP.

The average is calculated by reference to the employee's relevant period. This is based on an eight-week period up to the end of the qualifying week, which is 15 weeks before the baby is due. In some instances, subsequent pay rises have to be taken into account when calculating SMP. Earnings for this purpose are the same as for Class 1 NICs and include SSP.

Recovery of SMP

92% of SMP paid can be recovered by deduction from the monthly PAYE payments.

Employers may qualify for Small Employers' Relief (SER). SER is 100% of SMP plus 3% compensation.

To qualify for SER, the current limits are:

- Total gross Class 1 NICs for the employee's qualifying tax year must be less than £45,000.
- The employee's qualifying tax year is the last complete tax year that ends before the start of her qualifying week.

Glossary of terms

Week baby due

The week in which the baby is expected to be born. This starts on a Sunday.

Qualifying week (QW)

The 15th week before the week baby is due. The week the baby is due and the QW are easy to establish using software or online calculators, which are available through gov.uk basic PAYE tools. [Gov.uk provide a calculator here to determine the earliest date you can start your Statutory Maternity Leave.](#)

Maternity Pay Period (MPP)

The period of up to 39 weeks during which SMP can be paid.

MATB1

Maternity certificate provided by a midwife or doctor. This is available up to 20 weeks before the baby is due and cannot be issued before this. SMP cannot be paid without it.

Ordinary Statutory Paternity Pay (OSPP) and Leave

OSPP was previously known as Statutory Paternity Pay. OSPP is paid to partners who take time off to care for the baby or support the mother in the first few weeks after the birth and can be:

- The baby's father.
- The expectant mother's spouse or civil partner.
- In a long-term relationship with the expectant mother.
- The intended parent (if they are having a baby through a surrogacy arrangement).

To be eligible employees must also:

- Be classed as an employee (paternity leave only)
- Be employed by you up to the date the child is born (or placed with the adopter) (paternity pay only)
- Be on your payroll and earn at least £123 a week (gross) in an 8-week 'relevant period' (paternity pay only).
- Give you the correct notice. [Notice guidance is here.](#) Notice does not have to be in writing unless you request it. Employees can use form SC3 to ask for leave and pay.
- Be taking time off to look after the child or their partner.
- Be responsible for the child's upbringing.
- Have been continuously employed by you for at least 26 weeks up to any day in the 'qualifying week'. The qualifying week is the 15th week before the baby is due. This is different if the [employee is adopting as explained here.](#)

Leave for antenatal appointments

The father, or expectant mother's spouse or civil partner, or intended parent or someone who is in a long-term relationship with the expectant mother - can take unpaid leave to attend up to two antenatal appointments of up to six and a half hours each.

The OSPP amount payable

OSPP is payable for a maximum of two weeks: it must be taken as a block of either one week or a complete fortnight but not two single weeks, at the following rates:

Either £156.66 a week for April 2022 – April 2023 or 90% of the employee's Average Weekly Earnings (AWE) – whichever is lower. You still need to deduct tax and national insurance.

The calculation of AWE and the recovery of OSPP are subject to the same rules as for SMP.

Adoptive parents

The rates of Statutory Adoption Pay (SAP) are £156.66 a week for April 2022 – April 2023 or 90% of the employee's Average Weekly Earnings (AWE) – whichever is lower. You still need to deduct tax and national insurance.

To qualify for Statutory Adoption Pay (SAP), an employee must:

- Have been continuously employed by you for at least 26 weeks up to any day in the week they were matched with a child (UK adoptions).
- Have been continuously employed by you for at least 26 weeks by either the date the child arrives in the UK or when they want their pay to start (overseas adoptions).
- Confirm that their partner is getting Statutory Adoption Pay in writing or by giving you a copy of their [partner's form SC6 \(overseas adoptions\)](#).
- Meet the [other eligibility conditions for paternity leave or pay](#).

Notice period

An employee adopting a child must [send you form SC4](#) for:

- Leave - no later than seven days of their co-adopter or partner being matched with a child.
- Pay - 28 days before they want their pay to start.

For overseas adoptions the form and notice period is different. [The process is explained on form SC5](#).

Leave start date

An employee taking paternity leave because they are adopting can start their leave:

- On the date of placement.
- An agreed number of days after the date of placement.
- On the date the child arrives in the UK or an agreed number of days after this (overseas adoptions).

For overseas adoptions, leave must be taken within 56 days of the date of placement or the child's arrival in the UK.

Proof of adoption

Employees must give you proof of adoption to qualify for paternity pay. Proof is not needed for paternity leave unless you request it. Proof can be a letter from their adoption agency or their matching certificate.

You must keep records of the proof, [as explained here](#).

Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP)

You and your partner may be able to get Shared Parental Leave (SPL) and Statutory Shared Parental Pay (ShPP) if you are:

- Having a baby.
- Using a surrogate to have a baby.
- Adopting a child.
- Fostering a child who you are planning to adopt.

You can share up to 50 weeks of leave and up to 37 weeks of pay between you.

You need to share the pay and leave in the first year after your child is born or placed with your family.

You can use SPL to take leave in blocks separated by periods of work, or take it all in one go. You can also choose to be off work together or to stagger the leave and pay.

To get SPL and ShPP, you and your partner need to:

- Meet the eligibility criteria - there's different criteria for birth parents and criteria for adoptive parents or parents using a surrogate.
- Give notice to your employers.
- Give up some of your maternity or adoption leave and pay.

Giving up maternity and adoption leave and pay

To get SPL and ShPP you or your partner has to:

- Take less than the 52 weeks of maternity or adoption leave and use the rest as SPL.
- Take less than the 39 weeks of maternity or adoption pay (or Maternity Allowance) and use the rest as ShPP.

For example, if you are the mother and you have taken 22 weeks of Maternity Leave and Statutory Maternity Pay, you can share 30 weeks of SPL and 17 weeks of ShPP with your partner.

More details on [Shared Parental Leave and Pay - and eligibility - are here.](#)

How we can help

If you are an employer, we will be more than happy to provide you with assistance or any additional information required. Please do [contact us at Firmvalue Payroll Limited.](#)

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