

EMPLOYMENT

The Sick Leave Act 2022 has been signed into law

As the Tánaiste highlighted in his speech on the Sick Leave Act in June 2022, Ireland is one of the few advanced economies in Europe not to have a mandatory sick pay scheme. Employees are of course entitled to take sick leave when they are ill but whether or not they are paid during their absence is solely governed by the terms of their employment contract and / or the employer policies and practices in place.

This is all about to change with the enactment of the Sick Leave Act 2022 (the **Act**). The Act provides for a statutory sick pay scheme for employees in Ireland. It was signed by the President on the 20 July 2022 and is due to be enacted by commencement order.

5 MIN READ

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General overview of the Sick Leave Act 2022

Once enacted, the Act for the first time will provide for statutory sick pay (**SSP**) for employees. The Act applies to employees who have entered into or work under a contract of employment. For agency workers the party who is liable to pay the wages of the individual concerned will be deemed to be the employer.

The Act provides that, an employee, in respect of a day on which they ordinarily work but are incapable of doing so due to illness or injury, will be entitled to SSP of up to three days a year. The sick leave days do not have to be consecutive. In order to qualify for SSP an employee must

- i. have completed 13 weeks continuous service
- ii. provide their employer with a medical certificate stating that they are unable to work

SSP will be paid by the employer at a rate of 70% of an employee's pay but, significantly, this payment will be subject to a **daily maximum limit of €110**. This limit may be revised over time by ministerial order to bring it in line with inflation and changing incomes.

Future changes

There is a provision within the Act for the Minister for Enterprise Trade and Employment (the **Minister**) following consultation with the Minister for Social Protection, to vary by way of an order, the number of statutory sick leave days per year having regard to:

- a. the state of the economy generally, the business environment and national competitiveness
- b. the state of society generally, the public interest and employee well-being
- c. the potential impact, including the potential for any disproportionate or other adverse impact that the making of the order will have on the economy generally, specific sectors of the economy, employers, or employees
- d. annual and quarterly data on earnings and labour costs as published by the Central Statistics Office

- e. expert opinion, research, national or international reports relating to the matters specified at paragraphs (a) to (d) that the Minister considers relevant
- f. the views of employer representative bodies

The Minister can make the first order 12 months following the commencement of the Act, and at 12-month intervals following that. However, the Minister cannot reduce the number of statutory sick days to below 3 or increase the number of days by more than 3 from the previous order. The objective is that the Act will be phased in with the number of days increasing incrementally over the next four years.

1. 2022 – three days covered
2. 2023 – five days covered
3. 2024 – seven days covered
4. 2025 – ten days covered

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.

Key takeaways for employers

The Act does not prevent the inclusion in a contract of employment of a provision that is as favourable or more favourable to an employee than the entitlement to SSP set out in the Act. Any such provision will be in substitution for, and not in addition to, the statutory entitlement. The Act also provides that any provision in a contract of employment that is, or becomes, less favourable to an employee will be deemed to be modified so as to be in line with the statutory entitlement.

The obligations contained in the Act will not apply to an employer who provides their employees with a sick leave scheme where the terms of the scheme give benefits that as a whole are more favourable to the employee than statutory sick leave.

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, to include the period of employment of each employee who availed of statutory sick leave, the dates and times of the statutory sick leave and the rate of sick leave payment. 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.

While the SSP sick leave days will rise incrementally over the coming years, the indicators are that the current proposed cap of €110 will continue to apply. The cap on the SSP ensures that employers will not be faced with excessive SSP payments having to be made for highly remunerated employees.

It is expected that the new law will commence later this year.

For further information in relation to this topic please contact Emer Murphy, Senior Associate, or any member of the ALG Employment team.

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