



Supply Teachers

STATUTORY SICK PAY (SSP) ADVICE AND GUIDANCE FOR SUPPLY TEACHERS

Access to SSP for supply teachers during the COVID-19 pandemic

Following the announcement and publication of the Westminster Governments living with **COVID-19 response**, the COVID-19 provisions around Statutory Sick Pay (SSP) will no longer be available from 24 March 2022

This means that the temporary revisions which provided for SSP to be paid from the first day of sickness for those eligible (as opposed to the fourth day) will no longer be in place to support individuals who are sick or self-isolating due to COVID-19.

Depending on your circumstances, you may still be eligible for SSP if you have COVID-19, so you are advised to carefully check against the eligibility criteria.

Supply teachers have a vital role to play in raising and maintaining high educational standards in schools. Campaigning to secure professional entitlements for supply teachers is a key priority of the NASUWT, together with securing decent pay and working conditions for all supply teachers.

Employees in paid work, including supply teachers, may qualify for Statutory Sick Pay (SSP) which is payable by the employer, subject to eligibility and rules on notification set out by the employer.

Your contract of employment

As a supply teacher, your rights and entitlements for sick pay should be set out in the overarching contract of employment that you have with your agency and/or umbrella company.

The agency and/or umbrella company must provide details of your sick pay entitlement in your **written statement of employment particulars**. From 6 April 2020, this must be provided to all workers and employees from day one.

In addition, agency workers such as supply teachers, must be given a **Key Information Document (KID)** containing the key terms and conditions that govern assignments, on or before the engagement start date, including the provisions in relation to sickness absence and sick pay. This is in addition to the right to a written statement of employment particulars.

Your employer may have an occupational scheme that is at least as good as SSP, but in the absence of any contractual sick pay, supply teachers may be entitled to SSP provided they meet the government **eligibility criteria**.

An eligible supply teacher could receive £96.35 per week SSP for up to 28 weeks, depending on whether they have targeted three months' continuous employment with their employer. This should be paid in the same way as the employer pays wages, and on the same day.

For the purposes of SSP for agency workers, such as supply teachers, continuous employment is not broken by periods of sickness or annual leave or when the agency is unable to offer work.

Further details regarding the eligibility for SSP for supply teachers:

- They must be an employee of the employer (e.g. agency or umbrella company) and have undertaken some work under their contract of employment, although they do not have to have

received payment in order to qualify. This means that a supply teacher who has only just started working may qualify for SSP even if they have not been paid yet.

Social security legislation uses a broader definition of 'employee' for the purposes of SSP, which means that supply teachers as agency workers may receive SSP if they meet the eligibility criteria and the agency and/or umbrella company is liable to pay National Insurance Contributions (NICs) for the supply teacher.

- ◆ Earnings must be at least as much as the **Lower Earnings Limit** (currently £120 per week from 6 April 2020) for NICs that apply on the first day of sickness, or if the level of pay varies, it will depend on the average over the previous eight weeks.

If a supply teacher has a contract with more than one agency and their earnings are aggregated for the purposes of NICs, they must be incapable of work under all their contracts before they are entitled to SSP.

Furthermore, a supply teacher cannot combine earnings from different contracts to meet the threshold outlined above (unless those jobs are with the same employer). However, a supply teacher undertaking two or more assignments with different agencies may be able to claim SSP from both agencies if they earn at least £120 in both assignments.

Where a supply teacher has not been working for an agency for eight weeks, SSP is calculated by reference to the amount of pay the supply teacher is due to be paid under their contract (e.g. the daily rate or the rate agreed for a long-term assignment).

- ◆ Supply teachers who earn less than the £120-per-week threshold, or who are self-employed, are not entitled to SSP.

- ◆ SSP is payable for a '**period of incapacity for work**'. With the exception of COVID-19-related absences (see below), this is any period of four or more calendar days in a row (known as '**waiting days**'). This includes weekends, bank holidays and non-working days where an employee is incapable of work due to illness.

If there are fewer than four consecutive days in a 'Period of Incapacity for Work', there is no SSP due.

- ◆ SSP can only be claimed for days counted as '**qualifying days**'. These are usually the days normally worked as set out in the contract of employment.

In the case of a supply teacher with no standard working work, the qualifying days may be set by agreement with the employer. If the days have not been agreed, then Wednesday is usually deemed as a qualifying day to ensure that an individual can still receive SSP for a week in which they would not normally work.

- ◆ 'Periods of incapacity for work' are linked and treated as one 'period of incapacity for work' if the gap between them is eight weeks (56 days) or fewer, irrespective of whether or not the reasons for the absence are linked.

The subsequent periods of sickness must be four or more days in a row to form another 'period of incapacity for work'.

If an employee returns to work and falls ill again within the same period (as described above), waiting days do not apply.

Any periods of sickness that are fewer than four days or more are ignored, as SSP only applies to 'periods of incapacity for work'.

Tables for linking 'periods of incapacity for work' can be found at: <https://www.gov.uk/government/publications/statutory-sick-pay-tables-for-linking-periods-of-incapacity-for-work>.

Paying SSP

Entitlement to SSP covers any period of illness up to a maximum of 28 weeks. How this is used up is dependent on the working pattern of the employee. For example, if an employee works two days per week and is paid SSP for these two days, then this uses up one week of SSP, whereas an employee



will only use up 0.4 of a week's entitlement if they are paid SSP for the same two days, but works five days per week.

Once the maximum entitlement to SSP has been paid, an employee/supply teacher must return to work for more than 56 days for a new entitlement to SSP to begin.

A supply teacher is deemed to have been incapable of work for the whole day if they arrive for an assignment but do not do any work before they go sick. However, if a supply teacher undertakes any work, no matter how long, that day cannot be treated as a day of incapacity for the purposes of SSP.

There is no need for an employer to show SSP separately on payslips as long as the statutory minimum is paid.

A daily rate of SSP is needed to pay SSP for part of a week. The daily rate of SSP is the weekly rate divided by the number of 'qualifying days' in that week.

As a supply teacher, if the number of 'qualifying days' vary, the calculations may need to be done separately for each week.

Example

An employee works full-time, Monday to Friday. They fall ill on Sunday and are sick until the following Sunday. There is a **'period of incapacity at work'** of eight days of consecutive illness.

The first three days (Monday to Wednesday) are discounted as these are **'waiting days'**. The employee is paid SSP for the remaining two **'qualifying days'** in that 'period of incapacity at work' (Thursday and Friday).

The employee will receive £38.54 ($£96.35 \times 2/5 = £38.54$).

If the period of receipt of SSP straddles different tax years, then the calculations should reflect the old and the new rates for each relevant period.

SSP is not payable if a supply teacher is getting any form of statutory paid leave (e.g. Statutory Maternity Pay; Statutory Adoption Pay).

Providing evidence of the incapacity for work

To claim SSP, a supply teacher must notify the employer about their sickness absence.

A supply teacher should be told by their employer, often in the overarching contract of employment, what they are expected to provide as evidence of their incapacity for work, and when this should be provided.

However, a supply teacher cannot be required to notify their employer in person, nor can an employer withhold SSP for the submission of late medical evidence by a supply teacher.

If required, a supply teacher should be able to get a 'sick note' from an **NHS online facility**, although it should be noted that a supply teacher does not have to provide a doctor's certificate (e.g. a 'Fit Note') for the first seven days of their incapacity for work, as a supply teacher is able to self-certificate.¹

Disputes over SSP

If there is a dispute as to whether or not a supply teacher is entitled to SSP (or where entitlement to SSP has come to an end), the employer should set out its reasons using Form SSP1 and send it to the supply teacher.

If appropriate, a supply teacher can contact the **HMRC statutory payment dispute team** within six months of the refusal to pay.

¹ It should be noted that the rules around the submission of fit notes/sick notes have recently been changed to state that for those who begin sick leave from 10 December 2021, a fit note has to be provided after 28 calendar days.

Access to SSP for supply teachers during the COVID-19 pandemic

Supply teachers, including those working as agency workers through an employment business, may be **eligible for SSP** from the first day of sickness (as opposed to the fourth day) under temporary revisions introduced to support individuals who are ill from COVID-19 or are required to self-isolate in line with **government advice and guidance**.

The key change to the payment of SSP for employees affected by COVID-19 is the removal of 'waiting days'. Ordinarily, SSP is not payable for the first three days. However, during the current pandemic employers are required to pay qualifying employees, including supply teachers, from day one of absence due to COVID-19, as opposed to the normal fourth day of absence. Nevertheless, an eligible supply teacher still needs to be absent for four or more days to be entitled to SSP.

In addition to this, access to SSP has been temporarily extended to cover individuals who are unable to work because they have been advised to self-isolate, as well as people caring for those within the same household who display COVID-19 symptoms and have been told to self-isolate.

Those eligible supply teachers who are self-isolating are able to obtain a **notification** via NHS 111, which can be used as evidence of absence from work.

As far as reasonably practicable, any absence should still be reported in the normal way laid out by the employer, although a supply teacher is still able to self-certificate for the first seven days.

However, it should be noted that, due to the COVID-19 pandemic, individuals may not be able to visit their GP to obtain a Fit Note, which explains why the period for self-certification has been increased as referenced in the **footnote above**.

An eligible supply teacher would receive £96.35 for each week of self-isolation (£192.70 in total), irrespective of the number of days worked.

It is important to note that the changes to SSP identified above do not change the eligibility conditions for SSP, so supply teachers are advised to carefully check against the eligibility criteria.

Furthermore, the COVID-19 entitlement to SSP from day one is not an additional entitlement, meaning that any previous 'periods of incapacity for work' may be linked for the purposes of calculating SSP.

Further advice and guidance

For further advice and guidance, please contact the NASUWT. We can help with information and advice to support you regarding SSP. We will be happy to discuss your circumstances and answer your questions.



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