
Sick Leave Bill 2021



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The Irish Government published the long-awaited Sick Leave Bill 2021 earlier this month. The Bill, for the first time, provides for a minimum statutory sick leave payment (SSP) for an employee, in respect of a day in which they ordinarily work but are incapable of doing so due to illness or injury, of up to three days a year.

The Department of Trade Enterprise and Employment have previously indicated that the number of statutory sick leave days would gradually increase as part of a phased four-year plan with three days covered in year one (2022), five in year two (2023), seven in year three (2024) and ten in year four (2025).

Section 6 of the Bill, however, allows the Minister to vary the minimum number of statutory sick leave days to such a number as he or she considers appropriate having regard to a number of considerations set out in the legislation such as the state of the economy generally.

The Bill prohibits the minister from reducing the number of statutory sick leave days below three days per year and from increasing the number of statutory sick leave days by more than three days per year. In addition, any orders to vary the number of days must be made at least 12 months apart. The entitlement to SSP will not commence until the employee has completed 13 weeks continuous service with their employer.

In order for an employee to avail of SSP they must provide their employer with a medical certificate signed by a registered medical practitioner which states that the named employee is unable to attend work. Under the Bill the SSP days can be consecutive or non-consecutive.

Statutory Sick Leave Payment and Employer Exemptions

The Bill provides that an employer shall pay an employee a prescribed daily rate of payment in respect of each statutory sick leave day. The Bill also states that the Minister may make regulations which set out the percentage rate of an employee's pay, up to a maximum daily amount, at which statutory sick leave payment will be paid. The Department has previously indicated that the initial rate of SSP will be 70% of an employee's wage up to a maximum of €110 per day. It should be noted that employers are not prevented from providing more favourable sick leave schemes in their contracts of employment.

Employers who cannot afford to pay the SSP may apply to the Labour Court for an exemption. Such an exemption may last for a period of not exceeding one year and not less than 3 months. The Labour Court will seek an agreement between the employer and the employees consenting to the exemption. However, the Labour Court may still grant an exemption in the absence of such consent where they are satisfied that the employer has informed its employees of its financial difficulties

and attempted to come to an agreement, and that if the employer was compelled to pay SSP the sustainability of the employer's business would be adversely affected, or likely lead to a number of employees being laid-off or made redundant.

Employees on Probation / Undergoing Training / Apprenticeships

Section 11(3) of the Bill provides that where an employee is on probation or is undergoing training or an apprenticeship and they take statutory sick leave the employer may require that the probation, training or apprenticeship be suspended during the period of statutory sick leave and be completed by the employee at the end of that period where the employer believes the employee's absence from employment would not be consistent with the continuance of the probation, training or apprenticeship.

Protection of Employment Rights and against Penalisation

The Bill provides for increased protection for employees while on statutory sick leave. Section 11 states that during a period of such absence the employee must be treated as if he or she had not been so absent and such absence shall not affect any right related to the employee's employment whether conferred by statute, contract or otherwise. Furthermore, statutory sick leave shall not be treated as part of any other leave from employment including annual leave, maternity leave, additional maternity leave, adoptive leave, paternity leave and parents leave.

Importantly, section 12 of the Bill provides that employers shall not penalise or threaten penalisation of an employee for proposing to exercise or having exercised their entitlement to statutory sick leave. Penalisation is defined under the Bill to include suspension, lay-off or dismissal, demotion or loss of opportunity for promotion, transfer of duties, change of location of place of work, reduction in wages or change in working hours, imposition or the administering of any discipline, reprimand or other penalty and coercion or intimidation.

Records

Under section 13 of the Bill there is an obligation on employers to maintain records of the statutory sick leave taken by each of their employees for a period of four years. Failure to maintain such records is an offence. The

records should include the period of employment of each employee who availed of statutory sick leave, the dates and times of statutory sick leave, and the rate of statutory sick leave payment in respect of each employee who availed of same.

Redress

Section 14 provides that an employee can make a complaint to the Workplace Relations Commission where they believe their employer has failed to comply with the provisions of the Act. The Adjudication Officer may award compensation of such an amount as they deem just and equitable in the circumstances, but this amount cannot exceed 20 weeks' remuneration.

Advice for Employers

The Bill is likely to be enacted shortly. While there might be some amendment to it before it is passed by the legislature, it would be prudent at this stage for employers to assess their existing policies and determine what changes need to be made.

Furthermore, employers should evaluate their finances in order to gauge whether there will be any affordability issues in complying with the proposed scheme which may warrant the making of an application to the Labour Court for an exemption under section 10 of the Bill.

Employers should also consider what processes they will need to put in place in order to comply with their record keeping obligations.

If you need assistance in reviewing your Sick Leave Policy please contact one of the team in CC Solicitors. CC Solicitors is a market leading specialist employment and partnership firm in Ireland.

Colleen Cleary has been recommended as a global leader in labour and employment law in *Who's Who Legal 2021*.

***Who's Who Legal 2021* recently commented: Colleen Cleary is an "outstanding employment law expert" who is "very experienced and excellent to deal with".**

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CC Solicitors

10 Pembroke Street Upper, Dublin 2

+353 1 9058680

www.ccsolicitors.ie

colleen@ccsolicitors.ie
