

INTRODUCTION

The [Statutory Sick Pay \(General\) Regulations 1982](#) (SSP Regs) govern the circumstances in which Statutory Sick Pay (SSP) must be paid, and ALP Brief 208 [Statutory Sick Pay for Agency Workers](#) provides guidance relating to the payment of Statutory Sick Pay (SSP) for agency workers by labour providers.

The SSP regs have been subject to a number of [amendments](#) with the following effects:

- People are eligible for SSP if they:
 - have tested positive for coronavirus
 - have symptoms of possible coronavirus infection
 - live in households with someone with symptoms that may be caused by coronavirus
 - have a member of a linked household (in England) or of their extended household (in Wales and Scotland) with the symptoms of coronavirus.
 - are self-isolating following notification that they have had contact with a person with coronavirus.
 - are advised to self-isolate ahead of surgery and are unable to work as a result.
- Those receiving SSP in connection with coronavirus do not have to serve waiting days for entitlement to SSP
- People will remain entitled to SSP until they (or the person they are living with) receives a negative test notification.
- Isolation due to coronavirus is defined as a person who has symptoms of coronavirus or lives with someone who has symptoms of coronavirus.

On 3 April, guidance on the [Coronavirus Statutory Sick Pay Rebate Scheme](#) was published. The scheme repays employers up to 2 weeks SSP paid to current or former employees subject to the following eligibility criteria:

- UK based businesses with fewer than 250 employees are eligible - the size of an employer is determined by the number of people they employed as of 28 February 2020. Although guidance isn't explicit, it seems likely that the definition of 'employee' is the one used by HMRC for tax purposes meaning that agency workers are included.
- The refund will cover up to 2 weeks' SSP, starting from the first qualifying day of sickness if the employee is unable to work because they either:
 - have coronavirus symptoms
 - cannot work because they are self-isolating because someone they live with have symptoms
 - are [shielding](#) and have a letter from the NHS or a GP telling them to stay at home for at least 12 weeks.
- Employers should maintain records of staff absences and payments of SSP, but workers will not need to provide a GP fit note. If evidence is required by an employer, those with symptoms of coronavirus can get an isolation note from [NHS 111 online](#) and those who live with someone that has symptoms can get a note from the [NHS website](#)
- The scheme will be available for periods of sickness or self-isolation commencing on or after 13 March, and for shielding workers from 16 April until 31 July.

Employers may use the [SSP calculator](#) to work out the actual amount to pay.



HOW TO CLAIM

Employers need a Government Gateway ID to [claim online](#). Employers who are unable to claim online should have received a letter on an alternative way to claim. Employers who are not able to claim online and have not received a letter should [contact HMRC](#).

Employers will need:

- Employer PAYE reference number
- Contact name and phone number of a contact for queries
- UK Bank or building society details which will accept a BACS payment
- The total amount of coronavirus SSP paid to employees for the claim period (not exceeding the set weekly rate, which is £95.85).
- The number of employees claimed for
- The start and end date of the claim period.

Employers can claim for multiple pay periods and employees at the same time. The start date of the claim is the start date of the earliest pay period claimed for. The end date of the claim is the end date of the most recent pay period claimed.

WHEN IS SSP PAYABLE?

Situation	Guidance	SSP Payable?
Worker has symptoms of coronavirus	Must self-isolate for at least 10 days from the date the symptoms started. Anyone else in the household must self-isolate for at least 14 days. See here for further guidance	Yes
Worker has tested positive for coronavirus	Must self-isolate for at least 10 days from the date of the test. Anyone else in the household must self-isolate for at least 14 days. See here for further guidance	Yes
Worker has an 'unclear' result from a coronavirus test.	Must self-isolate for at least 10 days from the date of the test. Anyone else in the household must self-isolate for at least 14 days. The worker may retake the test and stop self-isolating if the result is negative. See here for further guidance	Yes
Worker has completed 10-day isolation period and still feels unwell.	Workers must continue to self-isolate for as long as they are suffering from: <ul style="list-style-type: none"> • a high temperature or feeling hot and shivery • a runny nose or sneezing • feeling or being sick 	Yes

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	<ul style="list-style-type: none"> • diarrhoea • loss of appetite <p>Workers who have diarrhoea or are being sick, must stay at home until 48 hours after they've stopped.</p>	
Worker with symptoms who tests negative for coronavirus.	No need to self-isolate as symptoms are not coronavirus. Worker may go to work if they feel well enough.	If worker is too ill to work, normal rules apply. See ALP brief 208 – SSP for Agency Workers .
Worker lives with someone, or is in a linked household with someone who has coronavirus symptoms	Must self-isolate for at least 14 days. See here for further guidance	Yes
Worker develops symptoms of coronavirus whilst self-isolating.	Must self-isolate for at least 10 days from when the symptoms started.	Yes
Worker has been told to self-isolate by Test and Trace (or the equivalent service in the devolved administrations).	Must self-isolate for at least 14 days. See here for further guidance	Yes
Worker has been told to self-isolate by Test and Trace (or the equivalent service in the devolved administrations), and tests negative for coronavirus.	Must complete the 14-day isolation period, because the virus may not be detectable yet.	Yes
Worker who has been advised to self-isolate ahead of surgery and who is unable to work as a result.	SSP is paid from day one for employees who are sick or self-isolating due to coronavirus for 4 days or more. Where someone is advised to self-isolate for 3 days prior to surgery, and they are unable to work on the day of the surgery, they would also be eligible for SSP.	Yes
Worker chooses to self-isolate, because they live with a vulnerable person.	Only workers who are self-isolating according to the official advice can claim SSP. Workers who choose to self-isolate who do not fall into one of the specified categories will not be eligible for SSP.	No



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<p>Worker is required to self-isolate after travel to the UK</p>	<p>For eligibility for SSP, isolation due to coronavirus is defined as a person who has symptoms of coronavirus or lives with someone who has symptoms of coronavirus.</p> <p>Therefore, people self-isolating due to a requirement to quarantine after arrival in the UK are not eligible for SSP, unless they also have symptoms of coronavirus, or live with someone who has symptoms of coronavirus.</p>	<p>No</p>
<p>Shielding workers</p>	<p>Those who are at <u>very high risk</u> of severe illness from coronavirus because of an underlying health condition ('extremely vulnerable' workers) were written to by the NHS, strongly advising them to stay at home for at least 12 weeks, known as 'shielding'. Shielding is paused in the UK from 1st August meaning that workers who are extremely vulnerable to the risks of coronavirus may then return to the workplace, as long as that workplace is COVID secure.</p> <p>From 1 August, individuals are longer be eligible for SSP on the basis of being clinically extremely vulnerable. Employers should help such workers to transition back to work safely and support them to keep to social distancing in the workplace, if they can't work from home.</p>	<p>No</p>
<p>Shielding workers during local lockdown</p>	<p>Individuals who are clinically extremely vulnerable will no longer be required to shield from 1 August and will no longer be eligible for SSP on the basis of being clinically extremely vulnerable.</p> <p>If shielding guidance is reintroduced, either in the case of local lockdowns or nationally, and individuals receive a notification advising them to shield, they will be eligible to receive SSP again if they meet all <u>eligibility criteria</u>.</p>	<p>Yes, if notification advising to shield is received.</p>
<p>Workers without a Fit Note</p>	<p>Fit Notes are not required for SSP to be payable.</p> <p>Isolation notes provide workers with evidence that they have been advised to self-isolate due to coronavirus, either because they have symptoms or they live with someone who has symptoms, and so cannot work. The notes can be accessed through the <u>NHS website</u> and NHS 111 online.</p>	<p>Yes</p>
<p>Worker too frightened to work</p>	<p>Agency workers have a choice as to whether or not they accept an assignment. If they refuse work, there is no entitlement to SSP since they are not sick, or self-isolating.</p> <p>Employers should not subject workers to detriment, because they refuse work due to feeling unsafe. See</p>	<p>No</p>



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	ALP Brief : Potential Coronavirus Health and Safety Claims.	
Pregnant worker does not want to work because she feels at risk.	<p>As with the worker who is too frightened to work, assuming the environment does not pose any particular risks to the workers, then they have a choice whether or not to accept an assignment, and if they refuse work, there is no entitlement to pay (subject to contract). Since the worker is not sick or self-isolating, there is no entitlement to SSP.</p> <p>Employers should not subject workers to detriment, because they refuse work due to feeling unsafe. ALP Brief: Potential Coronavirus Health and Safety Claims describes the risks of this scenario.</p>	No
Worker who has to stay home to look after dependents.	Since the worker is not sick or self-isolating, there is no entitlement to SSP.	No
Worker who falls into the 'vulnerable' category	<p>Vulnerable workers are those who are at increased risk of severe illness from coronavirus: people over the age of 70; under the age of 70 but with an underlying health condition listed in the guidance and those who are pregnant.</p> <p>There is no separate guidance for vulnerable workers, other than they should be 'particularly vigilant' in following social distancing measures.</p> <p>Vulnerable workers have the same entitlements to SSP as anyone else and so since the worker is not sick or self-isolating, there is no entitlement to SSP.</p>	No
Worker employed at a site where there is an outbreak	<p>If the worker has been required to self-isolate by Test and Trace (or equivalent in the devolved administrations) because they have come into contact with someone with coronavirus, then they are eligible for SSP.</p> <p>Otherwise, since the worker is not sick or self-isolating, there is no entitlement to SSP.</p>	Dependent upon whether they are required to self-isolate
Worker who has claimed SSP for multiple periods of self-isolation.	There is no limit to the number of times a worker may self-isolate, although each time must be for one of the reasons described in the introduction. Workers with symptoms may take a test to determine whether or not they have coronavirus and may return to work if the result is negative.	Yes



PRACTICAL CONSIDERATIONS

Contractual entitlement to SSP

Whether or not your agency workers are entitled to receive sick pay will depend on their contractual status, and whether or not they are on assignment – please see table below and for more information, [ALP Member Brief 208 Statutory Sick Pay for Agency Workers](#). There is no government guidance about coronavirus and SSP that changes that position. [Government guidance](#) confirms that anyone not eligible to receive sick pay is able to claim Universal Credit and/or contributory Employment and Support Allowance.

Employment Status	Entitlement to SSP
Employees, including those on an overarching contract of employment.	Up to 28 weeks, commencing on their start date. Liability only ceases on proper termination of employment.
Workers on a contract for services irrespective of their length of engagement	Entitlement commences on their first day of assignment and lasts until the end of any assignment they had agreed to work, or for 28 weeks, whichever is sooner.

Record Keeping

Employers must keep the following records for 3 years after the date payment is received:

- The dates the employee was off sick
- Which of those days were [qualifying days](#)
- The reason they said they were off work – if they had symptoms, someone they lived with had symptoms or they were shielding.
- The employees National Insurance number.

SSP and furlough

Employers may furlough workers who are off sick provided that they have been previously furloughed - for more detail, please see [ALP Member Brief 223](#) – Coronavirus Job Retention Scheme and Agency Workers. This is likely to be a more cost-effective option for labour providers who cannot claim rebates for SSP

Such workers should no longer receive sick pay and would be classified as furloughed workers.

The scheme is not intended to cover short-term absences from work due to sickness.

Employers can claim back from both the Coronavirus Job Retention Scheme and the SSP rebate scheme for the same worker, but not for the same period of time – a worker is either off sick, or furloughed – they cannot be both.

If a worker becomes ill whilst on furlough, and they qualify for SSP, it is up to the employer to decide whether to move these workers onto Statutory Sick Pay or keep them on furlough at their furloughed rate. If the worker is moved onto SSP, employers can no longer claim for the furloughed salary.

Workers with Coronavirus symptoms who do not self-isolate

Labour providers may experience scenarios where workers with potential coronavirus symptoms refuse to self-isolate and insist on coming into work. This could be because despite having a cough or fever they feel well enough to work, or it could be that they are concerned about surviving on SSP if they don't work.

In order to comply with [government guidance](#) and safeguard the health of the rest of your workforce the worker must be sent home and commence a period of self-isolation during which they would be paid either SSP or furlough depending on their eligibility and the needs of the business.

Employees on a contract of employment, dependent upon their contractual terms may be entitled to full pay if you send them home, since they are technically willing and able to work. If you choose to pay SSP only, they could potentially sue for the disparity in wages or claim constructive dismissal. If an employee won such a claim it would probably be with a high level of contributory fault given the circumstances. In this scenario what you choose to pay the employee is essentially a commercial decision.

Certification for coronavirus related absence

For the first seven days off work, employees can self-certify following your normal absence reporting procedures. People are being advised not to ring NHS 111 for 7-day self-isolation so there will be no evidence that the person does actually need to self-isolate. This is the same for all sickness absence.

After 7 days employers may ask for evidence of sickness absence and it is for the employer to determine what evidence they require, if any, from the worker. Where this is related to having symptoms of coronavirus or living with someone who has symptoms, an isolation note can be used to provide evidence of the advice to self-isolate.

Isolation notes will provide workers with evidence that they have been advised to self-isolate due to coronavirus, either because they have symptoms or they live with someone who has symptoms, and so cannot work.

The notes can be accessed through the [NHS website](#) and [NHS 111 online](#).

AWR and company sick pay

The Agency Workers Regulations do not apply to sick pay so there is no legal requirement for labour providers to pay parity with the labour users comparator worker in respect of sick pay.

Where agency workers or staff are entitled to contractual sick pay (CSP) over and above SSP, their standard contractual rules will apply to any CSP payment in respect of coronavirus.

ALP POSITION ON CORONAVIRUS RELATED SSP REFUNDS

ALP position submitted to government on Coronavirus related SSP refunds is:

1. Only offering SSP refunds to businesses with less than 250 employees is a criterion with no link to business circumstances or ability to pay. The impact of coronavirus will be felt more heavily by those with large numbers of workers who cannot work from home and who work in close proximity such as in factories and farms. Boutique financial businesses for example have significantly more ability to pay than low margin agricultural and food businesses and the labour providers who supply them and who are essential to keeping the UK fed.
2. The [Coronavirus Statutory Sick Pay Rebate Scheme](#) should be extended to all businesses of all sizes. If refund rules are retained as currently expressed, the definition of employee in recruitment businesses for the purposes of the 250 threshold, should include workers for entitlement to SSP, but, for the definition of employer size, only employees engaged under a contract of employment working directly for the business and not as an agency worker.
3. As a labour provider's only revenue stream is from their clients, the cost will need to be passed on to growers, food processors and packers.

HOW LABOUR PROVIDERS SHOULD DEAL WITH SSP COSTS

Labour providers revenue is generated from their labour user clients. All costs related to Statutory Sick Pay (SSP) should therefore be charged to clients. How this is achieved is for commercial negotiation between the parties, but ALP offers the following guidance.

ALP [Charge Rate Guidance](#) includes “Provision for statutory sick pay absence, in line with the Defra estimate of 2 weeks at £95.85 per week accrued on normal time only, not on overtime. This figure also covers the 8% of statutory maternity, paternity, adoption and statutory shared parental pay payments that must be met by the labour provider.”

The figure of 11p per hour is calculated as follows: £95.85 x 2 weeks = £191.70. Maximum working hours in a year = (52 weeks – 5.6 weeks holiday – 2 weeks sickness) = 44.4 weeks x 40 hours = 1776 hours. £191.70 / 1776 hours = 11p.

The cost currently included for SSP in the ALP Charge Rate Guidance does not cover the additional cost for SSP for coronavirus and so as a statutory cost of employment, this additional cost should be passed on to the client.

There are several variables:

- whether or not the labour provider is able to claim back the cost of SSP
- the number of workers who may contract coronavirus or be required to self-isolate
- Those for whom the debilitating effects of the virus extend beyond 14 days

As the pandemic progresses, it may become possible to calculate an hourly cost of coronavirus SSP to be added to each hour worked. Each additional week's SSP cost, broadly speaking when reclaimed over a year, starts at 5p per hour and increases as absence increases and work time decreases.

In the short term, where coronavirus related SSP is not refunded by government, a levy will need to be charged to labour user clients, equivalent to the cost of SSP, for agency workers who would otherwise be working at their site. The [current SSP rate](#) of £95.85 per week is under the threshold for both employers NI contributions and auto-enrolment pensions but for labour providers in excess of £3m turnover will attract an additional 0.5% cost for the apprenticeship levy, bringing the total cost of SSP to £98.73 per week.

These additional charges should be agreed in writing between the labour provider and the labour user.

APPENDIX 1 – SSP AMENDMENT REGULATIONS AND THEIR IMPACT

- [The Statutory Sick Pay \(General\) \(Coronavirus Amendment\) Regulations 2020](#) allow SSP to be paid to people who are unable to work because they are self-isolating, in accordance with [guidance](#) published by Public Health England or its equivalent in the devolved administrations. i.e.:
 - People who have tested positive for coronavirus
 - People with symptoms of possible COVID-19 infection
 - People living in households with someone who shows symptoms that may be caused by COVID-19
- [The Statutory Sick Pay \(General\)\(Coronavirus Amendment\)\(No2\) Regulations 2020](#) simply amends the effective date from which Coronavirus SSP provisions apply, from 12th March to 16th March.
- [The Statutory Sick Pay \(Coronavirus\) \(Suspension of Waiting Days and General Amendment\) Regulations 2020](#) ensures that those receiving SSP due to coronavirus do not have to serve waiting days for entitlement for SSP, and adds in a [Schedule](#) to the SSP Regs defining isolation due to coronavirus as a person who has symptoms of coronavirus or lives with someone who has symptoms of coronavirus.
- [The Statutory Sick Pay \(Coronavirus\) \(Suspension of Waiting Days and General Amendment\) \(No. 2\) Regulations 2020](#) ensure that people deemed to be incapable of work because they or another person have the symptoms of coronavirus will remain entitled to statutory sick pay until the person with those symptoms receives notification that they have tested negative for coronavirus, and that a person will be entitled to statutory sick pay if a member of a linked household (in England) or of their extended household (in Wales and Scotland) has the symptoms of coronavirus.
- [The Statutory Sick Pay \(General\)\(Coronavirus Amendment\)\(No3\) Regulations 2020](#) allow SSP to be paid to people defined in guidance issued by Public Health England, the Scottish Ministers or Public Health Wales as being extremely vulnerable and at very high risk of severe illness from coronavirus because of an underlying health condition, and who have been advised, in accordance with that guidance, to follow rigorously shielding measures.
- [The Statutory Sick Pay \(General\)\(Coronavirus Amendment\)\(No4\) Regulations 2020](#) allow SSP to be paid to people who are self-isolating following notification that they have had contact with a person with coronavirus.