



Submission to the Department of Enterprise, Trade and Employment in response to its Public Consultation on the introduction of Statutory Sick Pay

December 2020

Introduction

Dublin Chamber is the representative body for business in the Greater Dublin Area. We welcome the opportunity to respond to the Department of Enterprise, Trade and Employment's Public Consultation on Statutory Sick Pay (SSP). The objectives outlined by the Department of bringing Ireland in line with other OECD countries whilst also improving overall social protections for workers are positive. It is important to note that the context for this consultation is the backdrop of Covid-19, a crisis that has significantly impacted on Irish businesses, the wellness of the labour force, and the economy as a whole. Dublin Chamber welcomes the acknowledgement in the consultation paper that 2020 has been a difficult year for the business community.

The Covid-19 crisis has brought to light the need to ensure that when employees are sick, they have the necessary support in place to allow them to recover and therefore do not feel the need to attend work while ill due to financial pressure. Meanwhile, many Irish businesses, and particularly those in the hospitality and retail sectors, have been placed under significant financial strain due to the public health measures imposed to contain the pandemic. Many hospitality and retail sector employees fall into the lower pay bracket without an existing sick pay policy in place, and the introduction of SSP will prove challenging in this context. In a survey of Dublin Chamber members, almost 60% of businesses stated that the introduction of SSP would impose a financial and/or administrative burden.¹

The consultation paper provided by the Department of Enterprise, Trade and Employment provides a good overview of context for the SSP debate. However, further detail is required on how Government would intend to implement such a scheme to allow for a more comprehensive public consultation and for Dublin Chamber to provide more in-depth recommendations. While Dublin Chamber is broadly in support of the introduction of a SSP scheme, there are a number of outstanding questions that need to be answered in relation to how businesses will be supported to deal with the financial and administrative burden of such a scheme; how the complexities relating to those in contract or part-time employment will be treated under the scheme; and how a statutory scheme will be developed which easily integrates with the comprehensive policies that many Irish businesses already have in place. The timeline communicated by the Department of Enterprise, Trade and Employment is somewhat short. With an implementation date of late 2021 reported, Dublin Chamber would

¹ Dublin Chamber Business Outlook Survey Q4 2020

have concerns about to the readiness of a scheme to be implemented successfully on that timeline and without considerable burden and confusion caused in the business community.²

Wellness Framework

While Dublin Chamber broadly supports the principle of SSP, we encourage Government to consider its introduction as part of a more holistic set of policies to promote wellbeing in the workplace. By improving the overall wellbeing of the labour force, employees can be supported in their mental and physical wellness and absenteeism or withdrawal from the labour force can be reduced. Dublin Chamber urges Government to make provision for management of absenteeism when drafting SSP guidelines, employer supports, and legislation by considering these issues through both a wellness and management lens. We acknowledge the consideration in the SSP consultation paper of the wider improvements that can be made for workplaces by reducing absenteeism across the board in both the public and private sector, thus boosting productivity and Ireland's reputation as a place in which to live, work, and do business. Wellness initiatives that also support wider policy goals, such as for example the Bike to Work scheme, should be linked into this overarching wellness framework and businesses that support them incentivised.

Mental health needs to be a consideration in the overall wellness framework as it is an increasing concern for the wellness of employees and may add to the requirement for sick days and illness benefit in the years to come. Isolation specifically is now a key concern for employees as remote working has become prevalent during the Covid-19 crisis. Surveying indicates that isolation is now the biggest concern from employers in relation to remote working, with more than a quarter citing it as their main concern.³

This more holistic approach to wellness must take account of the role that can be played by flexible work practices in allowing employees with caring duties to manage their work life balance effectively. By supporting businesses to implement flexible working policies, some of the requirement for absence through 'sick days' can be reduced to the benefit of the employee, the employer, and overall productivity. For example, in instances where an employee needs to unexpectedly provide care for a sick child or parent, flexible working arrangements can allow for caring duties in the home at short notice. EU research on the use of sick leave among member states shows that take up of sick leave is higher among women due to a number of factors including their share of home caring duties and low-paid or part time work. For example, it is 40-50% higher among women in Hungary, mainly due to the requirement to look after sick children.⁴

² Gov.ie <https://www.gov.ie/en/press-release/eadce-tanaiste-invites-views-on-statutory-sick-pay-scheme/>

RTE <https://www.rte.ie/news/ireland/2020/1116/1178370-sick-pay/>

³ Dublin Chamber Business Outlook Q4 2020

⁴ Sick pay and sickness benefit schemes in the European Union Background report for the Social Protection Committee's In-Depth Review on sickness benefits Brussels, 17 October 2016, pp. 20, 28.

Minimum Rate of Payment (Q1)

The minimum rate of payment for SSP will depend on the model that is used for the overall rate of payment calculation and for how long SSP is applicable before Illness Benefit takes over. As SSP will provide the greatest social protection for those in low paid work, it is important that the scheme succeeds in its goal by ensuring that payment per day of sick leave is in line with minimum wage at least.

Consideration must be afforded to how a minimum rate of payment will be created for those in part-time, contract, and seasonal employment, as a blanket system may have unintended consequences whereby it becomes more financially advantageous to access SSP frequently than to fulfil part-time working hours. As was seen with the Pandemic Unemployment Payment, using a blunt instrument for payment can cause issues by creating a perverse incentive with respect to attending work; it is thus advisable that a tapered level depending on salary be strongly considered.

There are several options to consider for tapering the rate of payment, including matching it to the weekly rate of pay, and introducing a sliding rate depending on salary with a ceiling cut-off point and a floor that could perhaps include different options for a full-time and a part-time employee. The rate of sickness payment varies widely across EU member states between 50% and 100% of salary, and in countries that have a flat rate payment the payment is on average 20% of salary.⁵ Similarly, the share of sickness payment contributed by the employer varies widely across the EU and there is little evidence of a best practice system. Dublin Chamber argues that as part of the consultation process, greater detail on the preferred option from Government should be provided.

Duration of Payment, Waiting Days, and Certification (Q2, Q3, Q4)

Dublin Chamber is in support of payment of Illness Payment being paid from the three day mark, as committed to in Budget 2021. We ask that Government provides greater detail on how it intends for SSP to work cohesively with Illness Benefit.

There should be provision in SSP legislation for the implications and application of SSP for employees that exhibit frequent and/or intermittent absences from work but are not and have not been recipients of Illness Benefit. For example, should an employee accrue 12 days' worth of SSP payments or have four instances of illness-based absence in a 12 month period, there should be an assessment with a clause for additional support from Government after the 12 days of SSP payment, or, for that employee to have exhausted their allowance for SSP during the 12 month period. For example, if an employee has medical certification that they suffer from an illness that causes intermittent and frequent absence a support must be in place to ensure that the employer can keep the employee on the books while also ensuring that the business is not adversely impacted financially or in terms of productivity. Should such a certification be provided, Government should provide a scheme whereby the employer is able to financially claim back a part of SSP payments, for example those days that go beyond 12 days of SSP payment. This is also important to ensure that there is no disincentive to offer employment to jobseekers that have a history of health issues.

⁵ Sick pay and sickness benefit schemes in the European Union Background report for the Social Protection Committee's In-Depth Review on sickness benefits Brussels, 17 October 2016, p. 22

For many day-to-day short-term illnesses that simply require rest at home, such as a common cold for example, the recovery time varies and it is possible that depending on working schedules, weekends, etc. an employee would only require one to three days of sick leave, and it may not be necessary to require a sick note. In light of this, it may be the case that a sick note or certificate is only required should an employee be absent from work for more than two days. However, to aid in any instances where a SSP scheme is being abused to the extent that it is treated as an additional leave allowance taken regardless of genuine illness, an employer should retain the right to request a sick note after one day, but can forgo this should they wish to.

Length of Service (Q5)

For private sector organisations, the policy around sick pay varies. The end of probation or completion of one year of service are common points at which sick pay may apply. Dublin Chamber suggests that these markers are considered as options for length of service obligations.

Earnings Threshold (Q6)

Low-paid workers, both full-time and part-time, are those most likely to benefit from SSP. In consideration of this, it would be counterproductive to have an earnings threshold that is higher than an annual income for a full-time minimum wage employee.

Those in part-time and/or shift work will require additional consideration in respect of earning thresholds.

Employers Support & Rehabilitation Supports (Q7 & Q8)

HR and Management Requirements

Managing and tracking sick leave as it occurs and performing the administrative duties to process sick leave as a statutory obligation will be a burden for many businesses, and the timeline set out by the Department for Enterprise Trade, and Employment to have SSP in place by the third quarter of 2021 is relatively short for many firms. Dublin Chamber surveying shows that nearly a fifth of businesses do not have any procedure in place for tracking and managing sick leave at present.⁶

In many SMEs, the HR, finance, and/or other functions of the business are performed by an owner or manager, not by a dedicated HR professional. In light of this, it is essential that all functional parts to be played by Government in administering this system are in place ahead of implementation, and that instructions on how these are to be used have been properly communicated to all relevant stakeholders in good time. SMEs will require particular support and consideration in the roll out of SSP, both in relation to administration and cash flow.

In relation rehabilitation support, where possible this would be of benefit to a member of the labour force that has suffered an absence from work through illness. However, this is an

⁶ Dublin Chamber Q4 Business Outlook Survey 2020

additional skillset that many within the SME community will not have. There will need to be provision from Government to address this gap, both for the wellbeing of the labour force, and to prevent the imposition of an additional burden on SMEs.

Application and Functionality

It is important to recognise that a significant number of businesses, including many larger SMEs, already have comprehensive systems of sick pay in place, some of which provide even greater protection to the employee than is being suggested as part of a proposed Statutory Sick Pay scheme. Dublin Chamber research shows that more than half of businesses have a comprehensive policy in place, and nearly a quarter have a policy whereby sick pay is paid at the employer's discretion.⁷ It is important that a new statutory scheme does not disrupt existing policies that are to the advantage of the employee. Furthermore, some businesses cover their employees with a Critical Illness insurance policy. Government should encourage and support businesses that engage such a policy for employees.⁸

It is essential that the introduction of SSP does not place an increased hardship on businesses that are already under significant strain due to the impact of Covid-19 public health measures and lockdowns. In the retail and hospitality sectors, many employees are within the low paid or part-time worker bracket representing those most likely to benefit from such a scheme. The Government must provide specific supports for this ailing sector if SSP is to be introduced.

Additionally, the question of how SSP would be applied in the case of contract and temporary workers needs to be explored prior to any introduction of such a policy change. In the case of temporary and contract workers, the employer is technically the agency through which they are then contracted out to another business. Again, this demonstrates that SSP cannot be introduced on a one-size-fits-all model.

Conclusion and Recommendations

The expressed intent of the Department of Enterprise, Trade and Employment to build on existing social protection measures for employees by introducing a scheme that supports the health of those in all sectors is commendable, and Dublin Chamber is broadly supportive of introduction of SSP. However, there are several areas which the Government must consider carefully before the introduction of such a scheme.

The introduction of a SSP scheme would likely be of greatest benefit to those in low-paid work and in sectors such as hospitality and retail. However, those most in need of this social protection work in businesses in sectors that will struggle most to apply it. This is due both to the financial pressures placed upon the sectors worst hit by Covid-19 lockdowns and public health measures, and, upon those employees that are most likely to be unwilling to stay at home due to illness out of fear of losing income. Greater clarity and detail is needed on how such employers would be financially supported in the introduction of SSP.

⁷ Dublin Chamber Q4 Business Outlook Survey 2020

⁸ LifeInsurance.ie

[https://www.lifeinsurance.ie/go/serious_illness_cover/critical_illness_policies#:~:text=Critical%20illness%20cover%20\(CIC\)%20is,sclerosis%20and%20loss%20of%20limbs.](https://www.lifeinsurance.ie/go/serious_illness_cover/critical_illness_policies#:~:text=Critical%20illness%20cover%20(CIC)%20is,sclerosis%20and%20loss%20of%20limbs.)

Additionally, this consultation brings to light the need for more information before a full set of recommendations in relation SSP can be settled upon. Dublin Chamber seeks answers to a number of questions, outlined below, on how a SSP scheme can be successfully introduced in 2021 while supporting Irish businesses and without unfairly imposing a financial and administrative burden on them with just a short number of months' notice.

- How will SSP be aligned with Illness Benefit? Considering that Illness Benefit becomes available after three days of becoming unwell, a seamless integrated system must be created.
- What supports are to be put in place to aid SMEs with introducing and administering SSP?
- How is SSP to be introduced in such a way as avoids interfering with the comprehensive sick leave policies many businesses have in place already?
- How will a SSP scheme apply to workers in part-time, shift, or contract work?
- How does Government propose to introduce SSP without creating a financial burden for businesses? What role will Government play in financially supporting businesses to pay SSP and how will taxation be impacted?

Furthermore, Dublin Chamber offers the below recommendations for consideration in the context of any SSP legislation:

- There should be a limit on the number of instances or SSP payments that an employer is obliged to make for a single employee in a 12 month period. Should an employee have a certified health issue that causes intermittent absence, the Government should support the employer and the employee to maintain that person's employment.
- Ahead of the introduction of a SSP scheme, a full set of guidelines, accompanying administrative materials including an online portal, webpage, and/or required forms need to be made available. Also, a full stakeholder briefing campaign to communicate how the scheme will work and the obligations and protections for employers and employees must be undertaken.
- Employers, particularly SMEs, must be given support around the accompanying HR functions for tracking and administering SSP.
- Illness Benefit should remain available from three days and, should Illness Benefit be paid through the employer in follow on to sick pay, there should be a seamless transition and very prompt payment of Illness Benefit through the employer. Consideration must be afforded to the cash flow of the employer.
- The rate of statutory sick pay should be nuanced and tapered with a minimum rate that aligns with the minimum wage so that those in the lowest paid work are protected. Payment as a blunt instrument must be avoided to avoid perverse incentives.