

SPM10220 - Statutory Sick Pay (SSP) - Who is covered by the SSP Scheme

Agency and Short contract workers

An agency worker is a person who is engaged and paid by one party (normally an employment agency) for work done for a third party, the employment provider (normally the agency's client)

Status

For SSP purposes a person's status is determined under the provisions of the **Social Security Categorisation of Earners' Regulations 1978 /Social Security (Categorisation of Earners) Regulations (Northern Ireland) 1978 ("the Categorisation of Earners Regulations")**

Agency workers do not normally have a contract of service or a contract for services with either the agency or their client. They are engaged under a '**sui generis contract**', which means 'of its own kind - unique'.

If the employer is referred to as an agency but their workers are engaged under a contract of service they are not "agency workers" in this context, but may be short contract employees. .

Under **regulation 2 of the Categorisation of Earners' Regulations**, agency workers are deemed to be employed in employed earners employment (that is, as employees) for NICs purposes. Class 1 NICs are payable on their earnings and the agency is the liable secondary contributor.

If the agency does not accept Class 1 NICs liability, or the exact status is not clear, this issue must be settled before SSP liability can be determined - the status may effect whether SSP is payable.

Under the provisions of **regulation 16 of the SSP (General) Regulations**, a worker treated as an employee under the Categorisation of Earners Regulations is deemed to be an employee and have a "contract of service" – the deemed contract – for the purposes of entitlement to SSP

The deemed contract starts on the date the agency worker is offered and accepts an assignment and finishes at the end of that assignment. Subsequent assignments give rise to a new deemed contract of service.

For example, if an agency worker engaged on a weekly assignment, Monday to Friday, is given their next assignment on a Thursday then the new contract starts on that Thursday.

For SSP purposes, regulations were amended in October 2008 to the effect that agency workers, as well as short contract workers, become entitled to SSP from the first day of their contract provided they satisfy all other conditions for entitlement. However they must have undertaken some work under that contract to become entitled. Entitlement to SSP will cease at:

- the end of the PIW, or
- the end of the current contract or assignment, or
- the end of a future contract, placement or assignment, where a future contract, placement or assignment has already been agreed.

However, once an agency worker has accrued 3 months continuous employment the deemed contract has the effect as if it were for an indefinite period unless the worker has been given appropriate notice of termination.

Linking periods of incapacity for work –

SSP will be payable across two or more contracts where there is a linking period of incapacity for work if:

- the worker was sick for four or more days in the first contract, and
- they have started work on a second or subsequent contract, and
- they were sick again within eight weeks of the last PIW.

Provided all the conditions are satisfied, the normal eight week linking rule applies and any waiting days served in the previous contract will count for the subsequent contract. Similarly, any payments made in the previous period will count towards the workers maximum payment of SSP.

Effect of Employment Rights Legislation

A person who is employed on a series of contracts with the same employer and,

- the contracts are linked by periods of not more than eight weeks, and
- the period in employment exceeds three months

is treated as being in continuous employment and their contract should be regarded as being for an indefinite period, incapable of being terminated without the employer giving seven days notice.

Section 86(1)(a) of the Employment Rights Act 1996/article 118(1) (a) of the Employment Rights (Northern Ireland) Order 1996

Section 6 of Schedule 11 of the Social Security Contributions and Benefits Act 1992

This means that if they fall sick within eight weeks of a period of work:

- they are treated as if they were employed under that contract on the first day of incapacity
- their contract does not terminate immediately upon their non-attendance at work, and
- they are entitled to SSP in the same way as any other employee with an indefinite contract of employment.

Entitlement to SSP continues:

- until the end of the PIW
- their contract is terminated, or
- they exhaust their entitlement.

This was confirmed in the **Court of Appeal in the case of Sally Brown v Chief Adjudication Officer.**