

**TUC response to
Making Work Pay:
Strengthening Statutory
Sick Pay Consultation**

December 2024

Introduction

The Trades Union Congress (TUC) exists to make the working world a better place for everyone. We bring together around 5.5 million working people who make up our 48 member unions. We support unions to grow and thrive, and we stand up for everyone who works for a living.

We appreciate the opportunity to respond to the government's consultation on Making Work Pay: Strengthening Statutory Sick Pay.

The TUC strongly welcomes measures contained in the Employment Rights Bill that will remove waiting days for Statutory Sick Pay (SSP) and end the requirement for a worker to earn more than the Lower Earnings Limit (LEL) to qualify for SSP.

Currently there are 1.1 million workers earning below £123 per week who are not eligible for SSP.¹ Ineligibility for SSP is twice as common for women as men. Three unpaid days of absence causes financial difficulties, especially for low-paid workers, who often have to budget on a week-to-week basis.

The TUC has long advocated reform, including in our 2019 response to the previous government's consultation on 'Health is Everyone's Business'². When the Covid pandemic hit, the TUC was at the forefront of exposing the hardship caused by the existing sick pay regime and the limits it placed on the national coronavirus response.^{3,4,5}

We also note that SSP is a backstop for those who do not benefit from strong contractual terms and conditions. These are most effectively achieved through collective bargaining structures and extending collective bargaining across the economy.

The TUC advocates that:

- workers who earn less than SSP should receive their normal pay
- if the government is intent on pursuing a percentage rate, that it should mirror the 95 per cent rate currently received by those at the Lower Earnings Limit. Removal of the Lower Earnings Rate was intended to deliver improvements to workers' rights. There is no justification for low earners to lose out
- any percentage arrangement should only apply to those who earn below SSP. There is a risk that up to 1.3 million low-paid workers could receive less than under

¹ TUC (2024) unpublished analysis

² TUC (2019). *TUC submission to the Department of Work and Pensions and the Department of Health and Social Care consultation on Health is Everyone's Business* www.tuc.org.uk/research-analysis/reports/health-everyones-business

³ TUC (2020). *Sick Pay for all* www.tuc.org.uk/research-analysis/reports/sick-pay-all

⁴ TUC (2020). *Sick pay from day one is not enough - we need sick pay for all* www.tuc.org.uk/blogs/sick-pay-day-one-not-enough-we-need-sick-pay-all

⁵ TUC (2020). *Fixing the safety net* www.tuc.org.uk/research-analysis/reports/fixing-safety-net-next-steps-economic-response-coronavirus

current arrangements, which would be incompatible with the government's pledge to "strengthen" sick pay

- the government move swiftly to review the current rate of SSP so that workers don't fall into financial hardship when they are absent from work due to illness.

Replacement rate

The removal of the lower earnings limit will extend SSP to the 1.15 million employees who are not currently eligible as they are not earning £123 per week. Scrapping the three-day wait will mean that workers who are off for one to three days with a short illness will now receive SSP, and that those with longer illnesses will not be denied sick pay for the first days of sickness.

Potential losers

The Employment Rights Bill proposes a replacement rate for SSP to all workers, not just those who earn less than the rate of SSP. Therefore, some claimants who currently receive full SSP could instead receive a percentage of their earnings and therefore could receive less under the new system than they do currently. This is the group currently earning above, but close to, the LEL.

Between 300,000 to 1.3 million employees could receive a lower weekly rate depending on a replacement rate from 60 to 80 percent, using the rates modelled in the consultation paper. The *Equality Analysis for Statutory Sick Pay Reform Measures in the Employment Rights Bill*⁶ shows that women are disproportionately represented in the group earning above but close to the LEL, at 74 percent.

The government's Plan to Make Work Pay committed to introduce a replacement rate for those earning below the rate of SSP, not for all low earners.

The argument made in the consultation document is that for shorter periods of absence, there are no losers. The government suggests that losses from a lower rate would be offset by the fact that recipients would no longer face a three-day wait.

However, this overlooks the potentially significant impact on those who are off work for an extended period. For this group the reduced payments would mean a notable cut to their income.

Take a worker earning £125 a week working three days a week, with an SSP earnings replacement rate of 60 per cent. Under the current system, they would be paid nothing in the first week, but £116.75 from the second week of illness onwards.

⁶ Department for Work and Pensions (6 November 2024). *Equality Analysis for Statutory Sick Pay Reform Measures in the Employment Rights Bill*, DWP www.gov.uk/government/consultations/making-work-pay-strengthening-statutory-sick-pay/equality-analysis-for-statutory-sick-pay-reform-measures-in-the-employment-rights-bill

Under the proposed legislation, they would receive £75 per week from the first week of illness. This worker would therefore be worse off by the third week of illness, and almost £100 worse off if they were off for five weeks. The higher the replacement rate, the longer it would take for the employee to be worse off.

The consultation recognises this is an issue but no policy solution is proposed. We think it would be a significant failing of this policy change if workers were forced to return to work before they are fully recovered due to financial pressures. This risks their longer-term participation in the labour market.

On top of this, if workers know that the three-day wait is being scrapped and they currently receive SSP, they may fairly expect to receive the current SSP rate from day one (rather than a lower rate of SSP from day one). Including all workers within any percentage rate therefore risks causing confusion and hardship.

The TUC strongly advocates that the Employment Rights Bill should be amended so that the percentage payments only apply to those earning less than SSP, ensuring that no workers are left worse off than under the current system. This would be consistent with the government's Plan to Make Work Pay which stated that "We will ensure the new system provides fair earnings replacement for people earning below the current rate of statutory sick pay." No mention was made of reforming the calculation for payments for those earning above SSP.

The rate for low earners

The TUC also believes the best way to deliver a "fair earnings replacement" is to ensure that workers receive the lower of their normal earnings or SSP.

The workers affected are low-paid, very unlikely to have significant savings and risk very quickly falling into hardship when their normal wages are reduced. We have seen no robust evidence that suggests that receiving full earnings replacement would lead to workers taking more time off than they require.

After all, large numbers of workers receive contractual sick pay at 100 per cent of wages, at least for a period, and there is little suggestion that those employers have difficulty bringing workers back to work.

However, if the government wishes to pursue a percentage replacement rate, the most appropriate approach would be to follow the existing level of SSP as a proportion of the LEL.

Currently, workers earning at the LEL (£123 a week) who claim SSP (£116.75) receive the equivalent of 95 per cent of their normal wages. This could be mirrored throughout the group who will gain access to SSP when the qualifying earnings threshold is dropped.

It is notable that this is a similar replacement rate to other benefits, such as statutory maternity pay⁷ which uses a rate of 90 per cent and has been recommended by the Work and Pensions Select Committee and the Health Foundation.

Costings

The impact assessment and the consultation document show that a higher replacement rate has little impact on the overall cost of SSP.

The biggest increases in costs of SSP resulting from these policy changes stems from the removal of waiting days. This is estimated to cost around £1.02bn (£36 per employee). Meanwhile, the difference in the cost for different replacement rates is minimal. However, the impact for individuals could be huge.

	Current System	60% earnings	70% earnings	80% earnings
Total costs	£0.65bn	£1.04bn	£1.06bn	£1.07bn
Per employee	£23	£37	£37	£38

Statutory Sick Pay Rate

This consultation focuses on the replacement rate and not the rate of SSP.

However, if the government is to fully meet its pledge to “strengthen” sick pay, the rate of SSP must also increase.

As it stands, the level of SSP is inadequate to meet basic living standards and leaves low-paid workers who have little to no savings to fall back on facing hardship.

Indeed, the income replacement level is around 20 percent of average earnings and is amongst the lowest of the UK’s European counterparts.

We urge the government to launch a review of the adequacy of the current rate of SSP, look at alternative rates and commit to taking action in response by the end of the current parliament.

⁷ model used for Statutory Maternity Pay (SMP) - mothers receive the lower of the SMP rate or 90 per cent of their average earnings between the 7th and 33rd week of maternity leave.