



# Social Security Contributions and Benefits Act 1992

## 1992 CHAPTER 4

### PART XI

#### STATUTORY SICK PAY

##### *Employer's liability*

#### **151 Employer's liability**

- (1) Where an employee has a day of incapacity for work in relation to his contract of service with an employer, that employer shall, if the conditions set out in sections 152 to 154 below are satisfied, be liable to make him, in accordance with the following provisions of this Part of this Act, a payment (to be known as "statutory sick pay") in respect of that day.
- (2) Any agreement shall be void to the extent that it purports—
  - (a) to exclude, limit or otherwise modify any provision of this Part of this Act, or
  - (b) to require an employee to contribute (whether directly or indirectly) towards any costs incurred by his employer under this Part of this Act.
- (3) For the avoidance of doubt, any agreement between an employer and an employee authorising any deductions from statutory sick pay which the employer is liable to pay to the employee in respect of any period shall not be void by virtue of subsection (2) (a) above if the employer—
  - (a) is authorised by that or another agreement to make the same deductions from any contractual remuneration which he is liable to pay in respect of the same period, or
  - (b) would be so authorised if he were liable to pay contractual remuneration in respect of that period.

- (4) For the purposes of this Part of this Act a day shall not be treated as a day of incapacity for work in relation to any contract of service unless on that day the employee concerned is, or is deemed in accordance with regulations to be, incapable by reason of some specific disease or bodily or mental disablement of doing work which he can reasonably be expected to do under that contract.
- (5) In any case where an employee has more than one contract of service with the same employer the provisions of this Part of this Act shall, except in such cases as may be prescribed and subject to the following provisions of this Part of this Act, have effect as if the employer were a different employer in relation to each contract of service.
- (6) Circumstances may be prescribed in which, notwithstanding the provisions of subsections (1) to (5) above, the liability to make payments of statutory sick pay is to be a liability of the Secretary of State.

*The qualifying conditions*

**152 Period of incapacity for work**

- (1) The first condition is that the day in question forms part of a period of incapacity for work.
- (2) In this Part of this Act “period of incapacity for work” means any period of four or more consecutive days, each of which is a day of incapacity for work in relation to the contract of service in question.
- (3) Any two periods of incapacity for work which are separated by a period of not more than 8 weeks shall be treated as a single period of incapacity for work.
- (4) The Secretary of State may by regulations direct that a larger number of weeks specified in the regulations shall be substituted for the number of weeks for the time being specified in subsection (3) above.
- (5) No day of the week shall be disregarded in calculating any period of consecutive days for the purposes of this section.
- (6) A day may be a day of incapacity for work in relation to a contract of service, and so form part of a period of incapacity for work, notwithstanding that—
  - (a) it falls before the making of the contract or after the contract expires or is brought to an end; or
  - (b) it is not a day on which the employee concerned would be required by that contract to be available for work.

**153 Period of entitlement**

- (1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.
- (2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—
  - (a) the termination of that period of incapacity for work;

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- (b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 155 below);
  - (c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;
  - (d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.
- (3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work.
- (4) A period of entitlement as between an employee and an employer of his may also be, or form part of, a period of entitlement as between him and another employer of his.
- (5) The Secretary of State may by regulations—
  - (a) specify circumstances in which, for the purpose of determining whether an employee's maximum entitlement to statutory sick pay has been reached in a period of entitlement as between him and an employer of his, days falling within a previous period of entitlement as between the employee and any person who is or has in the past been an employer of his are to be counted; and
  - (b) direct that in prescribed circumstances an employer shall provide a person who is about to leave his employment, or who has been employed by him in the past, with a statement in the prescribed form containing such information as may be prescribed in relation to any entitlement of the employee to statutory sick pay.
- (6) Regulations may provide, in relation to prescribed cases, for a period of entitlement to end otherwise than in accordance with subsection (2) above.
- (7) In a case where the employee's contract of service first takes effect on a day which falls within a period of incapacity for work, the period of entitlement begins with that day.
- (8) In a case where the employee's contract of service first takes effect between two periods of incapacity for work which by virtue of section 152(3) above are treated as one, the period of entitlement begins with the first day of the second of those periods.
- (9) In any case where, otherwise than by virtue of section 6(1)(b) above, an employee's earnings under a contract of service in respect of the day on which the contract takes effect do not attract a liability to pay secondary Class 1 contributions, subsections (7) and (8) above shall have effect as if for any reference to the contract first taking effect there were substituted a reference to the first day in respect of which the employee's earnings attract such a liability.
- (10) Regulations shall make provision as to an employer's liability under this Part of this Act to pay statutory sick pay to an employee in any case where the employer's contract of service with that employee has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory sick pay.
- (11) Subsection (2)(d) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement.
- (12) In this section—
  - “confinement” is to be construed in accordance with section 171(1) below;

“disqualifying period” means—

- (a) in relation to a woman entitled to statutory maternity pay, the maternity pay period; and
- (b) in relation to a woman entitled to maternity allowance, the maternity allowance period;

“maternity allowance period” has the meaning assigned to it by section 35(2) above, and

“maternity pay period” has the meaning assigned to it by section 165(1) below.

#### **154 Qualifying days**

- (1) The third condition is that the day in question is a qualifying day.
- (2) The days which are for the purposes of this Part of this Act to be qualifying days as between an employee and an employer of his (that is to say, those days of the week on which he is required by his contract of service with that employer to be available for work or which are chosen to reflect the terms of that contract) shall be such day or days as may, subject to regulations, be agreed between the employee and his employer or, failing such agreement, determined in accordance with regulations.
- (3) In any case where qualifying days are determined by agreement between an employee and his employer there shall, in each week (beginning with Sunday), be at least one qualifying day.
- (4) A day which is a qualifying day as between an employee and an employer of his may also be a qualifying day as between him and another employer of his.

*Limitations on entitlement, etc.*

#### **155 Limitations on entitlement**

- (1) Statutory sick pay shall not be payable for the first three qualifying days in any period of entitlement.
- (2) An employee shall not be entitled, as against any one employer, to an aggregate amount of statutory sick pay in respect of any one period of entitlement which exceeds his maximum entitlement.
- (3) The maximum entitlement as against any one employer is reached on the day on which the amount to which the employee has become entitled by way of statutory sick pay during the period of entitlement in question first reaches or passes the entitlement limit.
- (4) The entitlement limit is an amount equal to 28 times the appropriate weekly rate set out in section 157 below.
- (5) Regulations may make provision for calculating the entitlement limit in any case where an employee’s entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of entitlement.

## **156 Notification of incapacity for work**

- (1) Regulations shall prescribe the manner in which, and the time within which, notice of any day of incapacity for work is to be given by or on behalf of an employee to his employer.
- (2) An employer who would, apart from this section, be liable to pay an amount of statutory sick pay to an employee in respect of a qualifying day (the “day in question”) shall be entitled to withhold payment of that amount if—
  - (a) the day in question is one in respect of which he has not been duly notified in accordance with regulations under subsection (1) above; or
  - (b) he has not been so notified in respect of any of the first three qualifying days in a period of entitlement (a “waiting day”) and the day in question is the first qualifying day in that period of entitlement in respect of which the employer is not entitled to withhold payment—
    - (i) by virtue of paragraph (a) above; or
    - (ii) in respect of an earlier waiting day by virtue of this paragraph.
- (3) Where an employer withholds any amount of statutory sick pay under this section—
  - (a) the period of entitlement in question shall not be affected; and
  - (b) for the purposes of calculating his maximum entitlement in accordance with section 155 above the employee shall not be taken to have become entitled to the amount so withheld.

### *Rates of payment, etc.*

## **157 Rates of payment**

- (1) Statutory sick pay shall be payable by an employer at the weekly rate of—
  - (a) £52.50, in a case where the employee’s normal weekly earnings under his contract of service with that employer are not less than £190; or
  - (b) £45.30, in any other case.
- (2) The Secretary of State may by order—
  - (a) substitute alternative provisions for the paragraphs of subsection (1) above; and
  - (b) make such consequential amendments as appear to him to be required of any provision contained in this Part of this Act.
- (3) The amount of statutory sick pay payable by any one employer in respect of any day shall be the weekly rate applicable on that day divided by the number of days which are, in the week (beginning with Sunday) in which that day falls, qualifying days as between that employer and the employee concerned.

## **158 Recovery by employers of amounts paid by way of statutory sick pay**

- (1) Regulations shall make provision—
  - (a) entitling, except in prescribed circumstances, any employer who has made one or more payments of statutory sick pay in a prescribed period to recover an amount equal to the sum of—
    - (i) the aggregate of such of those payments as qualify for small employers' relief; and

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- (ii) an amount equal to 80 per cent. of the aggregate of such of those payments as do not so qualify,
  - by making one or more deductions from his contributions payments; and
  - (b) for the payment, in prescribed circumstances, by or on behalf of the Secretary of State of sums to employers who are unable so to recover the whole, or any part, of the amounts which they are entitled to recover by virtue of paragraph (a) above.
- (2) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day which forms part of a period of incapacity for work qualifies for small employers' relief if—
  - (a) on that day the employer is a small employer who has been liable to pay statutory sick pay in respect of that employee for earlier days forming part of that period of incapacity for work; and
  - (b) the aggregate amount of those payments exceeds the entitlement threshold, that is to say, an amount equal to  $W \times R$ , where—
    - W is a prescribed number of weeks; and
    - R is the appropriate weekly rate set out in section 157 above;
 and regulations may make provision for calculating the entitlement threshold in any case where the employee's entitlement to statutory sick pay is calculated by reference to different weekly rates in the same period of incapacity for work.
- (3) For the purposes of this section, "small employer" shall have the meaning assigned to it by regulations, and, without prejudice to the generality of the foregoing, any such regulations—
  - (a) may define that expression by reference to the amount of an employer's contributions payments for any prescribed period; and
  - (b) if they do so, may in that connection make provision for the amount of those payments for that prescribed period—
    - (i) to be determined without regard to any deductions that may be made from them under this section or under any other enactment or instrument; and
    - (ii) in prescribed circumstances, to be adjusted, estimated or otherwise attributed to him by reference to their amount in any other prescribed period.
- (4) In this section "contributions payments", in relation to an employer, means any payments which the employer is required, by or under any enactment, to make in discharge of any liability in respect of primary or secondary Class 1 contributions.
- (5) Regulations under this section may, in particular,—
  - (a) provide for any deduction made in accordance with the regulations to be disregarded for prescribed purposes; and
  - (b) provide for the rounding up or down of any fraction of a penny which would otherwise result from calculating the amount which an employer is entitled to recover for any period by virtue of subsection (1)(a) above.
- (6) Where, in accordance with any provision of regulations made under this section, an amount has been deducted from an employer's contributions payments, the amount so deducted shall (except in such cases as may be prescribed) be treated for the purposes

of any provision made by or under any enactment in relation to primary or secondary Class 1 contributions as having been—

- (a) paid (on such date as may be determined in accordance with the regulations); and
- (b) received by the Secretary of State, towards discharging the liability mentioned in subsection (4) above.

- (7) Any day of incapacity for work falling before 6th April 1991 shall be left out of account for the purposes of subsection (2) above.

### **159 Power to substitute provisions for s. 158(2)**

- (1) If the Secretary of State by order so provides for any tax year, the following subsections shall have effect for that tax year in substitution for section 158(2) above—

“(2A) For the purposes of this section, a payment of statutory sick pay which an employer is liable to make to an employee for any day in a tax year qualifies for small employers' relief if—

- (a) on that day the employer is a small employer who has been liable to make payments of statutory sick pay for earlier days in that tax year in respect of any employees of his; and
- (b) the aggregate of any such payments for those earlier days exceeds a prescribed sum.

(2B) In any case where—

- (a) an employer is liable to make two or more payments of statutory sick pay for the same day in a tax year; and
- (b) by virtue of the condition in subsection (2A)(b) above, none of those payments would qualify for small employers' relief; but
- (c) that condition would have been fulfilled in relation to a proportion of the aggregate amount of those payments, had he been liable—
  - (i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that aggregate that would enable that condition to be fulfilled; and
  - (ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (2A) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of as mentioned in paragraph (a) above.

(2C) If, in a case not falling within subsection (2B) above—

- (a) an employer is liable to make a single payment of statutory sick pay for a day in a tax year; and
- (b) by virtue of the condition in subsection (2A)(b) above, that payment would not qualify for small employers' relief; but
- (c) that condition would have been fulfilled in relation to a proportion of that payment, had he been liable—
  - (i) to pay as statutory sick pay for an earlier day in that tax year, instead of for the day in question, the smallest part of that payment that would enable that condition to be fulfilled; and

(ii) to pay the remainder as statutory sick pay for the day in question,

he shall be treated for the purposes of subsection (2A) above as if he had been liable to make payments of statutory sick pay as mentioned in paragraph (c) above instead of the payment mentioned in paragraph (a) above.”.

- (2) Without prejudice to section 175(4) below, the Secretary of State may by regulations make such transitional or consequential provision or savings as he considers necessary or expedient in connection with the coming into force of an order under subsection (1) above or the expiry or revocation of any such order and the consequent revival of section 158(2) above.

### *Miscellaneous*

#### **160 Relationship with benefits and other payments, etc**

Schedule 12 to this Act has effect with respect to the relationship between statutory sick pay and certain benefits and payments.

#### **161 Crown employment - Part XI**

- (1) Subject to subsection (2) below, the provisions of this Part of this Act apply in relation to persons employed by or under the Crown as they apply in relation to persons employed otherwise than by or under the Crown.
- (2) The provisions of this Part of this Act do not apply in relation to persons serving as members of Her Majesty’s forces, in their capacity as such.
- (3) For the purposes of this section Her Majesty’s forces shall be taken to consist of such establishments and organisations as may be prescribed, being establishments and organisations in which persons serve under the control of the Defence Council.

#### **162 Special classes of persons**

- (1) The Secretary of State may make regulations modifying this Part of this Act in such manner as he thinks proper in their application to any person who is, has been or is to be—
- (a) employed on board any ship, vessel, hovercraft or aircraft;
  - (b) outside Great Britain at any prescribed time or in any prescribed circumstances; or
  - (c) in prescribed employment in connection with continental shelf operations, as defined in section 120(2) above.
- (2) Regulations under subsection (1) above may in particular provide—
- (a) for any provision of this Part of this Act to apply to any such person, notwithstanding that it would not otherwise apply;
  - (b) for any such provision not to apply to any such person, notwithstanding that it would otherwise apply;
  - (c) for excepting any such person from the application of any such provision where he neither is domiciled nor has a place of residence in any part of Great Britain;



- (d) for the taking of evidence, for the purposes of the determination of any question arising under any such provision, in a country or territory outside Great Britain, by a British consular official or such other person as may be determined in accordance with the regulations.

### **163 Interpretation of Part XI and supplementary provisions**

- (1) In this Part of this Act—

“contract of service” (except in paragraph (a) of the definition below of “employee”) includes any arrangement providing for the terms of appointment of an employee;

“employee” means a person who is—

- (a) gainfully employed in Great Britain either under a contract of service or in an office (including elective office) with emoluments chargeable to income tax under Schedule E; and
- (b) over the age of 16;

but subject to regulations, which may provide for cases where any such person is not to be treated as an employee for the purposes of this Part of this Act and for cases where any person who would not otherwise be an employee for those purposes is to be treated as an employee for those purposes;

“employer”, in relation to an employee and a contract of service of his, means a person who under section 6 above is, or but for subsection (1)(b) of that section would be, liable to pay secondary Class 1 contributions in relation to any earnings of the employee under the contract;

“period of entitlement” has the meaning given by section 153 above;

“period of incapacity for work” has the meaning given by section 152 above;

“period of interruption of employment” has the same meaning as it has in the provisions of this Act relating to unemployment benefit, sickness benefit and invalidity benefit by virtue of section 57(1)(d) above;

“prescribed” means prescribed by regulations;

“qualifying day” has the meaning given by section 154 above;

“week” means any period of 7 days.

- (2) For the purposes of this Part of this Act an employee’s normal weekly earnings shall, subject to subsection (4) below, be taken to be the average weekly earnings which in the relevant period have been paid to him or paid for his benefit under his contract of service with the employer in question.
- (3) For the purposes of subsection (2) above, the expressions “earnings” and “relevant period” shall have the meaning given to them by regulations.
- (4) In such cases as may be prescribed an employee’s normal weekly earnings shall be calculated in accordance with regulations.
- (5) Without prejudice to any other power to make regulations under this Part of this Act, regulations may specify cases in which, for the purposes of this Part of this Act or such of its provisions as may be prescribed—
  - (a) two or more employers are to be treated as one;
  - (b) two or more contracts of service in respect of which the same person is an employee are to be treated as one.

- (6) Where, in consequence of the establishment of one or more National Health Service trusts under Part I of the National Health Service and Community Care Act 1990 or the National Health Service (Scotland) Act 1978, a person's contract of employment is treated by a scheme under that Part or Act as divided so as to constitute two or more contracts, regulations may make provision enabling him to elect for all of those contracts to be treated as one contract for the purposes of this Part of this Act or of such provisions of this Part of this Act as may be prescribed; and any such regulations may prescribe—
- (a) the conditions that must be satisfied if a person is to be entitled to make such an election;
  - (b) the manner in which, and the time within which, such an election is to be made;
  - (c) the persons to whom, and the manner in which, notice of such an election is to be given;
  - (d) the information which a person who makes such an election is to provide, and the persons to whom, and the time within which, he is to provide it;
  - (e) the time for which such an election is to have effect;
  - (f) which one of the person's employers under the two or more contracts is to be regarded for the purposes of statutory sick pay as his employer under the one contract;
- and the powers conferred by this subsection are without prejudice to any other power to make regulations under this Part of this Act.
- (7) Regulations may provide for periods of work which begin on one day and finish on the following day to be treated, for the purposes of this Part of this Act, as falling solely within one or other of those days.