

# Drafting a Company Sick Pay Scheme

## An EBS Management Guide

***Barry Rees, EBS Director of Human Resources Services, outlines the key considerations when drafting a Company Sick Pay Scheme, to enable you to avoid the common pitfalls that most schemes face.***

Employers must provide details of sick leave and sick pay entitlements in the 'written statement of employment particulars' (often called the contract of employment) that they should provide to all employees within eight weeks of their start date.

Such details would normally set out the entitlements for any pay the employees would receive when off sick, together with any conditions that would need to be met around notifying the company of their absence, and the provision of certificates.

Employers may choose to offer just Statutory Sick Pay (SSP), or they may offer enhanced provision under a Company Sick Pay (CSP) scheme. There is no legal requirement to make any payments beyond the SSP scheme, although many companies do so as a way of attracting and retaining key staff.

Many employers will state in the written particulars that they operate the SSP scheme and 'that any other payments are down to management discretion'. Whilst this may appear to be OK, the reality can be that it confuses employees, as they don't know what they are entitled to, and unless it can be shown that there is a clear process for determining when such discretion is used, it can also be open to charges of discrimination. If you have always previously paid someone, and then stop, they may even be able to claim a breach of contract, because despite what the contract documents state, the reality is that people have been paid full pay when they are off sick.

This paper will consider three options:

- Offer just SSP
- Drafting a fair, workable CSP scheme
- Implementing a 'Hardship Policy', that can retain some discretionary elements, but outside of sick pay provisions.

### Statutory Sick Pay

All employees who meet basic earnings requirements are eligible to receive Statutory Sick Pay if they are absent from work due to ill health. However, the first three days of any period of absence are known as "waiting days" and no payments are due.

This is, therefore, the basic sick pay provision you can offer.

If it is your intention to only provide SSP you should stick to this, and make no exceptions under 'management discretion'.

However, consider the following scenarios:

- Your best sales person has to go into hospital for two weeks for a minor operation. You know they have been approached by a competitor and cannot afford to lose them; you are worried if you do not pay them for their sick leave they will quit.
- You have just recruited a key individual who will be central to developing a new product line. They have gone down with a flu bug, which is affecting several employees. You are happy that their absence is genuine; however, you are convinced another person is just taking advantage of the situation.

These types of scenario are used in many organisations to make payments to some 'key' people, whilst refusing to pay others who are seen to be 'malingerers'. The risk you take with such a policy is, at best, you are viewed as treating people differently – which can seriously demotivate people, and at worst, you can end up in a tribunal for discrimination, or breach of contract.

## **Company Sick Pay**

Rather than leave things to chance, where you believe you will make payments over and above SSP, it is far better to provide for such payments within a Company Sick Pay Scheme.

The following issues should be considered:

### **Amount of Days Paid**

The first decision will need to be, how many days per year are you prepared to pay for. One way to calculate this is to look back at the average days people have had off over the past couple of years.

Large organisations have typically been very generous – with sick pay of up to six months full pay and six months half pay (capped as a maximum over a four year period).

Smaller organisations, where such amounts of sick leave would have other organisational implications, will opt for smaller amounts, with a typical range from 5 days to 20 days a year.

You would always make it clear that any CSP included the individual's entitlement to SSP (so that you are not paying SSP on top of CSP).

### **Rolling or Calendar Year**

Giving an entitlement for use in a 'rolling year' will stop the type of abuse where someone uses up all of one year's entitlement at the end of the year, and then goes off sick again at the start of the next year. 'Calendar year' entitlements tend to be used where an organisation wishes to tie their costs into their financial year.

### **Any Unpaid Days**

Some organisations will, like SSP, not pay for the first three days of a sick absence, on the belief that it stops abuse of the system but provides a safety net for those on longer term sick. This can work, but again you need to be consistent and not make exceptions.

### **A Maximum in any one Period of Sick**

Another way of stopping major abuse is to limit the number of days CSP that are paid for any single period of absence – i.e. an employee may have an entitlement to 10 days per year, but will only receive a payment of 5 days for any single period of sick leave. This would cover most absences from work, but will not cover a long absence – so again you would need to be consistent with your approach to anyone in this position.

### **Rewarding Long Service**

Some companies have a sliding scale of CSP that rewards long service. So an individual might be eligible for 5 days CSP on joining, rising to 10 days after one year, and 15 days after three years.

Under the age discrimination legislation if you apply length of service criteria for over 5 years service, you have to be able to justify this in terms of 'increasing loyalty' etc.

### **Employee Insurance**

A growing number of companies are now advising employees to take out their own insurance to cover longer periods of sick absence. Unless you provide such cover to all staff, as a benefit, (in which case you can describe your own scheme) you should not advise staff on the merits or otherwise of any commercial schemes – rather advise them to seek the advice of an Independent Financial Advisor.

### **Clear Reasons for Non Payment**

If there are some restrictions on when your scheme may pay out, such as sports injuries, or when suitable medical certificates have not been provided, you should make this clear up front.

### **Sick Absence Management**

To avoid abuse of such a CSP system, it is important that you operate a suitable sick absence management process that might include 'Return to Work Interviews' or the use of Occupational Health advisors.

### **Communication of CSP scheme**

Where you are introducing a formal CSP scheme, as well as including it in all future employment written particulars, you should also ensure that you communicate the scheme details to all existing employees. Where you are formalising an existing practice of paying people, you should use the communication to 'clarify' the position relating to sick pay – reminding people that technically they have only been entitled to SSP.

### **Hardship Policy**

One way of retaining some degree of management discretion is to introduce a 'Hardship Policy' for the company. This would be a way of employees who would face particular hardship if they were to receive only SSP (either because that is all that your offer, or where they have exhausted their CSP entitlement). This could be because they are the only wage earner in the family, or had just had an unexpected large bill etc. A hardship policy could be operated in a number of ways:

- Provide an advance against future salary, to be recovered in instalments once they return to work.
- Provide a one off, ex-gratia, payment that does not need to be reimbursed.
- Provide a monthly payment, either as a loan, or as a series of ex-gratia payments.

Whilst there would still be a requirement to be reasonably consistent, the difference here will be in the personal backgrounds of each member of staff – making it easier to make discretionary payments.

As this policy is separate to the sick pay scheme (and could in theory be used for any hardship situation, not just due to sick pay issues), any payment made under this scheme should not have contractual implications for your sick pay scheme

### **Drafting a Company Sick Pay Scheme / Sick Absence Management Process**

If you have any queries on any aspect of this guide, or if you would like assistance in implementing a Company Sick Pay Scheme, or Sick Absence Management process, then please contact us on **01844 211084** or email Barry Rees at [barry.rees@ebs-hr.co.uk](mailto:barry.rees@ebs-hr.co.uk).