

2020 No.

SOCIAL SECURITY

The Statutory Sick Pay (Coronavirus: Compensation of Employers) Regulations 2020

Made - - - -

Laid before Parliament

Coming into force - -

The Commissioners for Her Majesty's Revenue and Customs in exercise of the powers conferred by sections 159B and 175(3) and (5) of the Social Security Contributions and Benefits Act 1992(a), and with the concurrence of the Secretary of State, make the following Regulations.

Citation and commencement

1.—(1) These Regulations may be cited as the Statutory Sick Pay (Coronavirus: Compensation of Employers) Regulations 2020 and come into force on [date].

(2) Regulations 2 to 10 shall have effect in relation to a day of incapacity for work related to coronavirus that falls on or after 13th March 2020.

Interpretation

2.—(1) For the purposes of these Regulations—

“the Commissioners” means the Commissioners of HMRC;

“the Contributions and Benefits Act” means the Social Security Contributions and Benefits Act 1992;

“day of incapacity for work” is to be construed in accordance with section 151(4) of the Contributions and Benefits Act(b) where on that day a person is—

(i) incapable of work for a reason related to coronavirus; or

(ii) deemed incapable of work under regulation 2(1)(c) of the SSP Regulations(c);

“eligible employer” has the meaning given in regulation 3;

“HMRC” means Her Majesty's Revenue and Customs;

-
- (a) 1992 c. 4. By virtue of section 37 of the Coronavirus Act 2020 (c. X), the Social Security Contributions and Benefits Act 1992 has effect as if a new section 159B is inserted after section 159A. For these purposes, section 159B has retrospective effect from 13th March 2020. “Coronavirus” within these Regulations therefore has the meaning given in section 159B(8). Section 175(5)(a) was substituted in part by section 11 of and paragraph 36 of Schedule 1 to the Social Security (Incapacity for Work) Act 1994 (c.18).
- (b) Section 151(4) was amended by section 11(1) of and Schedule 1 Part I Paragraph 34 of the Social Security (Incapacity for Work) Act 1994.
- (c) S.I. Paragraph (1)(c) of Regulation 2 was inserted by S.I. 2020/287 with effect from 13th March 2020. It was amended by S.I. 2020/304 with effect from 16th March 2020.

“income tax month” means the period beginning on the 6th day of any calendar month and ending on the 5th day of the following calendar month;

“income tax quarter” means, in any tax year, the period beginning on 6th April and ending on 5th July, the period beginning on 6th July and ending on 5th October, the period beginning on 6th October and ending on 5th January, or the period beginning on 6th January and ending on 5th April;

“PAYE” means Pay As You Earn;

“period of entitlement” is to be construed in accordance with section 153 of the Contributions and Benefits Act;

“period of incapacity for work” is to be construed in accordance with section 152(2) of the Contributions and Benefits Act where throughout the period in question a person is—

- (i) incapable of work for a reason related to coronavirus; or
- (ii) deemed incapable of work under regulation 2(1)(c) of the SSP Regulations;

“qualifying day” is to be construed in accordance with section 154 of the Contributions and Benefits Act;

“statutory sick pay” means any payment made under section 151(1) of the Contributions and Benefits Act;

“tax year” means the period of 12 months beginning on 6th April in any year;

“the SSP Regulations” means the Statutory Sick Pay (General) Regulations 1982(a);

“writing” includes writing delivered by means of electronic communications approved by directions issued by the Commissioners pursuant to regulations made under section 132 of the Finance Act 1999(b).

(2) Any reference in these Regulations to “the relevant date” means 28th February 2020.

Meaning of eligible employer

3.—(1) An eligible employer is an employer who, as at the relevant date—

- (a) employs no more than 249 employees; and
- (b) where all employees are enrolled in an established PAYE scheme held within HMRC systems.

(2) For the purposes of paragraph (1)(b), it is irrelevant whether an eligible employer operates one or multiple PAYE schemes.

(3) The total number of employees for the purposes of paragraph (1)(a) must be determined by reference to the number of employees enrolled in any PAYE scheme operated by that employer at the relevant date.

(4) Any reference in these Regulations to—

- (a) the employee of an eligible employer includes, where the context permits, a reference to a former employee;
- (b) an eligible employer includes a person (A) who was previously the employer of a person (B) to whom a payment of statutory sick pay was made, whether or not A remains the employer of B—
 - (i) at the time that a claim for recovery under regulation 5 is made; or
 - (ii) at the time that any payment is received by A in accordance with regulation 5.

(a) S.I. 1982/894.

(b) 1999 c. 16. Section 132(10) was amended by section 406(1) and Paragraph 156 of Schedule 17 to the Communications Act 2003 (c. 21) and S.I. 2011/1043.

Connected persons

4.—(1) This regulation applies if—

- (a) on the relevant date, two or more companies which are not charities are connected with one another, and
- (b) apart from this regulation, two or more of those companies would be eligible employers for the purposes of regulation 3.

(2) This regulation also applies if—

- (a) on the relevant date, two or more charities are connected with one another, and
- (b) apart from this regulation, two or more of those charities would be eligible employers for the purposes of regulation 3.

(3) Where this regulation applies, the total number of employees determined under regulation 3(1)(a) and (3) must be calculated by reference to the total number of employees enrolled in all of the PAYE schemes operated by the connected companies or charities.

(4) Part 1 of Schedule 1 to the National Insurance Contributions Act 2014(a) sets out the rules for determining if two or more companies are “connected” with one another for the purposes of paragraph (1).

(5) Part 2 of Schedule 1 to the National Insurance Contributions Act 2014 sets out the rules for determining if two or more charities are “connected” with each other for the purposes of paragraph (2).

(6) In this regulation—

“charity” has the meaning as given by section 18 of the Small Charitable Donations Act 2012(b), subject to paragraph 8(5) of Schedule 1 of the National Insurance Contributions Act 2014; and

“company” has the meaning given by section 1121(1) of the Corporation Tax Act 2010(c) and includes a limited liability partnership.

Funding of employers’ liabilities by the Commissioners

5.—(1) Where an eligible employer has—

- (a) made payments of statutory sick pay to an employee in connection with a period of incapacity for work, and
- (b) for a day which is a qualifying day and is within a period of entitlement,

that employer is entitled to recover an amount from the Commissioners by way of funding in arrears for payments of statutory sick pay made to that employee.

(2) The maximum amount which an eligible employer may recover from the Commissioners under paragraph (1) in relation to any one employee is the equivalent of 2 weeks’ payment of statutory sick pay in respect of a single period of incapacity for work, regardless of the total number of days or periods of incapacity for work in respect of which statutory sick pay was payable for that employee for reasons relating to coronavirus.

(3) The maximum amount which any eligible employer may recover from the Commissioners under paragraph (1) in total is the equivalent of 2 weeks’ payment of statutory sick pay for the number of employees determined under regulation 3(1)(a) and (3).

(4) The weekly rate of statutory sick pay for the purposes of paragraph (1) is the rate prescribed in section 157(1) of the Contributions and Benefits Act(d).

(a) 2014 c. 7.

(b) 2012 c. 23.

(c) 2010 c. 4. Section 1121 was amended by S.I. 2013/1388.

(d) Section 157(1) was amended by S.I. 2019/480. Subsection (2)(a) was substituted by section 8(3) of the Social Security (Incapacity for Work) Act 1994 (c. 18).

(5) Payments recovered under paragraph (1) will be paid by the Commissioners in such manner as specified in directions made by HMRC.

(6) Payments recovered under paragraph (1) are to be paid out of the National Insurance Fund.

(7) An eligible employer must make a claim for recovery of payments under paragraph (1) in accordance with directions made by HMRC.

(8) Where a claim is made under paragraph (7), an officer of HMRC must make a decision in accordance with section 8(1)(g) of the Social Security Contributions (Transfer of Functions, etc) Act 1999(a) whether to accept or reject the claim.

(9) The directions referred to in paragraph (7) may include provision for facilitating the use of electronic communications in relation to any of the matters referred to in section 132(3) of the Finance Act 1999(b).

(10) A claim for recovery under paragraph (1) must be made within a period of 2 years starting with the latest qualifying day within that period of incapacity for work for that employee.

Records to be maintained by eligible employer

6.—(1) Where an eligible employer has made payments of statutory sick pay which have subsequently been recovered from HMRC under regulation 5, the employer must maintain for 3 years after the date on which they recovered the payments from HMRC, a record of the following information in relation to each employee—

- (a) each period of incapacity for work in respect of which a claim for recovery was made under regulation 5;
- (b) a record of the reason for incapacity for work provided by the employee in question; and
- (c) the days which were qualifying days as between that employer and that employee in the period of incapacity for work referred to in paragraph (a).

(2) All records maintained under paragraph (1) must contain reference to the National Insurance number for the relevant employee to whom payments of statutory sick pay were originally made.

(3) A record falling under paragraph (1)(b) does not need to be a sickness note provided by a medical doctor.

Inspection of employers' records

7.—(1) Every eligible employer, whenever required to do so by a notice issued by an officer of HMRC, must produce any or all of the documents and records specified in regulation 6 to that officer for inspection, in accordance with the requirements set out in regulation 13A of the SSP Regulations, and at such time and place reasonably required by the officer.

(2) The officer may—

- (a) take copies of, or make extracts from, any document or record produced to the officer for inspection in accordance with paragraph (1);
- (b) remove any document or record so produced if it appears to the officer to be necessary to do so, at a reasonable time and for a reasonable period.

(3) Where any document or record is removed in accordance with paragraph (2)(b), the officer shall provide—

(a) 1999 c. 2. Section 8(1)(g) was amended by section 9(1) and (2)(b) of the Employment Act 2002 (c. 22); section 126(1) and paragraphs 44 and 45(1), (2)(c) and (d) of Schedule 7 to the Children and Families Act 2014 (c. 6); and section 1(c) and paragraphs 29, 30(1) and (2)(a) and (b) of Part 3 of the Schedule to the Parental Bereavement (Leave and Pay) Act 2018 (c. 24).

(b) Section 132(1) provides that regulations may be made, in accordance with the section, for facilitating the use of electronic communications for (b) the making of payments under any legislation relating to a taxation matter. Such power is conferred on the Commissioners of Inland Revenue in relation to matters which are under their care and management. Section 7 and Schedule 1 of the Commissioners for Revenue and Customs Act 2005 (c. 11) contains a list of former Inland Revenue matters, which includes statutory sick pay.

- (a) a receipt for the document or record so removed; and
- (b) a copy of the document or record, free of charge, within 7 days, to the person by whom it was produced or caused to be produced where the document or record is reasonably required for the proper conduct of a business.

(4) Where a lien is claimed on a document produced in accordance with paragraph (1), the removal of the document under paragraph (2)(b) shall not be regarded as breaking the lien.

(5) Where records are maintained by computer, the person required to make them available for inspection shall provide the officer with all facilities necessary for obtaining information from them.

Overpayments

8.—(1) Where payment has been made to an eligible employer following a claim for recovery under regulation 5, HMRC may require the employer to repay any amount which an officer of HMRC decides was not due under regulation 5(1) (“the overpayment”).

(2) HMRC must give a notice in writing of any decision under paragraph (1) to the employer, and the notice must specify the amount of the overpayment.

(3) A decision under paragraph (2) may be in respect of payments made to an eligible employer under regulation 5—

- (a) for any one income tax month or income tax quarter, or more than one income tax month or income tax quarter, in a tax year, and
 - (i) in respect of a class or classes of employees specified in the decision notice (where the decision does not name an individual employee); or
 - (ii) in respect of one or more individual employees named in the decision notice.

(4) Subject to paragraphs (5), (6) or (7), Part 6 of the Taxes Management Act 1970 (collection and recovery)(a) applies with any necessary modification to a decision under this regulation as if—

- (a) the amount specified were an assessment; and
- (b) the amount set out in the notice were income tax charged on the employer.

(5) Where a decision under paragraph (2) relates to more than one employee, proceedings may be brought to recover the amount overpaid—

- (a) without distinguishing the sum to be repaid in respect of each employee; and
- (b) without specifying the employee in question.

(6) A decision made to recover an amount under this regulation gives rise to one cause of action or matter of complaint for the purpose of proceedings under sections 65(b), 66(c), or 67(d) of the Taxes Management Act 1970.

(7) Paragraph (5) does not prevent separate proceedings being brought for the recovery of any amount which the employer is liable to repay in respect of each employee to whom the decision relates.

(a) 1970 c. 9

(b) Section 65 was amended by section 57(1)(b) and (c) of the Finance Act 1984 (c.46); and section 117(3) of and paragraph 30(2) to (4) of the Finance Act 1998 (c. 36).

(c) Section 66 was amended by sections 89(1) and 110 of and Schedule 33, Part 2(14) of the Finance Act 2001 (c. 9); section 137(2)(a) and (b) of the Finance Act 2008 (c. 9); section 17(5) of and paragraph 132, Schedule 9, Part 3 to the Crime And Courts Act 2013 (c. 22); S.I. 1980/297; and S.I. 1991/724. Subsection (2A) was inserted by section 148(1) of and paragraph 36 of Schedule 2 to the County Courts Act 1984 (c. 28), and repealed by S.I. 1991/724. Subsection (3) was substituted by S.I. 1991/724.

(d) Section 67 was amended by sections 89(1) and 110 of and Schedule 33, Part 2(14) of the Finance Act 2001 (c. 9); section 137(2)(a) and (b) of the Finance Act 2008 (c. 9); section 17(5) of and paragraph 132, Schedule 9, Part 3 to the Crime And Courts Act 2013 (c. 22); S.I. 1980/297; and S.I. 1991/724. Subsection (2A) was inserted by section 148(1) of and paragraph 36 of Schedule 2 to the County Courts Act 1984 (c. 28), and repealed by S.I. 1991/724. Subsection (3) was substituted by S.I. 1991/724.9). Subsection (1A) was inserted, in relation to proceedings commenced after 1st May 1995, by section 156(3) and (4) of the Finance Act 1995.

(8) In the application of section 101 of the Finance Act 2009(a) (late payment interest on sums due to HMRC) in relation to a repayment to HMRC under this section, the late payment interest start date is the date on which HMRC gives a notice in writing under paragraph (2).

(9) Any repayments made by an employer under this regulation, and any interest in respect of them under section 101 of the Finance Act 2009, are to be paid into the National Insurance Fund.

Provision of information

9.—(1) Any person specified in paragraph (2) shall, where information or documents are reasonably required from them to ascertain whether an eligible employer was entitled to claim for recovery under regulation 5, furnish that information or those documents within 30 days of receiving a notification from an officer of HMRC requesting such information or documents.

(2) The requirement to provide such information or documents applies to—

- (a) the eligible employer; and
- (b) any person who is a servant or agent of the eligible employer.

Transitional provisions

10. Where an employee has a period of incapacity for work which began before 13th March 2020 and which has not come to an end before that date—

- (a) if 13th March 2020 is a day of incapacity for work within a period of entitlement to statutory sick pay, an eligible employer may not recover any amount from the Commissioners under regulation 5 in relation to that period of entitlement;
- (b) if 13th March 2020 is not a day of incapacity for work, a period of entitlement to statutory sick pay in relation to which a eligible employer may recover an amount from the Commissioners under regulation 5 shall arise on the first day of incapacity for work after 13th March 2020.

Name

Name

Date

Two of the Lords Commissioners of Her Majesty's Treasury

The Secretary of State concurs.

Signed by authority of the Secretary of State for Work and Pensions.

Name

Minister of State

Date

Department for Work and Pensions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for a scheme for certain small and medium sized employers to apply to Her Majesty's Revenue and Customs (HMRC) to recover the costs of paying statutory sick pay (SSP) to their employees. The scheme will compensate employers for costs of SSP up to a certain threshold where an employee is incapable of work for a reason related to coronavirus, or is deemed to be incapable of work because the employee is self-isolating in accordance with guidance issued by Public Health England, NHS National Services Scotland or Public Health Wales. Employers who are eligible for the scheme are those with 249 or fewer employees as at 28

(a) Section 101(2)(a) and (b) were repealed by section 25 of and paragraphs 1 and 2 of Schedule 9, Part 1 to the Finance (No 3) Act 2010 (c. 33). Subsections (10) and (11) were inserted by section 103 of and paragraph 20(1) and (2) of Schedule 22, Part 3 of the Finance Act 2014 (c. 26), and repealed by section 32 and paragraphs 115 and 116 of Schedule 8, Part 2 of the Taxation (Cross-border Trade) Act 2018 (c. 22).

February 2020, and who meet other criteria set out in Regulations 3 and 4. Recovery is limited to a maximum of two weeks of SSP for each employee, regardless of the total number of days of incapacity for work which that employee has for a reason relating to coronavirus under the SSP Regulations. However, these Regulations have retrospective effect meaning that an eligible employer can recover payments of SSP at a later date when the scheme comes into effect, in relation to any qualifying day on or after 13 March 2020.

Regulation 4 provides that, where two or more companies or charities are “connected” with one another within the criteria set out in Parts 1 or 2 of Schedule 1 to the National Insurance Contributions Act 2014, and where two or more of those companies would individually be eligible employers for the purposes of regulation 3 and able to recover payments of SSP under these Regulations, the number of employees for the purposes of regulation 3(1)(a) and (3) must be calculated by reference to the cumulative number of employees enrolled in all PAYE schemes operated by the connected companies or charities.

Regulation 5 provides for the procedure for making claims for recovery by way of funding in arrears. Such claims may be made to recover payments made for any two week period of SSP, starting with 13 March 2020 and ending with 13 March 2022 (the date the Act expires). They must be made in accordance with guidance issued by HMRC and within a period of 2 years starting with the latest qualifying day of that employee’s period of incapacity for work. Regulation 5 provides for the use of electronic communications, and also provides that HMRC may make a decision about whether to accept or reject a claim for funding in arrears, which then confers a right of appeal on an employer under the Social Security Contributions (Transfer of Functions, etc.) Act 1999 (c. 2).

Regulation 6 provides that employers are required to keep records relating to any relevant payments of SSP for which an claim for recovery is made, for a period of 3 years beginning with the date on which the employer recovered the payments. Regulation 7 empowers officers of HMRC to inspect, copy or remove employers’ payment records.

Regulation 8 provides for a procedure by which overpayments of funding made to compensate eligible employers under regulation 5 may be recovered. It specifies that HMRC may use certain powers under the Taxes Management Act 1970 (c. 9) in order to do so.

Regulation 9 requires eligible employers and agents or servants of an eligible employer to furnish information or documents to an officer of HMRC on request.

Regulation 10 contains transitional provisions applying to situations where an employee has a period of incapacity for work with a eligible employer which began before 13 March 2020 and which has not come to an end before that date.

No regulatory impact assessment has been produced for these Regulations in view of the urgency required to establish a scheme to alleviate the financial burden on small employers of payment of SSP for reasons related to coronavirus.