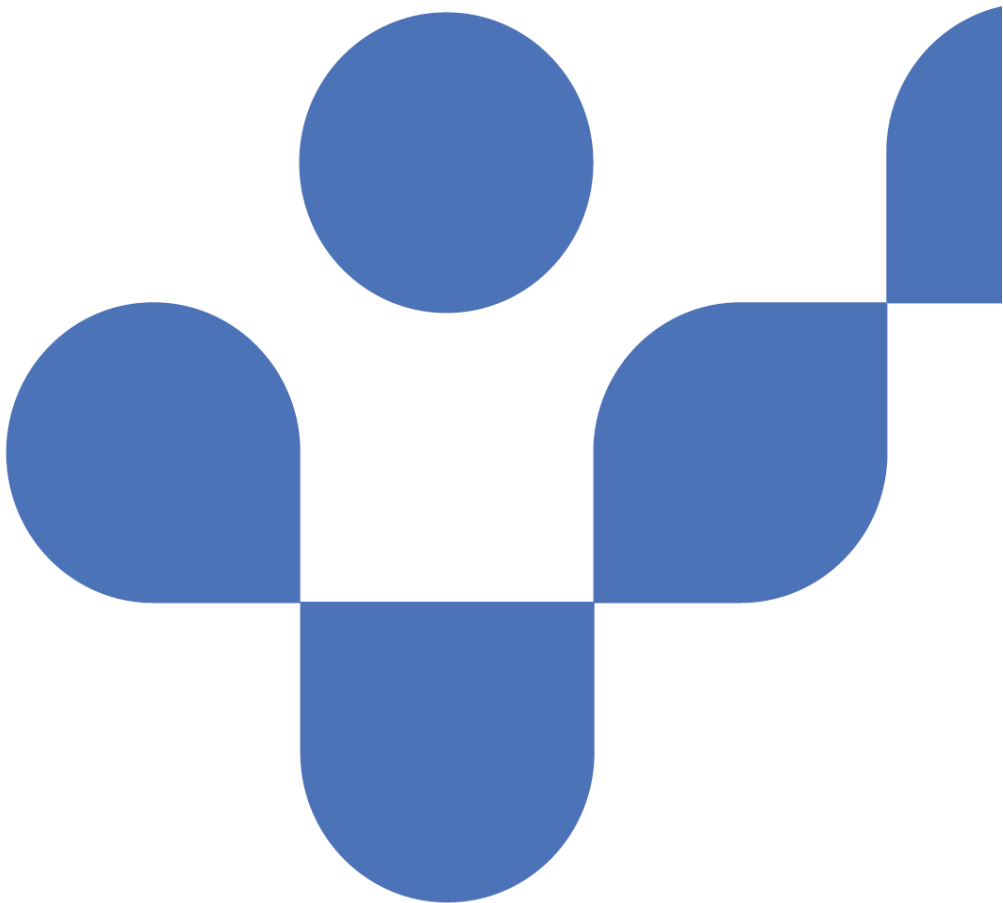


Consultation on Strengthening Statutory Sick Pay

A response by the Recruitment & Employment
Confederation

December 2024



About the Recruitment & Employment Confederation

The [Recruitment & Employment Confederation](#) (REC) is the professional body for the UK recruitment industry. We represent over 3,000 recruitment businesses and our sector places nearly a million people into permanent jobs each year and ensures that a further one million are working flexibly through temporary assignments on any given day.

The professional staffing sector is bigger in scale than either law or accountancy and contributed over £44 billion to UK GDP in 2023. Our members work as advisors, planners, and partners with business across all sectors on recruitment, retention and productivity.

Executive Summary

Overall, the REC is supportive of the premise of Statutory Sick Pay (SSP) and believes that a fair and effective SSP system can be implemented in the UK labour market. This needs to work for both the permanent and temporary labour markets. Agency workers generally operate under two types of contracts, either a "contract for services," where work is assigned intermittently, and a continuous employment contract. Both contract types currently qualify workers for SSP, though interpretation can be unclear for non-continuous contracts. However, proposed changes to Statutory Sick Pay (SSP) could create significant challenges for the temporary labour market, agency workers and the predominantly small businesses that supply them.

Agencies face unique difficulties in funding SSP for non-continuous agency workers, as clients often refuse to cover SSP costs. Agencies, especially in the public sector with capped fees, are thus forced to absorb these expenses, compounding financial strain from rising operational costs, national wage increases, and other regulatory changes.

The consultation's proposed SSP reforms, such as removing waiting days and lowering earnings limit will raise costs on businesses and their suppliers already under financial pressure. Additionally, fluctuating agency work makes calculating average earnings—and thus SSP entitlement—unpredictable. Seasonal sectors, where income can vary widely, could see SSP payouts not accurately reflecting workers' actual earnings, adding to the complexity.

Small businesses, making up a large percentage of the market, would bear a disproportionate cost burden, as 60% of the new SSP costs would fall on these enterprises. The REC advocates for a lower SSP rate to mitigate the impact, urging the government to consider how the cumulative impact of all the regulatory changes proposed will affect small businesses and to prioritise a balanced approach between worker support and business sustainability.

Consultation Response

Changes to SSP need to be carefully considered when it comes to the temporary labour market. There are a number of misconceptions that need to be considered when it comes to this market, and the nature of the relationship between parties also needs to be taken into account when it comes to applying SSP to agency workers.

Background

On signing up with a recruitment agency, workers understand, and frequently welcome, the temporary nature of the work. Employment businesses usually engage workers on a contract for services, and they then supply these workers to their clients as and when they are required. These workers are engaged on a temporary basis, and there is no overarching contract between the employment business and the

workers between their assignments. There are also some agency workers who are engaged on contracts of employment. These contracts are continuous and exist even when the worker is not on an assignment. However, both classes of worker are eligible to receive SSP under the current legislation. The application of this to employed agency workers where the contract continues is clear, but the application to workers on a contract for services can be less clear. Government guidance states that:

Agency workers whose contract does not continue between assignments are subject to them being employed earners and meeting the qualifying conditions entitled to SSP for the entire period of incapacity for work until the assignment ends (for reasons other than avoiding liability for SSP) or entitlement to SSP ends for another reason as detailed on the SSP1 form.

This means that agency workers who are not on assignment are not eligible to receive SSP unless there is evidence to suggest that their assignment was ended as a way of avoiding SSP liability. However, the flexible nature of agency work means that if an agency worker is unable to work for whatever reason including sickness, an end hirer client is likely to require a replacement worker from the agency to cover the assignment. In this scenario, whether an assignment has legitimately ended is a matter of fact. Increasingly, when it is unclear whether an assignment has ended due to sickness and as a means of avoiding SSP liability, or whether an assignment has been brought to an end because an end-hirer client legitimately requires someone to carry out the piece of work the original agency worker was assigned to do, agencies will continue to pay SSP to avoid liability for HMRC fines and in the case of sickness related to long term conditions, disability discrimination.

For small agencies who make up the majority of the sector, it is important to be able to meet their legal obligations to pay SSP in a sustainable way, as they may be liable for hundreds of agency workers. Where workers are unable to work due to sickness, agencies face a lot of difficulty in recovering the payment of SSP from their end-hirer clients even when they are contractually entitled to payment and end up shouldering the responsibility for these payments to ensure workers are not disadvantaged, usually at a loss. In many cases, clients are unwilling to pay agencies a fee (the SSP charge) for a worker who is absent from an assignment due to sickness, when they have not received the benefit of the agency worker's work and in some cases, where they are paying for a substitute agency worker. Agencies have no leverage in these conversations as clients can easily find alternative suppliers. Therefore, agencies pay SSP at a loss even when they are unable to claim the cost of this back from clients. This is further exacerbated in the public sector, for example in under the NHS Agency Rules, where framework rates limit the overall rate an agency can charge an NHS Trust client, leaving no room to cover the additional cost of SSP.

[The impact of the proposals to remove waiting days and the lower earnings limit](#)

The proposals set out in the consultation are likely to exacerbate the challenges agencies already currently face in respect of claiming back SSP payments from clients due to the increase in the scope of those who will become eligible for SSP. This means agencies are likely to have to absorb the increased cost themselves. Combined with increases to national minimum wage and changes to National Insurance contributions, businesses are finding themselves increasingly squeezed, especially with the cost of doing business rising more generally over the last few years. It is important that the government doesn't consider all the changes they have proposed in isolation, and also consider the holistic impact of their full suite of proposed reforms. The government's consultations and approach to implementing each of their policies are currently too disconnected, and the impact of each policy is being considered in isolation without considering the overall impact of the changes happening all at once.

The proposals around SSP are designed to stop people feeling obligated to come into work when they are genuinely sick. The intention is to provide workers with a safety net for their income if they are unable to work. However, in introducing measures to achieve this, the government needs to ensure they avoid unintended consequences, particularly when applying these changes to the agency worker

market. Agency workers are not entitled to any pay if they are not working, so remaining on SSP can, in some circumstances, allow them to be financially better off than they would have been otherwise. This is particularly important considering that agency workers may be registered with more than one agency at any given time, meaning that if they are sick, they could claim SSP from multiple agencies at once. Additionally, it is also possible for an agency worker to be fit for work in some roles but not fit for others. In this scenario, an agency worker could work for one employer, whilst simultaneously receiving SSP from another. For example, a worker may be able to do an administrative desk job for via one agency, whilst being unfit to work as a warehouse operative and receiving SSP for this role via another. These scenarios could lead to individuals signing up to multiple agencies, taking an assignment and then calling in on day 1 to receive SSP.

The nature of agency work makes it hard to anticipate the average weekly earnings of an agency worker, and whether this will be above the Lower Earnings Limit for SSP. An agency worker's earning potential is dependent on the availability of work, which is dependent on the demand of the hirer, and worker's own availability, both of which can fluctuate. It is therefore not possible for an agency to accurately calculate what pay an agency worker who has only previously worked for a handful of hours would have been entitled to had they not fallen ill. The Conduct of Employment Agencies and Employment Businesses Regulations 2003 (the Conduct Regulations) set out that an agency must provide a temporary agency worker with details of the rate of pay or minimum rate of pay that the agency worker can expect during the assignment. It is therefore unclear how the proposals to calculate SSP as a percentage of earnings would apply to a worker with fluctuating levels of work and pay. In industries where there are high levels of seasonal demand like hospitality and retail, fluctuations in pay for workers can be quite extreme, which in turn means SSP entitlement for these workers could be similarly unpredictable and not reflective of their actual earnings.

As stated in the consultation document "small and micro businesses pay around 60% of the annual SSP cost to employers and make up around 47% of businesses. Given 60% of the additional costs to businesses will be borne by 47% of the population, there will be a disproportionate burden on small and micro businesses". Roughly 94% of the REC's membership consists of small and microbusinesses who are already facing immense pressures in the current market, the implementation of these measures as proposed is likely to have as significant impact in the sector where compliance costs are steadily rising. REC members want to do the right thing and comply, but a balance must be struck between worker and business interests. To ensure this balance is struck, the government should set the new SSP rate as low as possible to minimise the additional cost for small businesses.

The government should also consider reintroducing a rebate for SMEs to reclaim SSP from the government. This was previously the case when SSP was introduced, but the ability to reclaim was abolished by the government in 2014. Bringing back a level of support for SSP from the government would help to offset the increase in costs.

Given the wider changes being introduced by the government, such as increased National Minimum Wage and the reduction in the threshold for Employers National insurance, the government needs to recognise that all these increased costs are compounding pressure on businesses and may jeopardise the economic growth which is so badly needed. It is estimated that the changes in the Employment Rights Bill will cost businesses as much as £5bn a year, which will hugely restrict their freedom in allowing the investment in the workforce that is needed to drive growth.

For more information on this submission, please contact:

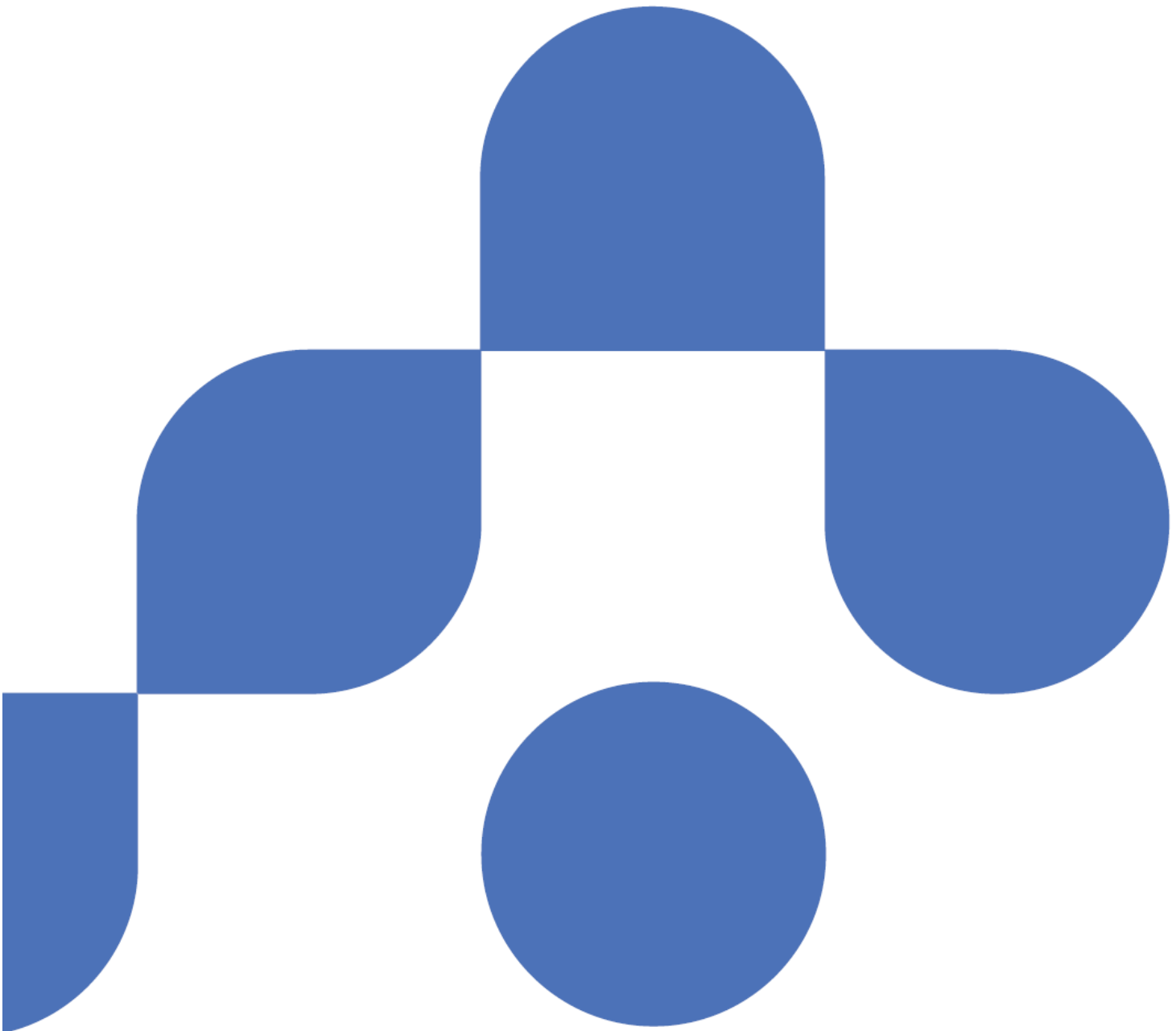
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The REC is the voice of the recruitment industry, speaking up for great recruiters. We drive standards and empower recruitment businesses to build better futures for their candidates and themselves. We are champions of an industry which is fundamental to the strength of the UK economy. Find out more about the Recruitment & Employment Confederation at www.rec.uk.com.



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