

Sick Leave Bill 2022

Bill No. 38 of 2022

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Abstract

The *Sick Leave Bill 2022* provides a minimum level of protection to low paid employees, who may have no entitlement to company sick pay schemes. Under the scheme, employers will pay a statutory sick pay rate of 70% of an employee's wage, subject to a daily threshold of €110. The scheme will be phased in over a four-year period, starting with three days per year in 2022 and eventually rising to 10 days per year in 2026.



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Glossary and abbreviations

Table 1: Glossary & Abbreviations

Glossary & Abbreviations	
Act of 2015	Means the <i>Workplace Relations Act 2015</i>
DETE	Department of Enterprise, Trade and Employment
IBEC	Irish Business Employers Confederation
ICTU	Irish Congress of Trade Unions
Illness benefit	A short-term payment made to insured contributors (PRSI) who are unable to work due to illness. No payment is made for the first 3 days of illness, which are known as waiting days.
Medical certification	A statement from a physician or other health care provider that attests to the result of a medical examination of a patient
Minister	Minister for Enterprise, Trade and Employment
MISSOC	Mutual Information System on Social Protection
PRSI	Pay Related Social Insurance
Replacement Rate (RR)	The proportion of employee's pay being paid during periods of illness and the duration covered by the SSP scheme
RIA	Regulatory Impact Assessment
Sick pay (company)	The continued, time limited, payment of (part of) the worker's salary by the employer during a period of sickness. It should be seen in the context of the contract of employment between employer and employee.
SME	Small and Medium Sized Enterprise
Statutory sick pay (SSP)	The money that an employer must by law pay to an employee who is unable to work because of illness.
Waiting Days	Period of time between the occurrence of the social security risk and the onset of the benefits' during which no compensation is paid. i.e. unpaid days in the event of illness

Summary

- The [Sick Leave Bill 2022](#) was published on 30 March 2022.
- The Bill comprises of 15 sections and 3 parts.
- Statutory sick pay provides for the entitlement of an employee to be paid a statutory sick leave payment by his or her employer in respect of a temporary absence from work due to illness, subject to medical certification from a registered medical practitioner.
- The primary purpose of the legislation is to deliver a minimum level of protection to low paid employees, who may have no entitlement to company sick pay schemes. There is currently no legal obligation on employers to pay workers during periods of illness in Ireland.
- The new scheme is to be phased in over a four-year period to help employers, particularly small businesses, to plan ahead and manage the additional cost. Sick pay cover will begin at three days per year in 2022, rising to five days payable in 2024 and seven days payable in 2025. Employers will eventually cover the cost of 10 sick days per year in 2026.
- Under the scheme, employers will pay a statutory sick pay rate of 70% of an employee's wage, subject to a daily threshold of €110. The daily earnings threshold cap has been designed to give employers certainty around the costs involved while also trying to ensure that employees receive an appropriate level of compensation if unable to work due to illness or injury.
- The scheme covers all workers and no waiting days are to apply (waiting days are the unpaid days in the event of illness).
- To avail of the scheme, an employee will have to get a medical certificate from a registered medical practitioner and will have to have worked for their employer for a minimum of 13 weeks.¹ Once entitlement to sick pay from their employer ends, employees who need to take more time off may qualify for illness benefit from the Department of Social Protection, subject to PRSI contributions.
- The Department of Enterprise, Trade and Employment carried out a [public consultation](#) on 16 November 2020 on the introduction of a statutory sick pay (SSP) scheme in Ireland. The consultation ran for a period of five weeks until 18 December 2020. A total of 118 submissions were received from a diverse range of stakeholders. A [report](#) on the submissions received from the public consultation was published by the Department of Enterprise, Trade and Employment on 23 March 2021.
- The [Regulatory Impact Assessment](#) accompanying the Bill estimates that the cost of the scheme for employers in providing 3 paid sick days ranges from €171.36 per employee (for employees on the minimum wage) to €386.82 per employee (for the employee earning at

¹ There are no set fees or charges for GP services in Ireland. However, to visit a GP you can expect to pay from around €45 up to €65 (in some urban areas).

the 75th percentile). It states that this equates, in percentage terms, to an additional cost for employers of a maximum of 0.8% of a worker's annual wage. It estimates that this is equivalent to a 2.6% pay increase in terms of value to the average employee who currently receives no sick pay from their employer.

- The draft Bill underwent pre-legislative scrutiny (PLS) by the Joint Committee on Enterprise, Trade and Employment in November 2021. Two public hearings were held (on [10 November](#) and [24 November](#) 2021) and the Committee issued a [report](#) in February 2022, which included a number of recommendations under 7 'key issues' as identified / categorised by the Joint Committee.
- The L&RS has also published a [Bill Briefing](#) page on this Bill [internal access only].

Introduction

The [Sick Leave Bill 2022](#) was published on 30 March 2022. The Bill contains 15 sections and 3 parts and seeks to give all workers the right to paid sick leave for the first time in Ireland. Under current arrangements, sick leave is provided to about half of all employees through their terms and conditions. However, there is a big gap between public sector workers of whom almost all get sick pay and private sector workers where coverage is much less.

Announcing the Government approval of the publication of the Bill on 30 March 2022, the Tánaiste and Minister for Enterprise, Trade and Employment, Leo Varadkar T.D. commented that:²

"The pandemic exposed the precarious position of many people, especially in the private sector and in low-paid roles, when it comes to missing work due to illness. No one should feel pressured to come to work when they are ill because they can't afford not to. Ireland is one of the few advanced countries in Europe not to have a mandatory sick pay scheme and although many, we think approximately half, of employers do provide sick pay, we need to make sure that security, that safety net, is there for all workers, regardless of their job. It has to be one of the legacies of the pandemic. It will be available to all workers, regardless of their illness."

The [Explanatory Memorandum](#) for the Bill notes that the purpose of the Bill is to:

- a) to provide for a scheme of statutory sick leave by employers;
- b) to cover the existing gap caused by illness benefit waiting days;
- c) to set a minimum floor of entitlement for employees who are unable to work due to illness or injury.

Cost implications

According to the [Regulatory Impact Assessment](#) (RIA), there will be no cost to the Exchequer arising from the scheme. However, the Bill will impose costs on employers who do not currently provide for paid employee sick leave. The RIA estimates the cost of the scheme to employers under a range of different options (see Table 2 below). For a period of 3 days paid sick leave, the cost of the scheme for employers ranges from €171.36 per employee (for employees on the minimum wage) to €386.82 per employee (for the employee earning at the 75th percentile).

The RIA states that this equates, in percentage terms, to an additional cost for employers of a maximum of 0.8% of a worker's annual wage (see Table 3 below). It estimates that this is equivalent to a 2.6% pay increase in terms of value to the average employee who currently receives no sick pay from their employer.

² See Department of Enterprise, Trade and Employment, Press Release, *All Irish workers will be entitled to sick pay for the first time under new law - Tánaiste* (30 March 2022). Available at: gov.ie - [All Irish workers will be entitled to sick pay for the first time under new law - Tánaiste \(www.gov.ie\)](http://www.gov.ie)

Table 2: Net cost (per employee) before any max. earnings threshold is applied

Net cost (per employee per annum) (no max earnings threshold applied)								
Option	Wage distribution CSO 2018							
	Minimum Wage €408pw		Median €593pw		Mean €741pw		75 th Percentile €921pw	
	Civil service proxy 9.2 days	Maximum payable						
1 (status quo)	Nil		Nil		Nil		Nil	
2a (RR 70%, 3 days /annum)	171.36		249.06		311.22		386.82	
2b (RR 70%, 5 days /annum)	285.60		415.10		518.70		644.70	
2c (RR 70%, 7 days /annum)	399.84		581.84		726.18		902.58	
2d (RR 70%, 10 days /annum)	525.50	571.20	763.78	830.20	954.41	1037.40	1186.25	1934.10

Source: [Regulatory Impact Assessment](#)

Table 3: Cost of scheme as proportion of employee annual wages

Net cost (per employee per annum) as a proportion of employee annual wages								
Option	Wage distribution CSO 2018							
	Minimum Wage €408pw		Median €593pw		Mean €741pw		75 th Percentile €921pw	
	Civil service proxy 9.2 days	Maximum payable	Civil service proxy 9.2 days	Maximum payable	Civil service proxy 9.2 days	Maximum payable	Civil service proxy 9.2 days	Maximum payable
1 (status quo)	Nil		Nil		Nil		Nil	
2a (RR 70%, 3 days /annum)	0.8%		0.8%		0.8%		0.8%	
2b (RR 70%, 5 days /annum)	1.3%		1.3%		1.3%		1.3%	
2c (RR 70%, 7 days /annum)	1.9%		1.9%		1.9%		1.9%	
2d (RR 70%, 10 days /annum)	2.5%	2.7%	2.5%	2.7%	2.5%	2.7%	2.5%	2.7%

Source: [Regulatory Impact Assessment](#)

Pre-legislative scrutiny (PLS)

The [General Scheme of the Sick Leave Bill 2021](#) was approved by Cabinet in June of 2021. The Tánaiste and Minister for Enterprise, Trade and Employment, Mr. Leo Varadkar T.D., referred the General scheme to the Joint Committee on Enterprise, Trade and Employment on 23 September 2021 with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

The Committee commenced pre-legislative scrutiny on the Bill in November of 2021. Two PLS hearings were held on [10 November](#) and [24 November](#) 2021 and included the following witnesses:

- Ms. Clare Dunne, Ms. Wendy Gray, and Mr. Paul Norris (Department of Enterprise, Trade and Employment)
- Ms. Maeve McElwee and Ms. Pauline O'Hare (Irish Business Employers Confederation)
- Dr. Laura Bambrick (Irish Congress of Trade Unions)

The L&RS prepared a [pre-hearing briefing paper](#) which highlighted some key issues in relation to the General Scheme. The Joint Committee subsequently published its PLS findings in February 2022 in its [Report on the Pre-Legislative Scrutiny of the General Scheme of the Sick Leave Bill 2021](#).

Table of provisions

The Bill comprises of 3 parts and 15 sections as summarised below:

Table 4: Summary of provisions contained in the Bill

Section	Title	Effect
Part 1: Preliminary and General		
1.	Short title and commencement	This is a standard provision and provides that, if enacted, this Bill will be cited as the Sick Leave Act 2022. It will be commenced by Ministerial order and different provisions may be commenced at different times.
2.	Definitions	Section 2 provides for definitions used within the Bill. In this Act, "Act of 2015" means the <i>Workplace Relations Act 2015</i> .
3.	Regulations and orders	Section 3 of the Bill provides for the Minister to enact regulations for matters referred to in the Bill and enables the Minister to put any subsequent regulations to the Houses of the Oireachtas.
4.	Expenses	Section 4 of the Bill provides for expenses incurred by the Minister in relation to this Bill to be refunded out of monies provided by the Oireachtas.
Part 2: Statutory Sick Leave		
5.	Employee's entitlement to statutory sick leave	Section 5 of the Bill provides for an employee to be entitled to sick leave if the employee is unwell on a workday. It also provides for the number of days allowed under the first phase of the scheme (3 days are proposed); and the conditions an employee must satisfy to qualify for the sick leave.
6.	Variation of number of statutory sick leave days	Section 6 of the Bill provides for the variation by the Minister of the number of statutory sick days an employee is entitled to and provides criteria to be considered.
7.	Statutory sick leave payment	Section 7 of the Bill provides for the payment of a daily rate in respect of sick leave and provides powers for the Minister to set the rate by way of regulation.
8.	More favourable provision in contract of employment	Section 8 of the Bill provides that nothing in the Bill will prevent the inclusion of more favourable provisions, in relation to sick leave, in a contract of employment.
9.	Non-application of obligations under Act	Section 9 of the Bill provides that obligations under the Bill will not apply where an employer provides

		his or her employee with a sick leave scheme that confers benefits that as a whole are more favourable to the employee.
10.	Exemption from obligation to pay statutory sick leave payment	Section 10 of the Bill provides for an exemption from the obligation to pay the statutory sick leave payment where the employer is deemed unable to pay sick leave by the Labour Court.
Part 3: Employment Rights		
11.	Protection of employment rights	Section 11 of the Bill provides for the rights of the employee to be unaffected by a period of sick leave taken under this Bill, and provides that sick leave should not be treated as any other type of leave and provides for arrangements if the employee is on a probationary period when on sick leave.
12.	Protection of employees from penalisation	Section 12 of the Bill provides protection for employees from penalisation if an employee takes sick leave.
13.	Records	Section 13 of the Bill provides for the information about an employee's sick leave that an employer must record and the period for which it must be maintained and provides for the penalty to an employer for failing to record and maintain the record of sick leave for the period specified.
14.	Decision under section 41 or 44 of Act of 2015	Section 14 of the Bill provides for disputes regarding this Bill and the compensation to be awarded to the employee should they be successful in the dispute.
15.	Amendment of Act of 2015	Section 15 of the Bill provides for revisions to the <i>Workplace Relations Act 2015</i> .

Source: [Explanatory Memorandum](#).

Policy context

Current supports

Currently in Ireland there is no statutory sick pay (SSP) scheme. Under any SSP scheme, employees will be covered for a certain period of absence paid by the employer (in full or in part) followed by illness benefits paid through the social protection system. In other EU member States, statutory sick pay coverage ranges from 15 days or less to up to 2 years.

Illness benefit is a short-term payment made to insured contributors (Pay Related Social Insurance (PRSI)) who are unable to work due to illness. To avail of this, the relevant persons must apply for Illness Benefit within 6 weeks of becoming ill and that payment of the benefit begins from the seventh day of the illness. Since 1 March 2021, the number of waiting days has been reduced from 6 days to 3 days. This means that no payment is made for the first 3 days of illness, which are known as waiting days.³

Illness Benefit entitlement continues as long as a person is unfit for work, subject to a maximum of two years, provided that the relevant person has at least 260 weeks' PRSI contributions paid. If they have an entitlement but have fewer than 260 paid contributions, Illness Benefit ceases after 52 weeks. If a worker is receiving sick pay from an employer, she or he may be required to sign over any illness benefit to the employer.⁴

Illness Benefit rates are graduated according to a person's *average weekly earnings* in the relevant tax year. Average weekly earnings are calculated by dividing the total reckonable gross earnings (without deductions) in the relevant tax year by the actual number of weeks worked in that year.

Table 5: Weekly Illness Benefit payment in 2022

Average weekly earnings	Personal rate	Increase for an adult dependent
€300 or more	€208	€138
€220 to €299.99	€162.90	€89.30
€150 to €219.99	€134.20	€89.30
Less than €150	€93.30	€89.30

Source: [Citizens Information Service](#)

The Illness Benefit scheme was temporarily enhanced to deal with the circumstances presented by the Covid-19 pandemic. The goal is to support people to not attend work by protecting their income, addressing their financial concerns when they should be in isolation. Significantly, there are no waiting days associated with the enhanced illness benefit, so the payment from the first day of illness allows them to comply with medical advice to self-isolate to mitigate the spread of the

³ See the Citizens Information Service for further information. Available [here](#).

⁴ Ibid.

disease, while having their income protected. The payment is made for a maximum period of 2 weeks where a person is a probable source of infection of Covid-19 and up to 10 weeks where a person has been diagnosed with Covid-19. The rate of the enhanced Illness Benefit is €350 per week, with additional payments possible in respect of a qualified adult and qualified child.⁵

Table 6: Expenditure on Illness Benefit

	Cost € million		Number of recipients	
	Illness benefit	Enhanced illness benefit	Illness benefit	Enhanced illness benefit
2020	€592.64	€56.87	45,270	2,887
2019	€607.22	n/a	49,313	n/a
2018	€623.30	n/a	55,995	n/a
2017	€599.37	n/a	52,809	n/a
2016	€597.46	n/a	54,492	n/a
2015	€620.01	n/a	55,540	n/a
2014	€625.98	n/a	57,024	n/a
2013	€648.94	n/a	58,990	n/a
2012	€773.96	n/a	64,429	n/a
2011	€875.55	n/a	73,397	n/a

Source: [Department of Social Protection](#) (2021)

Public consultation

The Department of Enterprise, Trade and Employment launched a [public consultation](#) on 16 November 2020 on the introduction of a statutory sick pay (SSP) scheme in Ireland. The consultation ran for a period of five weeks until 18 December 2020. A total of 118 submissions were received from a diverse range of stakeholders including unions, employer representative bodies, individual employers and employees and political parties.

The consultation included a questionnaire which covered eight different areas:

- Minimum rate of payment
- Duration of payment
- Waiting days
- Certification of illness
- Length of service
- Earnings threshold
- Employer supports

⁵ Department of Social Protection. *Enhanced Illness Benefit for COVID-19*. Available [here](#).

- Rehabilitation programmes

Minimum rate of payment

The introduction of statutory sick pay will require regulation around the rate that an employer pays his or her employees under the scheme. The consultation paper proposed a number of different options to consider in this regard:

- A fixed minimum rate of payment that would apply to employees;
- A fixed percentage of an employee's weekly earnings. The same percentage rate would be fixed for all employees, but the actual rate of payment received would then vary based on an employee's earnings. (Amongst EU member states who use this system the percentage can range from 25-100%);
- A payment rate based on the current illness benefit rates, potentially with increases for adult or child dependents; and
- A payment rate that is tapered in line with different income bands.

Of the responses received, 77% favoured a rate of at least 75% of an employee's weekly earnings initially but that this should go down over a period of time to reduce the burden of cost on the employer. 59% suggested that sick pay should be 100% of weekly pay.

Duration of payment

Under any SSP scheme, employees will be covered for a certain period of absence paid by the employer (in full or in part) followed by illness benefits paid through the social protection system. In other EU member States, statutory sick pay coverage ranges from 15 days or less to up to 2 years.

Of the responses received, 37% of respondents gave a figure of between 1 and 4 weeks. Others had suggestions ranging from 0 weeks to 104 weeks. Of those that chose to respond with a specific figure, the majority chose 2 weeks paid sick leave. Of those that chose 2 weeks there was some suggestions that this would be 2 weeks at full pay and then some scaling down if it were decided on a longer period of absence.⁶

Waiting days

As already mentioned, under the current Illness benefit system, Illness benefit is paid after a period of 3 days, known as waiting days.

Of the responses received in respect of waiting days, 85% of respondents stated that the number of waiting days should be a period of 3 days or less. Of those, 43% advised against any waiting period as it was likely to lead to lower paid staff to coming to work whilst sick, which can lead to other staff getting sick, which in turn can lead to more staff off on paid sick leave.

⁶ Department of Enterprise, Trade and Employment, *Sick Leave Bill 2021: Regulatory Impact Assessment* (June 2021). Available [here](#).

Certification of illness

In all EU countries, medical certification of some form is a requirement for sick pay. However, there is some variation around the timing and frequency of when medical certification is needed.

On the question as to whether statutory sick pay should only apply to illnesses that have been certified by a medical professional or medical body, 54% said yes, 30% said no and 16% were undecided. Of those that responded in favour of this, some went on to say that a certificate should only be required after a few days.

Length of service

On the length of service an employee must complete to be eligible for paid sick leave, 73% of respondents gave specific periods of time as follows:

- 6 months (19%)
- 12 months (18%)
- Company probation (13%)
- 0 Months (16%)
- Other (7%)
- Undecided (27%)

Earnings threshold

On whether an employee should have to satisfy a minimum earnings threshold to avail of statutory sick pay, 53% said that there should be no income threshold and no other eligibility requirements, 22% responded there should be some requirement and 25% were undecided.

Employer supports

The RIA noted that the additional administrative cost combined with more complexity in the regulatory environment may mean the introduction of a SSP scheme could potentially have a disproportionate impact on SMEs and micro businesses, many of which operate on low margins.

On the question of whether there should be financial supports in place for employers who genuinely cannot afford to pay the rates of SSP, 67% of respondents said yes, 10% said no and 23% were undecided.

Rehabilitation programmes

Finally, respondents were asked to indicate whether they favoured providing supports targeted toward employees who were availing of long term sick leave to help them reintegrate with the workforce. 50% said yes, 25% said no and 25% were undecided. Some respondents answered no to this question as they did not want more costs to fall on the employer. Others who did not offer an answer or opinion would like to know how such supports would work and who would be paying for them.⁷

⁷ Ibid.

EU sick pay schemes

As already mentioned, Ireland is an outlier when it comes to the introduction of a statutory sick pay scheme within the EU. Currently Ireland is one of only five EU Member States (along with Cyprus, Denmark, Greece and Portugal) that does not have any state mandated sick pay scheme in place. While such schemes do exist in the other 22 member states, the form the schemes take differs considerably from country to country.

In most EU countries, sick pay is calculated as a percentage of the (daily or monthly) gross wage and varies from 25% in Slovakia to 100% in countries such as Austria, Belgium, Finland, Germany and Luxembourg (see Table 7). The compensation rate depends on various factors, such as the duration of the employment contract, the worker's status (civil servant, white collar, blue collar, etc.), the existence of collective agreements and the type of injury (for example, an occupational accident).⁸

Table 7: Rate and Duration of Statutory Sick Pay in EU Countries

Member State	Details of scheme
Austria	Continued payment of wages for workers and employees for a period of 6 to 12 weeks, depending on the length of service. After this period, they are entitled to the payment of half their salaries for a period of 4 weeks. No sickness benefit, and in some cases no rehabilitation benefit, during 100% continued payment of wages. Half of sickness benefit, or in some cases half the rehabilitation benefit, for the period in which 50% of the salaries are paid. Employers are responsible for the continued payment of wages.
Belgium	Blue-collar workers: <ul style="list-style-type: none"> * during the first 7 days of incapacity for work: 100% of earnings; * from 8th to 14th day of incapacity: 85.88% of earnings; * from 15th to 30th day of incapacity: 25.88% for that part of the remuneration which does not exceed the ceiling established for the sickness-invalidity insurance and 85.88% for the remuneration above such ceiling. White-collar workers: 100% of earnings during a period of one month.
Bulgaria	Employers are legally obliged to pay on their own account the cash benefit for the first three working days of the temporary incapacity. The amount of the benefit is 70% of the average daily gross salary for the month of occurrence of the incapacity. Afterwards, the benefit shall be 80% of the average daily gross salary or of the contributory income if the gross salary is lower than the minimum contributory income and is paid by the National Social Security Institute.
Croatia	Continued payment by the employer during the first 42 days of incapacity for work (during the first 7 days for disabled employees) if the general practitioner has issued a medical certificate. The amount of the payment by the employer depends on provisions of the sectoral collective agreement, but cannot be less than the statutory threshold of 70% of the insurance base.
Czech Republic	Wage compensation by the employer. For the first 14 calendar days of temporary incapacity for work:

⁸ ETUI Policy Brief (2020). *Sickness benefits in the EU: making sense of diversity*. Available [here](#).

	<p>60% of the Hourly Average Earning. Wage compensation is paid according to the working hours. Hourly Average Earning is calculated using gross hourly earnings of the preceding calendar quarter. They are taken into account as follows:</p> <ul style="list-style-type: none"> * up to CZK 206,85 (€8): 90% * CZK 206,85 (€8) to CZK 310,28 (€12): 60% * CZK 310,28 (€12) to CZK 620,38 (€24): 30% * earnings over CZK 620,38 (€24) are not taken into account <p>Wage compensation is paid monthly. Since wage compensation is regulated under labour law, employers pay on their own account.</p>
Estonia	<p>70% of the reference wage in case of temporary relief from the performance of employment duties, from the fourth to the eighth day paid by the employer and from the ninth day onwards by the Health Insurance Fund. The benefit paid by the employer is based on the employee's average wage during the last six months; the benefit paid by the Health Insurance Fund is based on the Social Tax paid for the employee during the calendar year preceding the illness (per calendar day as a percentage of his or her average income per calendar day). No ceilings. No additional amounts for dependants.</p>
Finland	<p>Employer pays full salary for the first 9 days if the employment relationship has lasted at least one month. If under one month, 50% of the salary is paid. By collective agreements most employers pay the full salary for more than 9 days, e.g. 1 month. In such cases, the sickness allowance for the additional period is paid directly to the employer by the Social Security Institution.</p>
France	<p>The Labour code provides for the payment of an additional allowance by the employer. To receive this supplement, the employee must, among other conditions, have been working in the company for at least a year. The duration of payment of this supplement varies according to the seniority of the employee in the company and to the duration of the sick leave (an employee with a seniority between 1 and 5 years will receive 90% of his usual gross salary during 30 days, then 2/3 of this same salary for 30 additional days). A waiting period of 7 days is applied to each period off work. Some collective agreements provide for the employer to maintain the full salary during the absence from work. The employer can then ask for the allowances to be paid directly to him.</p>
Germany	<p>Continuation of payment of wages and salaries for employees: Up to 6 weeks at 100% of the wage. Entitlement to continued payment of wages in the event of illness only after four uninterrupted weeks of the employment relationship.</p>
Hungary	<p>Absence Fee: 70% of the daily gross earnings, for up to 15 working days annually (payment starts on the first day of sickness). Granted only in the event of sickness on the part of the employee. The daily gross earnings include the wage, the regular wage supplement(s) and the pay for extra work, applicable for the time (duration) of the absence. Employers pay the Absence fee on their own account.</p>
Italy	<p>Statutory continuation of payment of wage. Benefits are paid directly by the employer for the entire duration of the sickness period and deducted from the amounts payable to the National Institute for Social Security as insurance contributions. For certain categories of workers, namely farming industry employees, unemployed, seasonal workers and employees on fixed-term contracts, based on specific conditions, the benefit is paid directly by the National Institute for Social Security. The benefit is related to previous earnings and based on the average daily wage of the month prior to sickness benefit commencement. For employees of the private sector: it increases over time from 50% of net earnings for the first 20 days to 66.66% from the 21st day onwards. Based on the relevant applicable Collective Agreement, employers integrate the benefit's amount at their own expenses.</p>
Latvia	<p>Statutory obligation for the employer to disburse sick pay on his/her own account to employees who have incurred temporary incapacity for work. The payment starts on the 2nd day of incapacity. The compensation amounts to no less than 75% of average earnings for the 2nd and the 3rd day of temporary incapacity for work, and no less than 80% from the 4th until the 10th day of incapacity. The total period of continued payments by the employer does not exceed 10 continuous calendar days (no ceiling).</p>

Lithuania	Employer pays at least 62.06% (and not more than 100%) of the employee's Compensatory Wage for the first two days. Employers must pay for the first two days of sickness on their own account and they are not refunded by State Social Insurance Fund. There is the possibility to determine the specific percentage rate of the employee's Compensatory Wage paid by the employer in collective agreements.
Luxembourg	Employees continue to receive a wage from their employer until the end of the month in which falls the 77th day of incapacity for work (13 weeks on average) during a reference period of 18 months. Wages and other advantages resulting from the employment contract are continued to be paid. Maintenance of the salary from the first day of sickness. Salary is paid by the employer on his own account but 80% is refunded to him via an employer's mutual insurance scheme.
Malta	The employer pays full wage/salary (or half-pay) for the maximum total number of full days (or half-days) of sick leave that the employee is entitled to under the labour law (Wage Regulation Order) or the individual collective agreement if applicable. The amount of sickness benefit due to the employee under the social security system (or the amount equivalent to the sick pay paid to the employee under the labour law/collective agreement if this is lower than the sickness benefit payable by the Department of Social Security) is transferred to the employer until the exhaustion of full/half sick payments made by the employer.
Netherlands	For employees: <ul style="list-style-type: none"> * Amount: 70% of wage. During the first year of sickness, the amount cannot be less than the minimum daily wage. This percentage can be increased by collective wage agreements. * Start: after a waiting period of two days. Employers and employees can agree on 'no waiting period' in collective labour agreements * Duration: 104 weeks. * Directly paid by employers. They may have a private insurance to be (partly) covered for this risk.
Poland	Employers continue to pay wages for: <ul style="list-style-type: none"> * the first 33 calendar days of illness in any calendar year or * 14 calendar days in case of persons aged 50 or over. <p>The continued payment of wages amounts to:</p> <ul style="list-style-type: none"> * 80% of the reference wage per month (labour regulations binding a given employer may provide for a higher remuneration in this respect) or * 100% of the reference wage per month in case of illness caused by an accident at work, occupational disease, an illness occurring during pregnancy or if incapacity for work is the result of undergoing necessary medical examinations or surgery for (potential) cell, tissue and organ donors. <p>Employers do the payment for their own account (as wage continuation under labour law).</p>
Romania	The employer is legally obliged to pay, on their own account, the benefit for incapacity to work from the first day until the 5th day of each temporary work incapacity period. The monthly amount of social insurance benefits is 75% of the average insured gross earnings over the last 6 months.
Slovakia	Income Replacement: <p>The first 10 calendar days of inability to work because of sickness are paid by the employer in the form of wage compensation under labour law. The income replacement by the employer is equal to:</p> <ul style="list-style-type: none"> * 25% of the assessment base (daily earnings calculated on the basis of the previous year, monthly ceiling is 2-times the national average monthly wage) during the first 3 calendar days; * 55% of the assessment base from the 4th to 10th calendar day.
Slovenia	Benefit is paid by employers on their own account for the first 30 working days of absence (as wage continuation). Sickness Benefit amounts are calculated as a

	<p>percentage of the recipient's average monthly gross wage in the previous calendar year (the calculation basis). The benefit amounts to:</p> <ul style="list-style-type: none"> * 100% (90% for the first 90 days in case of isolation ordered by a physician) of the calculation basis for occupational diseases, accidents at work, donation of tissue, organs or blood; * 90% (or 80% for the first 90 days) of the calculation basis for illness; * 80% (or 70% for the first 90 days) of the calculation basis for an injury unrelated to work; * 80% of the calculation basis for nursing of an immediate family member.
Spain	<p>Statutory obligation for employers to pay, on their own account, 60% of the regulatory basis (this is the result of dividing the contribution basis of the month prior to the date of leave by the number of days corresponding to this contribution) from the 4th up to the 15th day of sick leave. From the 16th day of sick leave, the employers pay on behalf of social security and are reimbursed.</p>
Sweden	<p>The employer pays sick pay on their own account up to the 14th day of illness at 80% of wages.</p>

Source: [MISSOC](#) (2021)

Pre-Legislative Scrutiny

The General Scheme of the Sick Leave Bill 2021 was approved by Cabinet in June of 2021. The Tánaiste and Minister for Enterprise, Trade and Employment, Mr. Leo Varadkar T.D., referred the General scheme to the Joint Committee on Enterprise, Trade and Employment on 23 September 2021 with a request to commence pre-legislative scrutiny at the Committee's earliest convenience.

The Committee commenced pre-legislative scrutiny on the Bill in November of 2021. Two PLS hearings were held on [10 November](#) and [24 November](#) 2021 and included the following witnesses:

- Ms. Clare Dunne, Ms. Wendy Gray, and Mr. Paul Norris (Department of Enterprise, Trade and Employment)
- Ms. Maeve McElwee and Ms. Pauline O'Hare (Irish Business Employers Confederation)
- Dr. Laura Bambrick (Irish Congress of Trade Unions)

The Joint Committee published its PLS findings in February 2022 in its [Report on the Pre-Legislative Scrutiny of the General Scheme of the Sick Leave Bill 2021](#).

The Joint Committee's PLS report made a number of recommendations related to various parts of the General Scheme of the Bill. These are detailed in Table 8 below.

As part of the Bill Digest process, the L&RS compares the recommendations made in the PLS report with their inclusion, partial or otherwise, in the subsequent Bill. We do this through liaison with the Department, in this case, the Department of Enterprise, Trade and Employment, by asking the Department to outline the extent to which, in their view, each of recommendations of the Joint Committee influenced the drafting of the resulting Bill. Along with the Department's input, the L&RS also assess the extent to which the PLS process impacted the drafting of the Bill. We do this, as set out in Table 8 below, by means of a 'traffic light' system, which for each recommendation allocates a green, orange or red light indicating respectively the extent to which it has been accepted in full, in part or is not reflected in the published Bill.

Table 8: Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

Source: L&RS

Table 9 below therefore shows for each recommendation the extent or otherwise it has been reflected in the Bill along with the commentary in each instance from the Department of Enterprise, Trade and Employment.

Table 9: Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.

Commentary as per Committee report		Whether addressed (either in whole or in part) in the Bill ⁹
Recommendation 1: Medical Certification		
<p>1. Where medical certification is required to qualify for statutory sick pay, some form of rebate of the cost of such certification should be made available to ease the financial burden on employees, particularly those who are low paid.</p>		<p>1. The Sick Leave Bill is not the appropriate vehicle by which to address issues around access to free medical care.</p> <p>It also should be considered that the purpose of a visit to a GP is not merely to obtain a medical certificate for work. It is often required to receive treatment, prescriptions, advice, referrals for further medical interventions etc.</p>
Recommendation 2: Impact on Business Costs		
<p>2. In the case of businesses (particularly small businesses), provision be made for –</p> <ul style="list-style-type: none"> • an exemption from the sick pay requirement for businesses that can demonstrate to the Labour Court that they cannot genuinely afford to make the payment. This would be similar to a provision in relation to the payment of 		<p>2. Agreed. Head 10 already provides for an exemption along the lines of the <i>National Minimum Wage Act 2000</i>.</p> <p>DETE will review this matter 12 months after the duration of days has been increased to 5 days to gather evidence of any difficulties experienced by companies.</p> <p>The setting up of a compensation scheme via the Social Insurance Fund is not merited. Employees, if eligible, would receive Illness Benefit after the</p>

⁹ The response text in this column is taken directly from the Department of Enterprise, Trade and Employment's email communication to the L&RS on 1 April 2022. The responses was received from the Department following the routine request, as part of the preparation of Bill Digests, from the L&RS to Departments in respect of Bills that have undergone PLS and the extent to which the resulting Bill has adopted the recommendations made by the relevant Joint Committee.

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill ⁹	
<p>wages under the <i>Minimum Wage Act 2000</i> (Section 41);</p> <ul style="list-style-type: none"> employees to be compensated in these cases by the Social Insurance Fund. 		<p>normal amount of 3 waiting days on day 4.</p>
Recommendation 3: Rate and duration of payment		
<p>3. In terms of rate and duration of payment -</p> <ul style="list-style-type: none"> there should be a minimum rate of sick pay to address the particular needs of low-paid workers specified in the Act; further clarity should be provided in the Act in relation to the amount of sick pay payable, in particular – <ul style="list-style-type: none"> how the specified 70% of employee’s wage is calculated, how this interacts with “banded hours” the duration of payment should be specified in the Act. 		<p>3. Agreed - a minimum entitlement will be set in relation to paid sick leave. However, this should be set by Ministerial regulation, rather than in the Act to allow for swift and efficient amendments as required over future years.</p> <p>The manner in which 70% of an employee’s wage is to be calculated will be set by regulation and will be similar to the calculation method that is already in place for annual leave. This will ensure that employers and employees have a workable calculation method that they are familiar with and one that already provides clarity for ‘banded hours’ contracts.</p> <p>The duration of coverage will require regular amendment to increase it in line with the Government’s proposed annual incremental increases. If this is done by primary legislation it will be a more complicated and time-consuming process. The setting of the rate and duration of payment via Regulations allows for amendments to be made in a more efficient way. However, the policy and principles that are to be considered before any change is made to the rate and duration of payment are set out in the primary legislation.</p>
Recommendation 4: Qualification period		

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill ⁹	
<p>4. That all employees be entitled to statutory sick pay, regardless of their length of employment with a particular employer where an employer can request medical certification.</p>		<p>4. The length of service requirement will remain at 3 months, but a policy commitment will be made to review this matter after 12 months of operation.</p> <p>A minimum term of employment is a common provision to access other forms of statutory leave in Ireland. Parental Leave and Carers Leave both require 12 months continuous service with an employer before an employee can avail of their statutory rights under the Acts.</p> <p>A length of service requirement is also a common provision in many company level sick pay schemes and is often applied as part of the eligibility criteria to access statutory sick pay schemes internationally (New Zealand for instance sets a requirement of six months to avail of the right).</p> <p>That said, the Department will keep this provision under review following the introduction of the scheme.</p>
Recommendation 5: Consultation		
<p>5. That the legislation should provide for consultation with the social partners in relation to the implementation of its provisions.</p>		<p>5. Agreed. The Department is happy to consult with the social partners in relation to the implementation of the provisions of the Bill.</p> <p>The Bill has been amended at Section 6 (1)(e) to include:</p> <p>“the views of employer representative bodies and trade unions”</p>

Source: L&RS is grateful to the Department of Enterprise, Trade and Employment for providing their analysis of how the Committees recommendations have impacted on the Bill. The traffic light assessment represents the analysis of the L&RS.

Principal provisions of the Bill

This section of the Digest examines some of the main provisions of the Bill. The Bill comprises of 15 sections in total. A short synopsis of each section is given in Table 4 above.

Preliminary and General

Section 2 – Definitions

Section 2 of the Bill provides for a number of definitions used within the Bill. These include some of the following:

“contract of employment”

This is taken to mean:

- a) a contract of service or apprenticeship, or
- b) any other contract whereby an individual agrees with another person, who is carrying on the business of an employment agency (within the meaning of the *Protection of Employees (Temporary Agency Work) Act 2012*), and is acting in the course of that business, to do or perform personally any work or service for another person (whether or not that other person is a party to the contract),

whether the contract is express or implied and, if express, whether it is oral or in writing.

“employee”

This is taken to mean a person who has entered into or works (or, where the employment has ceased, entered into or worked) under a contract of employment and references, in relation to an employer, to an employee, shall be construed as references to an employee employed by that employer.

“employer”

This is taken to mean, in relation to an employee, the person with whom the employee has entered into or for whom the employee works under (or, where the employment has ceased, entered into or worked under) a contract of employment subject to the qualification that the person who under a contract of employment referred to in paragraph (b) of the definition of “contract of employment” is liable to pay the wages of the individual concerned in respect of the work or service concerned shall be deemed to be the individual’s employer and includes, where appropriate, the successor of the employer or an associated employer of the employer.

Statutory Sick Leave

Section 5 – Employee’s entitlement to statutory sick leave

Section 5 of the Bill provides for an employee’s entitlement to statutory sick leave and includes the following provisions:

- 1) Subject to this Act, an employee will, in respect of a day on which he or she would ordinarily work but is incapable of doing so due to illness or injury (in this Act referred to as a “statutory sick leave day”), be entitled to statutory sick leave.

- 2) An employee is entitled up to and including **3 statutory sick leave days in a year**, or such additional number of statutory sick leave days (if any) as may stand specified from time to time by order of the Minister under section 6.
- 3) Statutory sick leave days may be consecutive days or non-consecutive days.
- 4) The first day in a year that an employee is incapable of working due to illness or injury shall be the employee's first statutory sick leave day, and any subsequent statutory sick leave days shall be construed accordingly.
- 5) An employee's entitlement to a statutory sick leave day shall not commence before a time when he or she has completed **13 weeks continuous service** with his or her employer.
- 6) The provisions of the First Schedule to the *Minimum Notice and Terms of Employment Act 1973* shall apply for the purposes of ascertaining the period of service of an employee and whether or not that service has been continuous.
- 7) Subject to subsection (8), an employee will be entitled to statutory sick leave payment from his or her employer in accordance with section 7 in respect of each statutory sick leave day.
- 8) An employee must, in respect of a statutory sick leave day, **provide his or her employer with a medical certificate** in an official language of the State signed by a registered medical practitioner stating that the employee named in the certificate is unable to work.
- 9) In this section, "registered medical practitioner" has the same meaning as it has in the *Medical Practitioners Act 2007*.

During [pre-legislative scrutiny](#) of the General Scheme of the Sick Leave Bill 2021, the Joint Committee recommended that where medical certification is required to qualify for statutory sick pay, some form of rebate of the cost of such certification should be made available to ease the financial burden on employees, particularly those who are low paid. The committee also recommended that all employees be entitled to statutory sick pay, regardless of their length of employment with a particular employer where an employer can request medical certification.

Section 6 – Variation of number of statutory sick leave days

Section 6 of the Bill provides that the Minister may, following consultation with the Minister for Social Protection, by order vary the number of statutory sick leave days, to such number of days as he or she considers appropriate having regard to the following criteria:

- a) the state of the economy generally, the business environment and national competitiveness;
- b) the potential impact, including the potential for any disproportionate or other adverse impact, that the making of an order will have on the economy generally, specific sectors of the economy, employers or employees;
- c) annual and quarterly data on earnings and labour costs as published by the Central Statistics Office;
- d) expert opinion, research, national or international reports relating to the matters specified at paragraphs (a) to (c) that the Minister considers relevant;
- e) the views of employer representative bodies and trade unions;
- f) such other matters as the Minister considers relevant.

Such an order made under this section shall neither:

- (i) reduce the number of statutory sick leave days by such number as would result in the number of statutory sick leave days in a year being less than 3, nor
- (ii) increase by more than 3 the number of statutory sick leave days in a year provided for under this section immediately before the making of the order.

Section 7 – Statutory sick leave payment

Section 7 of the Bill provides for the payment of a daily rate in respect of sick leave and provides powers for the Minister to set the rate by way of regulation. These regulations may:

- a) specify the percentage rate of an employee's pay, up to a maximum daily amount, at which statutory sick leave payment will be paid,
- b) subject to the maximum daily amount specified in accordance with paragraph (a), specify an allowance in respect of board and lodgings, board only or lodgings only in a case in which such board or lodgings constitute part of the employee's remuneration calculated at the prescribed rate, or
- c) subject to the maximum daily amount specified in accordance with paragraph (a), specify basic pay and any pay in excess of basic pay in respect of shift work, piece work, unsocial hours worked or hours worked on a Sunday, allowances, emoluments, premium pay (or its equivalent), or any other payment as the Minister considers appropriate, that are to be taken into account in the calculation of statutory sick leave payment.

During [pre-legislative scrutiny](#) of the General Scheme of the Sick Leave Bill 2021, the Joint Committee recommended that there should be a minimum rate of sick pay to address the particular needs of low-paid workers specified in the Act as well as the duration of payment. In their response to the recommendation, the Department of Enterprise, Trade and Employment stated that the setting of the rate and duration of payment via Regulations allows for amendments to be made in a more efficient way.

Section 8 - More favourable provision in contract of employment

Section 8 of the Bill provides that nothing in the Bill will prevent the inclusion of more favourable provisions, in relation to sick leave, in a contract of employment. The Bill provides a minimum statutory protection for all workers but individual contracts of employment may be more generous regarding sick leave.

Section 9 - Non-application of obligations under Act

Section 9 of the Bill provides that obligations under the Bill will not apply where an employer provides his or her employee with a sick leave scheme that confers benefits that as a whole are more favourable to the employee.

In determining whether a sick leave scheme confers benefits that are, as a whole, more favourable than statutory sick leave, the following matters are to be taken into consideration:

- a) the period of service of an employee that is required before sick leave is payable;
- b) the number of days that an employee is absent before sick leave is payable;
- c) the period for which sick leave is payable;

- d) the amount of sick leave that is payable;
- e) the reference period of the sick leave scheme.

Section 10 - Exemption from obligation to pay statutory sick leave payment

Section 10 of the Bill provides for an exemption from the obligation to pay the statutory sick leave payment where the employer is deemed unable to pay sick leave by the Labour Court. Such an exemption is to be for a **period not exceeding one year and not less than 3 months**, and while it remains in force the employer accordingly need not so comply.

The Labour Court may grant such an exemption provided it is satisfied that:

- a) the employer has informed the employees concerned of the financial difficulties of the business and has attempted to come to an agreement with the employees, their representative or trade union in relation to a proposed exemption from payment of statutory sick leave payment, and
- b) the employer is unable to pay statutory sick leave payment to the employees, due to the employer not having the ability to pay or being unlikely to be able to pay, to the extent that, if the employer were compelled to pay there would be a substantial risk—
 - (i) having regard to the number of employees employed by the employer, that a material number of those employees would be likely to be laid-off employment with the employer, or made redundant, or
 - (ii) that the sustainability of the employer's business would be significantly adversely affected.

During [pre-legislative scrutiny](#) of the General Scheme of the Sick Leave Bill 2021, the Joint Committee in their report raised the issue of how statutory sick pay is to be funded and recommended that the legislation should provide for consultation with the social partners in relation to the implementation of its provisions.

The key funding questions that arise are:

- whether the costs of statutory sick pay are correctly apportioned between employers, employees and the State;
- whether different funding models have been examined, including from other countries which already have statutory sick pay schemes in place;
- whether the cost to the employer of funding statutory sick pay may have any unintended consequences.

Employment Rights

Section 11 - Protection of employment rights

Section 11 of the Bill provides for the rights of the employee to be unaffected by a period of sick leave taken under this Bill and provides that sick leave should not be treated as any other type of leave (including annual leave, maternity leave, additional maternity leave, leave under section 16(1) and (4) of the *Maternity Protection Act 1994*, adoptive leave within the meaning of the *Adoptive Leave Act 1995*, additional adoptive leave within the meaning of the *Adoptive Leave Act*

1995, paternity leave, transferred paternity leave and parent's leave) to which the employee concerned is entitled.

It also provides for arrangements if the employee is on a probationary period when on sick leave.

Where—

- a) an employee who is on probation in his or her employment or is undergoing training in relation to that employment or is employed under a contract of apprenticeship takes statutory sick leave, and
- b) his or her employer considers that the employee's absence from employment while on statutory sick leave would not be consistent with the continuance of the probation, training or apprenticeship,

the employer may require that the probation, training or apprenticeship be suspended during the period of statutory sick leave and be completed by the employee at the end of that period.

Section 13 - Records

Section 13 of the Bill provides for the information about an employee's sick leave that an employer must record and the period for which it must be maintained and provides for the penalty to an employer for failing to record and maintain the record of sick leave for the period specified.

A record under this section is to be retained by the employer concerned for a period of 4 years and must include:

- a) the period of employment of each employee who availed of statutory sick leave,
- b) the dates and times of statutory sick leave in respect of each employee who availed of such leave, and
- c) the rate of statutory sick leave payment in relation to each employee who availed of statutory sick leave.

A person guilty of an offence under this section will be liable on summary conviction to a class C fine (a maximum of €5,000).

Section 14 - Decision under section 41 or 44 of the *Workplace Relations Act 2015*¹⁰

Section 14 of the Bill provides for disputes regarding this Bill and the compensation to be awarded to the employee should they be successful in the dispute. It provides that:

- 1) Where an employee believes that his or her employer has failed to comply with the provisions of this Act, the employee may make a complaint in accordance with Part 4 of the Act of 2015.
- 2) A decision of an adjudication officer under section 41 of the Act of 2015 in relation to a complaint or dispute between an employee and an employer concerning the employee's

¹⁰ [Section 41](#) of the Workplace Relations Act 2015 relates to the presentation of complaints and referral of disputes while [Section 44](#) provides for the right of appeal to the Labour Court from the decision of an adjudication officer.

entitlement under this Act may include an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, as the adjudication officer considers just and equitable having regard to all the circumstances but shall not exceed 20 weeks' remuneration in respect of the employee's employment calculated in such manner as may be prescribed.

- 3) A decision of the Labour Court under section 44 of the Act of 2015 on appeal from a decision of an adjudication officer referred to in subsection (2) may include an award of compensation (in favour of the employee concerned to be paid by the employer concerned) of such amount, as the Labour Court considers just and equitable having regard to all the circumstances but shall not exceed 20 weeks' remuneration in respect of the employee's employment calculated in such manner as may be prescribed.

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