

SIPTU Submission
to the Public
Consultation on the
Introduction of
Statutory Sick Pay

December 2020

**Fairness
at Work and
Justice in
Society**

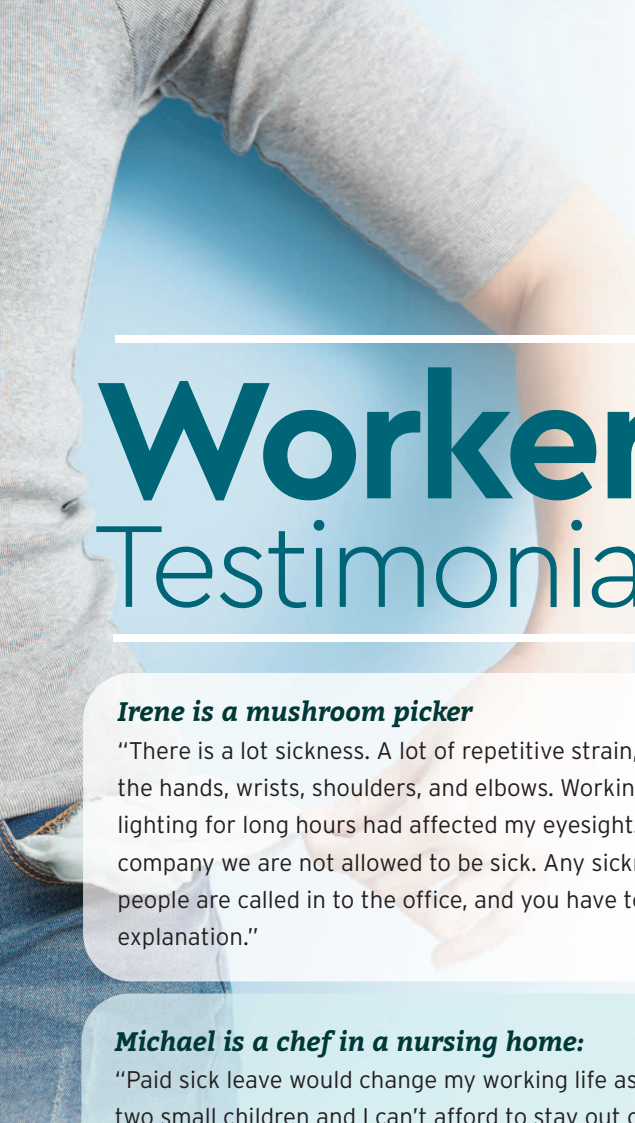
Introduction

SIPTU is the largest trade union in Ireland, representing tens of thousands of workers across the economy, spanning areas such health, transport, industry and the community. The fight for decent sick pay for workers is a daily part of our union's struggle.

SIPTU's has been pressing for adequate sick pay for all workers in Ireland at every available opportunity - both at local and national levels - since the union's foundation. SIPTU has also been to the fore in publicly highlighting the lack of sick pay in activities that have been classified as 'essential services' for society and the economy during the coronavirus pandemic, such as meat processing, childcare and nursing homes and for other frontline workers. SIPTU Officials and Organisers have been pivotal in bringing the plight of vulnerable and diligent workers to the attention of media outlets and the Oireachtas, prompting the government to respond with a proposal to introduce a statutory sick pay scheme to this country.

Any technical discussion by policy-makers on the details of a statutory sick pay scheme must not take place without an understanding of the lived-experience of workers. SIPTU is determined to give workers across a range of sectors and occupations a platform to speak for themselves. It is deeply regrettable but very understandable that some workers feel unable to disclose their names because of the reaction they fear from their employer. SIPTU representatives will continue to be vocal on their behalf.





Worker Testimonial

Irene is a mushroom picker

"There is a lot sickness. A lot of repetitive strain, injuries in the hands, wrists, shoulders, and elbows. Working in low lighting for long hours had affected my eyesight. In my company we are not allowed to be sick. Any sickness people are called in to the office, and you have to give an explanation."

Michael is a chef in a nursing home:

"Paid sick leave would change my working life as I have two small children and I can't afford to stay out of work if I am sick. I would not survive on Illness Benefit if I had to stay out of work as I am already on low pay."

Damian is a mushroom picker

"Lots of workers do not have a GP here, if they get very sick they would phone GP's in their own countries. Otherwise when workers go on holidays, usually it is back to home country so they can get to doctors for health checks."

Dorice is a contract cleaner

I am a mother, with two young children. I work in one of the main hospitals in Dublin as a contract cleaner. I earn €10.30 an hour. No overtime. No premium. No pension. My wages barely keep a roof over our heads. Last year, I got into trouble at work. My manager called all the cleaners into his office and said he got word there was stock missing from the hospital and that he would sack all of us unless the guilty cleaner put up her hand.

It was humiliating. You see, I was the one that took some stock. I had no choice. I was very sick. I had a bowel infection. We have no sick pay. I could not afford to have no wages. To pay my rent. To feed my babies. I took two nappies from the stockroom to wear while I was working my night shift. I couldn't afford to be sick.

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Darren works in a construction-related company:

"I and my colleagues are sick of waiting for a sick pay scheme. We wonder does anyone in the employer groups like IBEC and ISME or the Government understand how difficult it is to work in an industry that is making lots of money, involved in high profile projects yet can't give the workforce the security of a sick pay scheme that keeps the wolf from the door. Instead, we're thrown to the wolves if we are unfortunate enough to become ill. It's not just about coronavirus and the pandemic. That just highlights the problem. It's there all the time."

Tommy, works in a construction-related company:

"If I'm off sick, my income drops to the Illness Benefit but every single bill for the mortgage, energy, food and providing an education for my children remains. My children's education is most important. They need to be able to avail of opportunities to escape low paid employment. Add to that the cost of the doctor's visit and the prescription. A working man doesn't be long falling behind in his commitments."

"Why would any worker say they had symptoms and suffer a pay loss? Leave Covid aside and just think of the normal winter bugs and flus that afflict us all. Why should we be financially crippled if we put our health, our families health and that of our co-workers first?"

"The lack of mandatory sick pay is delaying our recovery from illnesses and actually causing stress, anxiety and mental health problems on top of the physical ones."

Martina is a health care assistant:

"I work in a care unit for the elderly I have had to take time off work because I was sick. Paid sick leave would bring stability to my working life and it would also protect residents in nursing homes as staff would not have to come to work when they are sick to make ends meet."

Denise works in a private nursing home:

"Not having a sick pay is brutal and unfair when you are out sick and unable to attend work. Having had cancer myself I understand the need for workplace sick pay. You just cannot afford to be out sick and there is no way you can survive on €203 a week."

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Leah is a childcare worker:

"Back in February of this year, I had mortgage approval with my partner. I was working three jobs, up to 70 hours a week to even get the approval. We moved back to my parents house to save. In March 2020 we went into lockdown. The bank wouldn't allow us to draw down a loan with subsidised wages. We've never had high earning jobs. We manage our money well and are ok provided we are all allowed access to work to maintain income. We don't have back up money or sick pay. This will hit us hard for the weeks we have to isolate. My partner was a close contact of someone infected. If we have to self-isolate again for any length of time, we will run into serious financial strain."

Anonymous response from a survey of childcare workers by the Big Start Campaign:

"I love my job, I adore working with children but it's not a job that I can keep. I have two small children and to afford our rent, groceries and our one car I have to work 9 hours 5 days a week. No sick pay. I am not a machine but yet I have had to ignore my ill health before as I could not afford to take time off. The pay is horrendous as is the lack of respect and recognition."

Anonymous response from a survey of childcare workers by the Big Start Campaign:

"A sick pay scheme would be fair as we get sick from the kids most of the time. Not paying us when we catch a sickness in the workplace is like not paying us for a workplace accident."

Tanya (pseudonym) is a contract catering worker:

"There are times when I have to go to work even when I am not fit for work because if I don't go to work, I will not get paid and I won't be able to feed children or pay my rent."

Svetlana (pseudonym) is a contract cleaner in Dublin:

"I cannot afford to take time off work when I am sick because I do not get paid. As a front-line worker, it is very unfair to me and my colleagues as other workers in the hospital have the security of sick pay."

Pedro is a trimmer in a meat factory for 16 years

"There are so many health and safety issues in my work. In 2018 I began to experience back pain due to the repetitive nature of my work. I was out of work for two months. We do not have sick pay scheme in work and I was not advised to apply for illness benefit. Me and my family were left to fend for ourselves."

Bartek is a contract cleaner:

"I am a contract cleaner who is on sick leave for more than 5 months. I had a heart attack. I received bills to pay for the hospital stay, I also had to pay for GP visits and medications. I could only survive thanks to my partner. Not having a proper sick pay scheme added a lot of stress to my illness. I am still on €203 per week and struggling to make ends meet. Paid sick leave would totally change my life, I could fully focus on my recovery and stop worrying that I will be forced to take a loan to pay the bills."

Agnieszka is a contract cleaner:

"I am a frontline worker and have been working all the time in a hospital during the pandemic. There were a few days when I felt unwell and had to go to work because I just could not afford to stay at home. I am on low pay and I cannot stay without any income."

Anonymous is a contract cleaner:

"My husband and I are working for the same company and we do not have a sick pay scheme at work. Last year I sprained my ankle and my husband got sick at the same time. Both of us could not afford to stay at home on sick leave for 6 days without any income. I had no other choice but to take my annual leave instead of sick leave. This was a very difficult time and we struggled to survive. It felt so unfair."

Anonymous is a housekeeper in a hotel:

"We are required to clean too many rooms each day. We are twisting, lifting and bending all the time. Without sick pay, we can't afford to take time off with any illness including a back injury. We will be old before our time."

Anonymous is a kitchen porter:

"Three weeks ago I got burned at work when a hot pan was left at wash up. The kitchen was very busy doing a collect meal service and I was told I had to work on. The pain was terrible, but I got through the shift. I have had to return each day to a hot kitchen putting my hands into hot water because if I do not, who will pay my rent?"

Anonymous is a waiter:

"I have no sick pay. If I get sick I come into work anyway because there is no other choice. If I get Covid-19 I will give it to others but I can't afford to stay at home and protect everyone else."

Mary works in a garage:

"I have no sick pay scheme in my job so it is a constant worry that I will become ill and have no income or that I will have to continue to work as I can't afford to be sick."

John is a hotel worker:

"I work in the hotel industry and I have had to often continue to work while unwell due to financial reasons. I would welcome the introduction of a mandatory sick pay scheme."

SIPTU's approach to Statutory Sick Pay

Minimum rate of payment

The coronavirus pandemic has highlighted a dangerous gap that exists because there is no statutory sick pay scheme in Ireland. The current flat-rate illness benefit is inadequate and out of step with the approach of other European countries. The standard rate for non-Covid related illness of €203 per week is minimal while the enhanced weekly payment of €350 for people diagnosed with coronavirus or self-isolating fails to provide sufficient income replacement. Many workers still find themselves in the impossible situation of needing to go to work even if they have symptoms of illness in order to make ends meet. SIPTU believes that workers should not be out of pocket when they fall ill. They should be afforded space and peace of mind to recover without worrying about income.

SIPTU is of the view that the best outcome would be for employers in Ireland to pay sick pay at the full rate of pay, or 100% of gross income, for an initial short period. Among advanced European economies, full pay is the standard benchmark: for instance, in Germany and Austria full pay lasts for 6 weeks or more and in Luxembourg for up to 13 weeks. In France, Sweden and the Netherlands the replacement rate can be between 70-90% of gross wages for a defined period (Mutual Information System on Social Protection - MISSOC).

A period of sick leave on full or near-full pay would show that workers are valued for their input and would provide stability and predictability for recuperation. The calculation of pay should include shift and other relevant payments for unsocial hours etc. to properly compensate workers. There must also be a guarantee for low-paid workers that the amount of statutory sick pay from an employer would not fall below what they would otherwise get from Illness Benefit and that the State would have to bridge the gap if necessary.

SIPTU is aware of many unionised employers currently paying sick pay at the full pay rate for six weeks and

beyond. It is essential that any legalisation on the introduction of statutory sick pay in Ireland would include a clause specifying that such an entitlement is a 'floor'/'baseline'/'minimum' which cannot diminish or erode existing collectively bargained sick pay provisions that exceed the legally-required level. Sectoral level collective bargaining on sick pay should be facilitated to keep pace with superior industry standards on sick pay. Any payment contribution from workers should only be applicable if sick pay beyond the statutory period is provided.

The early period of full pay should be followed by payment at tapered rates from the social security system, gradually declining over the course of two years but never lower than



unemployment benefit by the end of the period. This type of dual system operates widely across Europe. Reform of the Irish system should allow for the gradual improvement of replacement rates in the early part of Year 1 Illness Benefit to 50%, 60% and ultimately 70% of normal salary over the medium term, as pertains in countries such as France, Italy, Belgium and Germany (MISSOC). SIPTU believes workers need solidarity and that their income should be maintained at no less than 50% of pre-sickness wages for a sufficient period to allow them to fully recover from commonplace illness or injury. Ireland should aspire to best practice in other European countries as regards prolonged illness. For example, in the Netherlands 70% of wages continues to be paid for the full second year while in Germany 70% can continue for six months. In Austria, the payment level increases with time from 50% to 60% which can then be accessed for up to 18 months. Italy allows for 50% of net earnings for up to 18 months in certain circumstances.

The exact arrangements for Ireland should be negotiated between the social partners and government. The scheme could be monitored by a legal body (drawing lessons from the Low Pay Commission) which could periodically determine appropriate replacement rates.

Duration of payment

The duration of statutory sick pay should bring Ireland into line with good practice in Europe, France, Germany, Austria and Denmark form a cluster in the middle-ground at around 4-6 weeks sick pay at full pay. This would be a reasonable starting point to focus preliminary discussions. It is consistent with many SIPTU unionised companies that provide sick pay of 6 weeks or more on full pay. The public service currently allows 92 days (13 weeks) on full pay in a rolling one year period followed by a maximum of 91 further days on half pay in a one year rolling period, subject to a maximum of 183 days in four year period. While it is not practical to suddenly jump to this system for the whole economy, the entitlement to a maximum 6 weeks statutory sick pay from an employer, in a rolling one year period, would be a modest first step in the right direction.

Existing and future agreements at company and/or sectoral level that offer a period longer than 6 weeks on full pay should be protected in law.

The duration of sickness benefit from the social security system should remain at two years. However, it should be transformed to cover a certain percentage of pay, with a guaranteed minimum.

Waiting Days

It is uncommon among advanced European countries to have waiting days for sick pay. Workers in Ireland should receive support from the first day of their illness. From February 2021, Illness Benefit will be paid after three days, rather than the present six waiting days. There is a waiver on waiting days for the enhanced Covid payment. SIPTU believes that the waiting day requirement for Illness Benefit should be permanently removed as it unfairly penalises workers and may reduce the likelihood of workers staying at home before an illness appreciably deteriorates.



Medical Certification

It is not unusual for employers to require the production of a medical certificate under sick pay rules, both here and on the continent. However, such an obligation should not come into effect until a certain number of days have lapsed if the employee is still unable to return to work. It may be enough for workers to rest a day or two to overcome mild illness. In such circumstances they should receive sick pay and/or Illness Benefit without the need for a costly GP visit. An employee should notify his/her employer from day one if unable to attend work. In Germany, a medical certificate must be submitted to the employer after three days out sick while in Sweden a doctor's declaration must be made within eight days of illness.

Length of Service

Statutory sick pay should be available for all workers without having to achieve a prolonged period of service, providing a minimum threshold to sustain decency at the workplace. While some countries apply certain rules around the completion of a probation period or having a set number of days worked for eligibility, such measures for Ireland would have to be carefully examined to avoid



discriminating between young workers and older workers and to ensure no other negative outcomes. Length of service could be considered as a factor in collective bargaining at the firm or sectoral level if employers pay extra sick pay beyond the statutory minimum.

Any rules that are introduced to circumscribe the obligation on employers to pay sick pay from day one would have to be matched by a requirement of the social security system to step in from the outset so that workers would instead receive acceptable sick pay from the State.

Earnings Threshold

Few, if any, highly developed EU countries impose a minimum earnings threshold for sick pay/benefit (MISSOC). SIPTU believes it is essential that low-paid workers can access sick pay and illness benefits in the same way as other workers. SIPTU is focused on improving the lives of vulnerable workers in precarious employment, many of whom are migrants, women and/or young people. SIPTU is involved in securing decent terms and conditions for thousands of members in contract cleaning, hospitality and childcare. Workers in sectors such as these are particularly reliant on the availability of sick pay/benefit during periods of illness given that their savings may be limited. Workers in low-paid jobs should not be penalised under a new statutory sick pay scheme by receiving any less from their employer than the Illness Benefit payment provides under existing rules. Sectoral level bargaining should be established to include negotiations on enhanced sick pay entitlements, facilitating staff retention and good employment relations.

Countries such as Belgium, Finland, Sweden and Luxembourg have a minimum level sickness benefit. This should also be considered for Ireland, in tandem with the approach outlined in answers 1 and 2. The minimum payment could be established using appropriate benchmarks such as the Minimum Essential Standard of Living (MESL), developed by the Vincentian Partnership for Social Justice or at least at the rate of unemployment benefit.

It is common among our European peer group to have a ceiling on the amount that is taken into consideration and/or paid for sickness benefit. An examination could be undertaken to assess the implications of setting a maximum level of Illness Benefit in Ireland e.g. at replacement levels of 50%, 60% and 70% up to average yearly earnings for full-time employment (as recorded by the Central Statistics Office) or using sector/industry specific benchmarks.



Employer Supports

A common feature across many EU countries is that the social security system takes over responsibility from the employer after a certain period as regards sick leave payments. Such a model in Ireland would mean that the burden on employers would not be excessive.

In Denmark, Luxembourg and the Netherlands employers may avail of insurance to help them cover the cost of sick pay (MISSOC). Many sick pay schemes in Ireland are underwritten by a private insurance policy. An analysis should be undertaken to identify whether this model is adequate in the context of a statutory sick pay scheme. Legislation should facilitate employers in paying out sick pay, whether from ongoing revenue or a separate fund. In Ireland, an employee typically signs over his/her Illness Benefit to an employer if a sick pay scheme is in operation. Under current rules this takes place after 6 days but it will be after 3 days from February 2021. If this payment/subsidy is taken away from such 'good' employers, and they are made liable for the full amount of wages, they would incur an



additional unforeseen cost. It would be reasonable to maintain the current arrangement that allows employers provide sick pay by recouping Illness Benefit and 'topping up' to normal wages.

In some cases, currently, employees may not be obliged to give up their Illness Benefit to their employer if the level of sick pay provided is minimal e.g. 20% or 30% of salary. No worker should be left worse-off as regards sick pay compensation compared to what they would have received from their employer prior to the introduction of statutory sick pay in Ireland.

Further financial supports could be given to small businesses (employers with less than 50 employees) based on a tapering schedule. For example, for firms with less than 10 employees, financial support (including Illness Benefit) would amount to 80 percent of gross pay; firms with 10-19 employees - 70 percent of gross pay, etc.

An assessment of the up-to-date audited financial statements and management accounts of a company would be required to determine whether there is a genuine inability to pay. This could be overseen by the Labour Court and/or Workplace Relations Commission. The State would have to intervene to pay any sick pay that is due to workers in the case of insolvency, trading difficulties or significant financial problems.

There should be an assessment as to the cost of subsidising employers and of providing adequate income replacement through the social security system. This cost should be recouped through incremental increases in employers' PRSI, implemented over the medium term so that the impact could be easily assimilated.

Rehabilitation Programmes

Rehabilitation and reintegration schemes exist in many European countries. SIPTU is supportive of the concept as long as it is implemented in an empowering rather than a punitive manner. In Ireland, it is possible for people who have been on Illness Benefit for six months to receive the Partial Capacity Benefit upon returning to work. An evaluation of the uptake and success of this scheme would be useful. A detailed examination of initiatives that work well in Europe and that could be adapted to suit the conditions here is also necessary.



Any other comments

Workers should have recourse to the WRC and any other appropriate State bodies to vindicate their right to statutory sick pay in the same way as other employee rights such as parental leave and force majeure.

The introduction of statutory sick pay in Ireland should take account of the impact of digitisation and the growth of atypical forms of employment in the Irish labour market.

People working in the Arts and Culture Sector as genuinely self-employed or freelance contractors with multiple ongoing engagements can suffer an imbalance of power because they are dependent on repeat business from a relatively small cohort of companies. Their work is highly mobile and, while in the audio-visual sector relative periods of stability can be achieved on some productions (several months rather than weeks) for certain categories of workers, this is not the norm. Many performers, musicians, theatre makers, theatre professionals and events workers in both the live performance and recorded media can be engaged in particular activities for a very short period of time.

Other 'atypical' workers such as those who do platform work, for example, in the food delivery industry or in other areas of the 'gig economy' may find themselves as 'bogus' self-employed in low-paid, precarious work because they are denied a normal contract of employment.

As part of negotiations, a mechanism should be developed to ensure all atypical workers, including the nominally self-employed, have access to statutory sick pay. This could be achieved progressively based on a risk-assessment of categories of workers. It may mean that the social security system (rather than the employer) would have to pay sick pay from day 1 for such workers but the associated cost should be recouped from industry through a levy and/or a gradual increase in employer PRSI. Sick pay should be based on the worker's average income over an identified period.

The issue of ensuring adequate sick pay coverage for atypical workers, dealing with implementation of a statutory scheme and also examining the possibility of enhanced terms, should be dealt with through collective bargaining at sectoral level, similar to the way the Construction Industry Registered Employment Agreements works.

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