

## **Reducing Ill-health Related Job Losses: Consultation**

The Government is consulting on proposals to reduce ill-health related job losses. These include:

- making changes to the legal framework to encourage employers to support employees with health issues affecting work, and to intervene early during a period of sickness absence;
- reforming Statutory Sick Pay (SSP) so that it is better enforced, more flexible and covers the lowest paid employees;
- improving Occupational Health (OH) provision by considering ways of reducing the costs, increasing market capacity and improving the value and quality of services, especially for small employers and self-employed people; and
- improving employers' and self-employed people's access to good advice and support, ensuring that all employers understand and are able to act on their responsibilities to their employees.

Details of the relevant parts of the consultation are set out below, including the consultation questions with our comments, and the LGA will be responding to the consultation. To assist with this we should be grateful if authorities could send us their views on the points and questions set out below. Please send your comments to [eru@local.gov.uk](mailto:eru@local.gov.uk) by 9 September. Should authorities want to respond directly to the consultation then details of how to do so are on the consultation website and the closing date is 7 October 2019. We should be grateful if you would send us a copy of any such response, again to [eru@local.gov.uk](mailto:eru@local.gov.uk)

### **Legal framework**

There are already legal duties in place relevant to those with health conditions. Those include the duty under the Equality Act 2010 to make reasonable adjustments for disabled employees, the right to request flexible working and health and safety duties. However, the Government is considering the following changes to the legal framework:

1. introducing a right to request work(place) modifications for employees not covered under the duty to make reasonable adjustments established in the Equality Act 2010;
2. strengthening statutory guidance for employers to encourage early intervention to support a sick employee to return to work; and
3. reforming Statutory Sick Pay to allow for greater flexibility in returning to work following sickness absence

### **Right to request workplace modifications**

The Government is seeking views on whether to introduce a right to request workplace modifications and if so who should be eligible for it. It is anticipated that the right would

operate in a similar way to the existing right to request flexible working and under the potential new right, the employer and employee would agree between them, where it is reasonable, workplace modifications. A Code of Practice would support the right, which would set out in more detail what might be appropriate business reasons for refusing a request.

**Question 1** Do you agree that, in addition to Government support, there is a role for employers to support employees with health conditions, who are not already covered by disability legislation, to support them to stay in work?

- strongly agree
- agree
- neither agree nor disagree
- disagree
- strongly disagree

**LGA comments:** We anticipate that most local authorities will agree with this. However, please let us know if you consider otherwise.

**Question 2** Why do you think employers might not provide support to employees with health conditions not already covered by disability legislation to help them stay in work?

**LGA comments** We anticipate that many local authorities will already be discussing and agreeing appropriate support for employees with health conditions, even if they may not have a disability within the meaning of the Equality Act. Where that is not the case though that is likely to be for resource reasons.

**Question 3** Do you agree that a new 'right to request work(place) modifications' on health grounds could be an effective way to help employees to receive adjustments to help them stay in work?

- yes
- no
- don't know (with reasons)

**LGA comments** For the reasons set out in our comments at 2 above, many may consider the impact of such a right may be limited, as it is only in limited cases that workplace modifications are not being discussed. We would therefore welcome authorities' views on whether they consider such a right would be effective.

**Question 4** If the Government were to implement this new right to request work(place) modifications, who should be eligible?

- a. any employee returning to work after a period of long-term sickness absence of 4 or more weeks

- b. any employee with a cumulative total of 4+ weeks sickness absence in a 12-month period
- c. any employee returning to work after any period of sickness absence
- d. any employee who is able to demonstrate a need for a work(place) modification on health grounds
- e. other (please state)

**LGA comments** We anticipate that most local authorities will support elements of both option a and option d, as otherwise the right could become a disproportionate administrative burden. However, please let us know if you consider otherwise.

**Question 5** How long do you think an employer would need to consider and respond formally to a statutory request for a work(place) modification?

- a) 0 to 4 weeks
- b) 5 to 8 weeks
- c) 9 to 12 weeks

**LGA comments** We anticipate that most local authorities will support option c, as a shorter time period could be difficult to manage. However, please let us know if you consider otherwise.

**Question 6** Do you think that it is reasonable to expect all employers to:

- a) consider requests made under a new 'right to request' work(place) modifications and
- b) to provide a written response setting out their decision to the employee?

**LGA comments** We anticipate that most local authorities will consider the expectation is in both cases reasonable. However, please let us know if you consider otherwise.

**Question 7** Please identify what you would consider to be legitimate business reasons for an employer to refuse a new right to request a work(place) modification made on health grounds:

- the extent of an employer's financial or other resources;
- the extent of physical change required to be made by an employer to their business premises in order to accommodate a request;
- the extent to which it would impact on productivity;
- other – please state.

**LGA comments** We consider that all the reasons identified above are legitimate, but would welcome any other views or suggestions for other reasons.

## Employer guidance

This part of the consultation focuses on employer-led support for employees, and statutory guidance to support that with the aim of prompting employers to take early, sustained and proportionate action to support employees to return to work.

**Questions 8-15** These questions seek views on what should be the role of that guidance, and its extent and usefulness.

**LGA comments:** In the interests of brevity we do not intend to set out the questions on this section or comment on them in detail but unless authorities tell us otherwise we will respond to support the introduction of such guidance, provided it is not overly prescriptive.

## Reforming SSP

At present, employees who are off work may receive SSP. To qualify for SSP the employee must:

- be an “employed earner” working for an employer who has liability to pay secondary Class 1 National Insurance contributions;
- have done some work for the employer under their contract of service;
- have been ill for at least 4 or more days in a row (including non-working days); and
- earn an average of at least £118 per week (the Lower Earnings Level (LEL)).

SSP is paid by employers from the fourth day of sickness absence at a flat rate of £94.25 per week for a maximum of 28 weeks. It is worth noting though that many employers, including local authorities, provide sick pay benefits in excess of SSP. Any increase though in SSP entitlements could impact on the costs of contracted services, if the contractor does not provide enhanced sick pay benefits.

The Government proposes to make SSP available to all employees who need it, in a flexible way underpinned by a suitable enforcement mechanism. The proposed changes include:

- amending the SSP rules to allow for phased returns to work following sickness absence;
- widening eligibility for SSP to those on the lowest incomes (the proposal is that where an employee earns less than the LEL, their SSP entitlement would be 80% of their weekly earnings);
- strengthening compliance and enforcement of SSP to ensure employees are paid what they are due.

**Question 16** Do you think the current SSP system works to prompt employers to support an employee’s return to work?

**LGA comments** We anticipate that authorities will be of the view that the current SSP system does little to support employees’ return to work.

**Question 17** What support would make it easier to provide phased returns to work during a period of sickness absence?

- guidance on how to implement a good phased return to work;
- a legal framework for a phased return to work which includes rules on how it should be agreed and implemented;
- clearer medical or professional information on whether a phased return to work is appropriate; and/or
- other suggestions

**LGA comments** This questions relates to how a more flexible SSP system could allow a phased return to work, through for example enabling employees to receive part wage and part SSP. As occupational sick pay in local authorities is normally more than SSP, we anticipate that such flexibility would be of little relevance for most local authorities when considering phased returns. Instead the most important support is clear medical and professional information.

**Question 18** Would the removal of rules requiring identification of specific qualifying days help simplify SSP rules?

**LGA comments** Qualifying days are used by an employer to work out which days of the week an employee should be paid SSP, and they are normally the employee's contracted working days. The Government considers that the rules can be confusing and we would welcome authorities' views on this, and on the potential impact of the removal of the rules.

**Question 19** Do you agree that SSP should be extended to include employees earning below the LEL?

- Yes
- No
- Maybe
- Don't know

**LGA comments** This would normally only directly impact on local authorities where they have an employee earning less than £118 per week, whose occupational sick pay entitlement has reduced to half pay or expired before the 28-week SSP entitlement period. At present when their occupational sick pay expires they will not be entitled to any SSP from their employer, whereas under the reforms they will. Such cases will be rare but we would welcome authorities' views on this proposal.

**Question 20** For employees earning less than the LEL, would payment of SSP at 80% of earnings strike the right balance between support for employees and avoiding the risk of creating a disincentive to return to work?

**LGA comments** Unless authorities tell us otherwise, we will respond to the consultation indicating that the 80% level strikes the right balance.

**Question 21** Do you agree that rights to SSP should be accrued over time?

**LGA comments** Currently SSP is a 'day one' right, however the Taylor Review of Modern Working Practices recommended that the entitlement should be built up over time. That approach would reduce employer costs and so remove a potential barrier to employers employing those with a long-term health condition. We anticipate that most local authorities will not agree with this proposal, as SSP entitlements will not be a factor weighing on their minds when considering the appointment of someone. Please let us know though if you think otherwise.

**Questions 22 and 23** Questions 22 and 23 concern enforcement of SSP, including a proposal for higher penalties for employers for non-compliance with SSP obligations and that enforcement should mirror National Minimum Wage enforcement

**LGA comments** Unless authorities indicate otherwise we intend to respond indicating support for the proposals.

**Question 24** Do you support the SSP1 form being given to employees 4 weeks before the end of SSP to help inform them of their options?

- Yes
- No
- Maybe
- Don't know

**LGA comments** Employers use form SSP1 to advise an employee that they are not eligible for SSP or their SSP is to end. In the latter case it has to be given no more than 7 days after it has ended. If it was given earlier it could for example prompt employees to discuss return to work options with their employer, and on that basis we intend to respond in support of this proposal, unless authorities indicate otherwise.

**Question 25** SSP rebates for SMEs (small and medium enterprises).

**LGA comments** As this question concerns SMEs we do not intend to respond.

**Question 26** At this stage, there are no plans to change the rate or length of SSP. The Government is though interested in views on the impact of the rate and length of SSP on employer and employee behaviour and decisions.

**LGA comments** We anticipate that the rate and length of SSP will have little impact on employee and employer behaviour in local authorities, but please let us know if you consider otherwise.

## Occupational health market reform

This section of the consultation concerns reforms to the occupational health (OH) system, including support for SMEs, the training and development of the OH workforce and employer practices. In the section below we only set out and comment on the questions that are relevant to local authorities as employers. That being said if authorities do have any comments on the questions we have not set out below then we would be happy to add them to our response.

**Question 45** As an employer, what indicators of quality and compliance arrangements would help you choose an OH provider?

- work outcomes
- quality marks
- process times
- customer reviews
- other – please state
- don't know
- indicators won't help

**LGA comments** We would welcome local authorities views on this, based on their current experience and what they think could assist.

**Question 48** Do you have suggestions for actions not proposed here which could improve capacity, quality and cost effectiveness in the OH market?

**LGA comments** We would welcome any suggestions authorities may have.

## Advice and support for employers

This section concerns proposals to improve the provision of advice and information to support the management of health in the workplace. The intention is that the advice would primarily be targeted at SMEs. It also covers advice and support that could be given to employers purchasing OH services, and a requirement for employers to report sickness absence to Government. As with the section on OH above we have only set out and commented on the questions relevant to local authorities.

**Question 49** Do you need more information, advice and guidance?

**LGA comments** Local authorities often tell us that Government advice for employers on managing ill-health issues and other employment-related issues is less detailed than it used to be and so of less use. Therefore we intend to respond in line with that.

**Question 50** If so, what content is missing?

- legal obligations and responsibilities/employment law
- recruiting disabled people and people with health conditions

- workplace adjustments, such as Access to Work
- managing sickness absence
- managing specific health conditions
- promoting healthier workplaces
- OH and health insurance
- best practice and case studies
- links to other organisations, campaigns and networks
- local providers of services and advice
- other – please state

**LGA comments** We would welcome local authorities' views on what content is missing.

**Question 51** What would you recommend as the best source of such new advice and information?

- the main government portal (GOV.UK)
- the Health and Safety Executive
- Jobcentre Plus
- other – please state

**LGA comments** Unless people tell us otherwise we consider that the best source of such advice would be gov.uk, as that is the central place for most Government guidance. However, for any Government advice to be useful it has to be easy to find, therefore, there needs to be significant improvement to the search engine on the site to enable readier access to the information.

**Question 52** As an employer, where do you go for buying advice and support when purchasing, or considering purchasing, OH services?

- internet search
- professional/personal contact
- legal sources
- HR person (in-house or external)
- accountant or other financial specialist
- other – please state
- don't know
- I don't seek advice or support

**LGA comments** We would welcome local authorities' responses on this.

**Question 53** As an employer, what additional information would you find useful when purchasing, or considering purchasing, OH services?

- online questionnaire to help you identify what type of services you could benefit from
- toolkit that could include information on OH referral and assessment process
- basic online information on the process of buying OH services

- provider database
- comparison website
- information on the value of OH services

**LGA comments** We would welcome local authorities' views on this.

**Question 54** Do you agree with the proposal to introduce a requirement for employers to report sickness absence to Government?

- yes
- no
- maybe
- don't know

**LGA comments** Little detail is given of this proposal but the intention behind it is that if employers reported SSP data through their payroll systems, then the Government could for SMEs intervene to provide 'timely and targeted' prompts' on how best to manage sickness absence. No indication is given of how the data would be used for larger employers. We anticipate that local authorities will consider that such reporting requirements would be unnecessary for them, as they already have robust sickness absence processes in place. Please let us know though if you consider otherwise.

## Next steps

The Government intends to use the evidence and views gathered during this consultation to develop these proposals and help determine what approach offers the best value for money in the context of the next Spending Reviews. Other than that, no indication is given on how and when the proposals may be taken forward.

**Question 56** Do you think this overall package of measures being explored in this consultation provides the right balance between supporting employees who are managing a health condition or disability, or on sickness absence, and setting appropriate expectations and support for employers?

- yes
- no
- maybe
- don't know

**LGA comments** We anticipate that many local authorities will consider that the overall package will not have any substantial impact but will nevertheless consider the proposals strike more or less the right balance. Please let us know if you consider otherwise.