

Swine Flu: Employee sickness self certification and Statutory Sick Pay payments - an update for Employees

How long will people with swine flu be ill and off work for?

Current UK data shows that while swine flu can be a serious illness, the majority of people experience mild symptoms.

The best current estimate of the length of illness is that around half of people who become ill recover within about 7 calendar days without needing to see a doctor. The remainder take longer but anyone whose health is not improving by day 7 is strongly advised to seek further medical advice.

Swine flu and Statutory Sick Pay (SSP)

Have there been any changes to arrangements for the payment of Statutory Sick Pay (SSP) to employees with swine flu?

Statutory Sick Pay is the minimum payment an employer can make to employees unable to work because of short-term sickness

No changes have been made to the rules for payment of Statutory Sick Pay (SSP) during the outbreak of Swine flu. The normal rules continue to apply.

What happens if I am an agency or temporary worker?

Agency workers or temporary workers like other employees are entitled to SSP from the first day of their contract provided they satisfy all the other conditions for entitlement. However, they must have undertaken some work under that contract to become entitled.

For more information about SSP follow this link to the Directgov website.

http://www.direct.gov.uk/en/MoneyTaxAndBenefits/BenefitsTaxCreditsAndOtherSupport/Illorinjured/DG_10018786

For illnesses lasting less than 7 calendar days, can my employer ask me for a medical certificate when paying Statutory Sick Pay?

No. Employees can self-certify for the first seven days of their illness. An employer is not permitted to ask for medical evidence (including medical certificates) during the first 7 days of absence.

For illnesses lasting more than 7 calendar days, does my employer have to ask me for a medical certificate when paying Statutory Sick Pay?

No. Employers are entitled to ask for reasonable evidence of your incapacity for work. The employer is free to decide whether they require evidence and, if so, what evidence is acceptable – this does not have to be a medical certificate.

What about other forms of sick pay I receive from my employer?

Many employers provide their own occupational sick pay (OSP) schemes in addition to, or instead of, SSP. If your employer does this, they are entitled to set their own rules and conditions of entitlement for OSP purposes.

What should I do if I am not able to return to work within 7 calendar days?

You should speak to your employer to explain why you are not able to return to work. If you are asked for a medical certificate and have not seen a doctor (for example you have contacted the National Pandemic Flu Service for treatment or only spoke to your doctor over the telephone) ask your employer if they will accept alternative forms of medical evidence in your case and if so

what they are. If your employer still requires a medical certificate, you should contact your GP, by phone in the first instance.

Do I have to have a certificate to show I am fit to return to work?

No. It is not necessary to have a medical certificate to show you are fit for work after any period of illness.

Can my GP refuse to give me a certificate?

Doctors have a duty to provide a medical certificate for SSP and benefit purposes, to a patient whom they have clinical responsibility for at that time. There are various rules around issuing medical certificates that Doctors must follow. For example, they cannot issue a medical certificate unless they have examined a patient on that day or the previous day and are able to make an adequate assessment of the patient's fitness or non- fitness for work.

Where a patient has previously been assessed as having swine flu, either by the National Pandemic Flu Service or their GP and has been advised to stay at home whilst ill, a GP may, at their discretion, be able to issue a medical certificate after a telephone consultation. This is for the GP to decide and depends on his clinical care of the patient.

What flexibilities are open to my employer around self-certification and medical evidence?

We are encouraging employers to consider using other arrangements (instead of a doctor's certificate) for gathering evidence of employee illness during the current swine flu pandemic to reduce the burden on GPs.

Some suggested flexibilities that may be considered by your employer are:

- Employers are free to decide on an extension to the self-certification period for their employees if they felt this was appropriate. This could, for example, be an extension to 10 calendar days self-certification for those with flu-like symptoms.
- Instead of a medical certificate, employers could ask for other proof of incapacity for work.
- Employers with access to qualified medical staff via an occupational health scheme could use these staff to contact those off sick with flu-like symptoms to satisfy themselves that the employee is ill and unable to work.

Employers that operate an Occupational Sick Pay (OSP) scheme and have their own rules about sickness evidence are also being encouraged to operate similar measures.

Possible legislative changes to the period of self-certification

If there is a further and widespread wave in this swine flu pandemic the Government is considering possible measures to protect public health to reduce pressure on GPs and minimise the risk of further spread of swine flu

One option available is to make a legal change to lengthen the period of self-certification beyond the current 7 day period. If this is adopted it would extend the period of time during which an employer would be prevented from requiring his employee to provide a medical certificate.

Such a measure would only be implemented if absolutely needed for a limited time and the decision would be taken by the Government's Civil Contingencies Committee and based on science advice and surveillance data. We will continue to monitor the situation and will seek to provide early

indications to employers of any possible changes so that they can communicate these to their employees.