



# Social Security Contributions and Benefits Act 1992

## 1992 CHAPTER 4

### PART XI

#### STATUTORY SICK PAY

##### *The qualifying conditions*

#### **152 Period of incapacity for work**

- (1) The first condition is that the day in question forms part of a period of incapacity for work.
- (2) In this Part of this Act “period of incapacity for work” means any period of four or more consecutive days, each of which is a day of incapacity for work in relation to the contract of service in question.
- (3) Any two periods of incapacity for work which are separated by a period of not more than 8 weeks shall be treated as a single period of incapacity for work.
- (4) The Secretary of State may by regulations direct that a larger number of weeks specified in the regulations shall be substituted for the number of weeks for the time being specified in subsection (3) above.
- (5) No day of the week shall be disregarded in calculating any period of consecutive days for the purposes of this section.
- (6) A day may be a day of incapacity for work in relation to a contract of service, and so form part of a period of incapacity for work, notwithstanding that—
  - (a) it falls before the making of the contract or after the contract expires or is brought to an end; or
  - (b) it is not a day on which the employee concerned would be required by that contract to be available for work.

**153 Period of entitlement**

- (1) The second condition is that the day in question falls within a period which is, as between the employee and his employer, a period of entitlement.
- (2) For the purposes of this Part of this Act a period of entitlement, as between an employee and his employer, is a period beginning with the commencement of a period of incapacity for work and ending with whichever of the following first occurs—
  - (a) the termination of that period of incapacity for work;
  - (b) the day on which the employee reaches, as against the employer concerned, his maximum entitlement to statutory sick pay (determined in accordance with section 155 below);
  - (c) the day on which the employee's contract of service with the employer concerned expires or is brought to an end;
  - (d) in the case of an employee who is, or has been, pregnant, the day immediately preceding the beginning of the disqualifying period.
- (3) Schedule 11 to this Act has effect for the purpose of specifying circumstances in which a period of entitlement does not arise in relation to a particular period of incapacity for work.
- (4) A period of entitlement as between an employee and an employer of his may also be, or form part of, a period of entitlement as between him and another employer of his.
- (5) The Secretary of State may by regulations—
  - (a) specify circumstances in which, for the purpose of determining whether an employee's maximum entitlement to statutory sick pay has been reached in a period of entitlement as between him and an employer of his, days falling within a previous period of entitlement as between the employee and any person who is or has in the past been an employer of his are to be counted; and
  - (b) direct that in prescribed circumstances an employer shall provide a person who is about to leave his employment, or who has been employed by him in the past, with a statement in the prescribed form containing such information as may be prescribed in relation to any entitlement of the employee to statutory sick pay.
- (6) Regulations may provide, in relation to prescribed cases, for a period of entitlement to end otherwise than in accordance with subsection (2) above.
- (7) In a case where the employee's contract of service first takes effect on a day which falls within a period of incapacity for work, the period of entitlement begins with that day.
- (8) In a case where the employee's contract of service first takes effect between two periods of incapacity for work which by virtue of section 152(3) above are treated as one, the period of entitlement begins with the first day of the second of those periods.
- (9) In any case where, otherwise than by virtue of section 6(1)(b) above, an employee's earnings under a contract of service in respect of the day on which the contract takes effect do not attract a liability to pay secondary Class 1 contributions, subsections (7) and (8) above shall have effect as if for any reference to the contract first taking effect there were substituted a reference to the first day in respect of which the employee's earnings attract such a liability.
- (10) Regulations shall make provision as to an employer's liability under this Part of this Act to pay statutory sick pay to an employee in any case where the employer's contract

of service with that employee has been brought to an end by the employer solely, or mainly, for the purpose of avoiding liability for statutory sick pay.

(11) Subsection (2)(d) above does not apply in relation to an employee who has been pregnant if her pregnancy terminated, before the beginning of the disqualifying period, otherwise than by confinement.

(12) In this section—

“confinement” is to be construed in accordance with section 171(1) below;

“disqualifying period” means—

(a) in relation to a woman entitled to statutory maternity pay, the maternity pay period; and

(b) in relation to a woman entitled to maternity allowance, the maternity allowance period;

“maternity allowance period” has the meaning assigned to it by section 35(2) above, and

“maternity pay period” has the meaning assigned to it by section 165(1) below.

## **154 Qualifying days**

(1) The third condition is that the day in question is a qualifying day.

(2) The days which are for the purposes of this Part of this Act to be qualifying days as between an employee and an employer of his (that is to say, those days of the week on which he is required by his contract of service with that employer to be available for work or which are chosen to reflect the terms of that contract) shall be such day or days as may, subject to regulations, be agreed between the employee and his employer or, failing such agreement, determined in accordance with regulations.

(3) In any case where qualifying days are determined by agreement between an employee and his employer there shall, in each week (beginning with Sunday), be at least one qualifying day.

(4) A day which is a qualifying day as between an employee and an employer of his may also be a qualifying day as between him and another employer of his.