

Summary

These questions were asked by live attendees at Ciphr's Employment Rights Act (ERA) 2025 webinar, which was hosted on 24 February 2026.

You can watch the recording of that webinar at:

<https://www.ciphr.com/webinars/erb-update>.

This information is based on public information that is available at the time of publication (26 February 2026). It is not employment law advice and should not be taken as legal advice. If you need legal advice, please consult an employment law firm.

About Ciphr

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<https://www.ciphr.com/download-our-brochure>.

Questions and answers

Day 1 rights, contracts, and probation periods

Q: With Day 1 rights being effective from 6 months. If as an organisation you have a 6-month probation period, should we be considering reducing that to 5 months? Also taking the probation period of 6 months into account, is there now little point in extending probation periods?

A. No, we would recommend leaving your probation period as is. But make sure your managers review performance earlier (here at Ciphr, we do review meetings in months 1, 3 and 5). Any issues should be flagged to HR as early as possible. Suggest HR diary in a touchpoint call with the managers at say 3 or 4 months.

Q. When the new legislation comes in, should we be offering completely new contracts or amendment letters?

A. No new contracts should be required for existing employees, unless you specifically have a clause that is now being affected by the ERA, eg if you specifically mention waiting days in your contracts you will need to send an amendment letter

Q. What are the implications for fixed-term contracts (FTC)?

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A. If you have any FTC that last longer than 6 months, regardless of the end date being noted in the FTC you will still need to follow fair dismissal procedures and look for alternative vacancies before dismissing. Think of it as a redundancy without the pay element

Q. Can we still extend probation beyond 6 months?

A. You can but you would need to bear in mind that that person will have employment rights after 6 months so you will need to follow ACAS guide to dismiss after this point. So if you have any concerns that performance will not improve, it best to end the employment earlier.

Q. Would redundancy and rehire on worse T&Cs be automatically unfair? We are a MAT and have taken on new schools with TUPE staff on local authority T&Cs. Sometimes the structure changes to bring in line with the rest of the trust.

A. In this situation we suggest you seek legal advice.

Q. Recommendation for probation periods for those on FTC?

A. If your permanent employees are on 6 months perhaps 3 months would be advisable. However, this is purely up to you as a business and depends on the circumstances.

Fair Work Agency

Q. If there are parts of the business that have different holiday entitlements, will the Fair Work Agency come in to ensure consistency across the board?

A. This is currently the only information that we have relating to the Fair Work Agency

<https://assets.publishing.service.gov.uk/media/696126a5d6532b76df7dcd75/fair-work-agency-factsheet.pdf>. We are not aware of a requirement for consistency across the board for holiday entitlement for different parts of a business, just consistency within areas.

Also if you are in the public sector you will need to take into account the two tier code which will be governed by the new Adult Social Care governing body when this comes into effect.

Statutory Sick Pay (SSP)

Q. How will the new SSP affect part time/variable pay employees?

A. They will be entitled to SSP from Day 1 of sickness, with rates of pay calculated in accordance with the AWE calculation – the difference will be if they earn less than £129 per week, from 6th April they will be entitled to 80% of AWE (or flat SSP rate, whichever is lower) per day, whereas previously they would have been excluded due to earnings

Q. Is that for businesses of all sizes?

A. Yes this is a statutory requirement for ALL businesses regardless of size

Q. Do we still have 'qualifying days' for SSP?

A. Yes – there is no change to the use or concept of qualifying days (QDs).

Q. Is this different for casual workers who don't have full employment contracts? How does this change to SSP impact casual workers?

A. Casual workers still have rights to SSP if they are booked and confirmed for particular shifts and they are sick during this period and follow the sickness absences procedure

Q. Will fit notes still be from day 7?

A. There is no change: fit notes still required from day 7.

Q. What is classed as an absence ? Is this just once we have been notified? What procedures should we have in place for confirming if it's a genuine sick day?

A. SSP is usually paid in arrears. All other entitlement rules remain the same, so the employee is required to notify. See <https://www.gov.uk/employers-sick-pay/notice-and-fit-notes>.

An absence is any time where the employee was meant to be working but is unable to due to sickness. However, SSP is only paid for full days, so if someone only works a half day, or even an hour, no SSP would be due for the day.

From a HR perspective, you should follow your absence procedure, we suggest checking in on their welfare first, if their emergency contact confirm they are ok but they still do not communicate you should follow your normal AWOL procedure. If they confirm they are sick and retrospectively follow your sickness

procedure, they are entitled to SSP. You may want to tighten up your absence procedures and communicate these clearly to employees.

Q. If someone is only off for 1 or 2 days are they still entitled to SSP, or is this still for long term illness but paid from day 1?

A. This change will apply to all employees from day 1 of sickness, so every instance of sickness will now receive SSP payment.

Q. Does it still have to be a period of 4 days sickness

A. No, 1 day will now form a PIW both for entitlement and for linking.

Q. We deduct sickness in arrears so would we apply this in April for March's sickness absence?

A. No, these rules apply to absence days taken on or after 6th April.

Q. When we pay company sick pay should we show 2 lines on the payslip - SSP and company sick pay?

A. There are no rules on how this should be shown on a payslip. Make sure it is shown as clearly as possible to reduce queries from employees.

Q. Will linked absence rules remain the same?

A. Yes, linked absence rules will remain. However, 1 day's absence will now form a link.

Q. Will maximum SSP remain the same?

A. Maximum SSP will remain at 28 weeks/3 year linked periods.

Q. How would we calculate AWE if an employee is off on their first day?

A. There is no change to the calculation of AWEs. If an employee is off on their first day and hasn't yet received any payment, the contractual expected earnings should be used.

Q. Can you explain qualifying days?

A. Qualifying days are the days the employee is normally required to work. These are then the days that SSP would be due for. Some companies use 7 days a week, others use actual contracted days – this is a matter for employer to decide.

Q. Can we as a business request 'fit notes' for employee absences if they are declaring sick days to be paid SSP?

A. You can request for occupational sick pay purposes, but for SSP a fit note can only be demanded from day 7. However you can request that they

complete a self-certification form, which is available from the government website.

Q. What is the recommended/most-common occupational sick pay (OSP)? We give full pay for 10 days of sickness absence within a rolling 12 month period and I've been told that's very low.

A. OSP is totally at the company's discretion. There is wide range of schemes from zero to 12 months etc. Here at Ciph, for example, we pay 20 days as standard after 1 year's service.

Q. If we currently operate paying full daily rate for the first 5 days of work and then SSP for any fit note absence after the self cert period, is that still okay to keep in place as the SSP is the minimum required?

A. Yes, as long as SSP is paid for every day of sickness absence as a minimum. If you chose to pay more than this that is your choice.

Q. Should we be asking for a self certificate (for example) for one day, are we able to try to confirm it is a sick day, or if someone doesn't turn up do they automatically get sick pay and if an employee does not contact the company should they still automatically get sick pay?

A. Notification is a requirement for SSP entitlement, so you can ask for a self-certification form to be completed either your own or the one from the government website. But you can't demand a fit note from day 1 – they just need to follow your notification rules for the day – sickness policy might say before midday etc – so the employee needs to inform you they are sick, but do not have to provide evidence to receive SSP for the first 7 days.

If an employee does not follow your absence notification process then they are not entitled to SSP. However, from a HR perspective you should follow your wellness protocol and AWOL process in this situation too.

Q. How does the new PIW rule affect phased returns to work? If someone works Tues, Thurs, would Weds be paid as SSP now?

A. SSP will now be payable for individual days of absence. Previously this wouldn't have been the case, so yes the Wednesday would be paid.

Q. Does the eight-week connecting period apply?

A. Yes, but linking will now be for each day, not requiring a four-day PIW.

Q. If our company sick pay is full pay, do we have to show the breakdown of what would be SSP or is the full pay enough proof?

A. Full pay would be enough evidence. However, unless your full pay covers 28 weeks you should record SSP days as they will count towards the 28-week maximum entitlement.

What if someone has been on long-term sick (months) and used all their SSP?

A. There is no change. If someone has used all their 28-week entitlement they should have been issued an SSP1 and benefits transferred to DWP.

Q. Are the rules the same for self certificate up to 7 days, then GP fit note?

A. Yes, no change to this requirement.

Q. If they exhausted their SSP in Jan 2026, what happens in April 2026?

A. There is no additional entitlement if they have exhausted their 28 weeks

Menopause action plans

Q. Do you have to disclose the action plans on the company website like the gender pay gap reports?

A: For 2026, there is no requirement to do so. For 2027 plans will likely be published through a government portal. At this time there is no information about a requirement to post on the company website.

Q. Is that for businesses of all sizes?

A. Yes the action plans are for all size companies. However, you will likely need to run a gender pay gap report in order to know what to include in your action plan, but you will not need to disclose the results.

Tipping

Q. Is the tipping policy the same as service charge or in addition?

A. Tips, gratuities and service charges are treated as one category for legal purposes, not as separate things, so you will need to treat service charges in the same way as tips.

Sexual harassment

Q. What are some examples of reasonable steps to prevent sexual harassment? We've done some prevention training, what else would they expect to see?

A: Beyond training, a sexual harassment risk assessment to identify risk areas, multiple reporting channels, including anonymous options, and a thorough policy are good practice.

Q. When speaking about customers are you discussing contract based client portfolios or customers visiting stores or spaces?

A: This would be with any non-employee your staff interacts with, whether that's corporate clients, contractors, or customers in retail, venues or customer service spaces. For physical spaces like these you could consider signage to communicate this, panic buttons, support in refusing service where necessary, or safe zones for staff. Recorded messages on phone lines may also be useful.

Q. We are changing our commercial contracts in April for other reasons, what is deemed as reasonable steps to prevent sexual harassment?

A: Including a contractual zero-tolerance clause that grants your staff a "right to withdraw services" or a right to request a removal of a contact without penalty. Some organisations might want to add a clause that if a third party company isn't responding with appropriate seriousness to allegations or concerns then they can withdraw business. We always suggest getting legal advice bespoke to your context before making any alterations to contracts.