

Research in Brief



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Paid Sick Leave, Its Absence in Korea, and What to Do to Implement It

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Introduction

As covid-19 spreads across the globe, governments the world over, facing devastating socioeconomic crises, have unveiled various policy packages. In the US alone as of May, an estimated 19.6 million jobs were reported to have been vanished since the covid-19 pandemic broke out in February. The unemployment rate was 13.3 percent. It's quite a different picture in Europe. Some European welfare states have rolled out policies to keep mass unemployment at bay. Germany, for example, induced reduced work hours and compensated, through a state salary scheme, cuts in working hours, thereby keeping the unemployment rates low at under 5 percent.

One of the central policy instruments in European countries is sick pay. In Sweden, sickness benefits are paid from the first day of sickness. The obligation for presenting a medical certificate is deferred for a leave of 4 days or less (OECD. 2020. Tackling Coronavirus: Contributing to a Global Effort). In Denmark, sick pay has been extended so that those who have received sickness benefits for the previously-set maximum period still can receive benefits for a certain period of time afterward.

In times such as these when an infectious disease like covid-19 spreads throughout the population, sick pay does two important things. Firstly, it helps ensure that the worker's right to take time off work to relax is protected. Secondly, it keeps a potential spread of infection from materializing by allowing affected workers to be absent from work for a certain period of time. One study (Scheil-adlung & Sander. 2010. Paid Sick Leave: Incidence, Patterns and Expenditure in Times of Crises. Extension of Social Security ESS Paper No. 27. Geneva. ILO) found that sick pay, or lack thereof, was among the main factors that made the difference between Germany and the US in the spread of AH1N1 influenza virus in 2009. The

influenza spread on a grand scale, infecting an estimated 7 million people in the US, as many workers there, having no paid sick leave provisions, were forced to come to work sick with the virus.

With no paid sick leave in place for non-work related injury or illness, Korea may be the only country among all OECD countries where workers do not have the right to rest when sick. Workers in Korea often find themselves having to work even when ill, running the risk of infecting others at work. To be sure, paid sick leave can be provided, as stipulated in the Infectious Disease Control and Prevention Act, for workers sick with an infectious disease. But there are no general provisions, not even in the Labor Standards Act, concerning non-work-related illness or injury. This brief examines how Korea's situation without sick pay compares with the situation of several selected countries with sick pay provisions. This brief argues for a stepwise implementation for paid sick leave for Korea.



The four among OECD countries without publicly-financed sick leave

As of 2018, Israel, Switzerland, the US and Korea were the only OECD countries without publicly-financed sick leave. The first three countries have several mechanisms, direct or indirect, to protect the worker's right to rest. The US has unpaid leave provisions in place, while in Switzerland and Israel there are state regulations requiring employers to provide, on their own, paid sick leave to their employees. Although the US lacks federal sick leave provisions, workers there are entitled by law to have unpaid sick leave while ill with a non-work-related health condition. The US Family and Medical Leave Act (1993) entitles workers ill with non-work-related illness or injury to up to 12 weeks of unpaid, job-protected leave per year (US Department of Labor. 2020a. <https://www.dol.gov/general/topic/benefits-leave/fmla>). As befits its title, the Act allows employees to take unpaid leave not only for their own illness, but also when they have a newborn child or have to care for an immediate family member.

As the number of confirmed cases surged earlier in March, the US Congress passed the Families First Coronavirus Response Act (FMLA), whereby employees taking leave are paid up to USD511 per day and USD5,110 over the whole period of leave. This program, however, is conditional on reasons related to covid-19 (US Department of Labor. 2020b. Families First Coronavirus Response Act: Questions and Answers).

Several US states—Rhode Island, California, New Jersey, New York and Hawaii—and the US territory of Puerto Rico have in place temporary disability insurance that pays up to 50~60 percent of the employee's wage for up to 52 weeks of leave due to temporary illness or injury.

Switzerland does not have government-financed paid sick leave. Instead, the Swiss Civil Law stipulates that employers provide sickness benefits for employees who, for reasons not within their control, cannot work for a certain period of time. Employees are entitled to 3 weeks of paid sick leave for continuous employment of 4~12 months and to 13 weeks of paid sick leave for continuous employment of 5~9 years.

[Table 1] Paid sick leave in the four OECD countries without a publicly-financed sick pay scheme

	Relevant law (responsible agency)	Resources	Target groups	Entitlement criteria	Benefit level	Benefit period
Israel	Paid Sick Leave Law (Ministry of Labor and Social Affairs)	Employers or employer-financed funds	Wage workers (daily workers and hourly workers included)	No	Minimum standards: no payment for the first day of illness; 50% of wage for the second and third days; 100% of wage for the fourth day and thereafter	Paid sick leave of at least 1.5 days per month; a maximum of 18 days per year
Swiss	Civil Law	Employers	Wage workers	Employment of more than three months	80 percent of the minimum wage	At least 3 weeks in the first year of employment contract
US	Family and Medical Leave Act	No	Workers at an employer with 50 employees or more	A total of at least 1250 hours during the past 12 months	No benefit	12 weeks
Korea	No relevant provisions in the Labor Standards Act, Article 50 of the National Health Insurance Law	x	x	x	x	x

Source: Sujin Kim and Ki-tae Kim. 2019. What kind of support can sick workers get from their employers? A study on social protection for sickness in the US, Switzerland and Israel. *Korea Social Policy Review*. 26(1). p. 22

If an employee on sick leave due to non-work related illness or accident has insurance coverage that pays for his or her leave, the employer is under no obligation to pay the employee's sick leave. If the amount the employee receives from the insurance company is less than 80 percent of his or her salary, the shortfall is the responsibility of the employer to pay. In Switzerland, an estimated two-thirds of all workers are enrolled in a sickness insurance plan (OECD. 2006. *Sickness, Disability and Work (Vol. 1): Norway, Poland and Switzerland*. Paris: OECD Publishing). Although without public paid sick leave, Switzerland is regarded to have in place a social safety net for illnesses. From the perspective of workers, a paid sick leave scheme that guarantees 80 percent of pay, whether through public funds or through private-sector employers, is a social safety net indeed.

Israel also has employer-based paid sick leave. The Israeli labor law provides that an employee is entitled to a minimum of 1.5 sick days per month. The first day of sick leave is not paid. The second and third days are paid at 50 percent of salary. An amount equivalent to 100 percent of salary is paid for the

fourth day and thereafter. Employers who are enrolled in the National Sick Fund are not obligated to pay their employees' sick leave only if the Fund pays more than the minimum set by law.



Sick pay in Korea

Korea's Labor Standards Act has no provision concerning non-work-related illness and injury. The Standard Employment Rules 2019 stipulates that "an employer can grant its employees sick leave of up to 60 working days per year," which, as stated therein, "shall be on an unpaid basis." An individual with a work-related illness or injury can as rule be benefited from the Industrial Accident Insurance (70 percent of salary).

A pregnant employee can have 90 days of maternity leave with pay, with, as stated in the Equal Opportunity and Work-Family Balance Assistance Act, the first 60 days of the leave period paid by the employer and the rest by the employment insurance.

Government employees can use up to 60 paid sick days per year, according to Article 18 of the Government Employee Service Regulations, and a maximum 24 months of paid sick leave, as provided by the State Public Officials Act. If a government employee is "in need of long-term medical care due to any physical mental disability," "the appointment authority shall order him or her to temporarily retire contrary to his or her will" (Article 71 (1) of the State Public Officials Act). This is an active way of protecting the right of government employees to have paid sick leave. An eligible government employee is paid up to 70 percent of salary for a leave period of less than 12 months and up to 50 percent for a leave period between 12 months and 2 years.

Korea's Employment Insurance Act does have provisions about sickness benefits, which, however, are not for employees who are out of employment because of a non-work-related illness or injury, but for jobseekers who, having fallen ill or been injured, cannot continue searching for a job actively. The benefits require that the jobseeker has, in the past 18 months, spent at least a total of 180 days in employment covered by the Employment Insurance.

Following the Equal Opportunity and Work-Family Balance Assistance Act (enacted in 2014), an employee can apply for leave of absence of up to 90 days per year for the purpose of providing care for his or her parent, spouse, son or daughter, or spouse's parent. Article 22 (2) states that no employer can "dismiss the relevant employee, deteriorate his or her working conditions, or take any other disadvantageous measures against him or her on grounds of family care leave or short-term care leave." Days in leave of absence in this case are counted as days of employment.

The City of Seoul has a sick leave allowance program of its own, through which low-income earners and self-employed people living in the capital, when ill, can receive benefits equivalent to the living wage of Seoul (KRW 84,180 as of 2020) for up to 11 days per year—10 days for hospitalization and 1 day for physical examination. This program is considered innovative in that it attempts to help fill, at least in part, the gaps created by the lack of paid sick leave, although the low rate of applications for it has been pointed out as an early-stage issue.

Policy recommendations for a stepwise introduction of paid sick leave programs

There is a need to proactively consider introducing a paid sick leave scheme with which to replace a portion of earnings for workers who are unable to work for a certain period of time because of non-work-related illness or injury. There are a slew of components to consider when designing a paid sick leave scheme, including how to finance it and to what extent, and at what levels benefits should be delivered by when through what channels to whom for how long. Table 2 summarizes some of the approaches selected countries have taken in implementing their paid sick leave programs.

[Table 2] Some examples from selected countries, presented as options to consider in designing a paid sick leave scheme

Financing	Taxation (Denmark, New Zealand); social insurance (Germany, Sweden, Turkey)
Contributions (in the case of social insurance)	Exclusive employer contribution (Italy, Sweden); joint contributions of employee and employer
Delivery system	Health insurance (Germany, France); pension (Portugal, UK, etc.), employment insurance (Taiwan, Canada, etc.)
Waiting period	No waiting (Poland) ~ 1 month (Belgium)
Benefit types	Fixed amount (Australia, Denmark, etc.), or flat rate (Germany, Sweden, etc.)
Flat rate benefit	50% (Taiwan) ~ 100% (Luxemburg)
Fixed amount benefit	KRW 0.35 million/month (Iceland) ~ KRW 2.9 million/month (Denmark)
Target groups 1	Workplace subscribers (Japan) ~ those 18 and older (Iceland)
Target groups 2	Oneself (England) ~ Oneself and one's dependants (Ireland)
Period of paid leave	70 days (Czech Republic) ~3 years (Germany)

Source: Seuong-ji Lim et al. (2019). A Study of Introducing Paid Sick leave into Korea I. Health Insurance Policy Research Institute (National Health Insurance Service).

[Table 3] Estimating how much is needed for the introduction of a new paid sick leave scheme

	Data used	Benefit level, target group, waiting period, etc.		Fund required
Induck Choi & Jinsu Kim (2007) ¹	Estimated based on inpatient cases, average dependency ratio and average annual number of days in hospitalization	3-day waiting period; maximum benefit period of 6 months; minimum daily wage per day		KRW805.5 billion ~ KRW920.9 billion
		3-day waiting period; maximum benefit period of 6 months; 50~60% of wage		KRW1.13 trillion ~ KRW1.36 trillion
Minsung Sohn et al. (2019) ²	Estimated using National Health Insurance Cohort Database and National Tax Service data	15-day waiting period; benefit period of up to 180 days (the minimum living cost and the national average earnings used as the threshold and ceiling, respectively, for 60% income replacement	60% income replacement; those with income less than the median	KRW321.1 billion ~ KRW371.8 billion
			60% income replacement, with no income limits	KRW452.0 billion ~ KRW523.5 billion
			Living wage in Seoul; 60% income replacement; those with income less than the median	KRW575.3 billion ~ KRW666.3 billion
			Living wage in Seoul; with no income limits	KRW727.5 billion ~ KRW842.5 billion
Seoung-ji Lim et al. (2019) ³	Estimated using National Health Insurance Big Data Database and National Tax Service data	Those 15 and older; 50% income replacement; up to 360 days; 30% and 100% of the average employee income as the floor and ceiling, respectively	7-day waiting period	KRW818.0 billion
			3-day waiting period	KRW1.13 trillion
			3-day waiting period; dependents including children under 3	KRW1.54 trillion

Note: 1. Induck Choi & Jinsu Kim (2007). A Study of Ways of Introducing Paid Sick Leave into Korea: Estimating the Budgetary Needs of a New Sick Leave Scheme; 2. Minsung Sohn et al. (2019). A Fiscal Projection for Sickness Benefits and Paid Sick Leave Using NHIS Cohort Database. Korean Journal of Health Economics and Policy. 23(2). 221-247; 3. Seoung-ji Lim et al. (2019). A Study of Introducing Paid Sick Leave into Korea I. Health Insurance Policy Research Institute (National Health Insurance Service).

Some of the previous studies concerning the introduction of paid sick leave into Korea have estimated the annual cost in the range of KRW321.1 billion~KRW1.54 trillion. The estimates vary widely even within the same study, depending on the number of wait days, benefit period, and benefit level. The highest estimate, KRW1.54 trillion, accounts for as little as 2.3 percent of National Health Insurance expenditure for 2018. If and when paid sick leave is implemented, however, the demand for it would increase among those who, in the absence of paid sick leave, would have kept working even when ill. This prospect requires introducing paid sick leave in a stepwise manner.

The introduction of paid sick leave consists in two things: providing legal protection of the worker's right to rest and entitling workers to income protection for the period of sick leave. These should proceed in a gradual sequence.

Neither the Labor Standards Act nor the Standard Employment Rules include any provisions pertaining to the worker's right to rest. When an employee requests a leave of absence with a doctor's report, the employer must grant it. The employee should not be put to a disadvantage—such as dismissal—because of or during sick leave. The employee should be entitled by right to the same work position or an equivalent position on the same terms when returning to work after sick leave. In this

case, the period for which the employee's such right subsists may extend beyond the period of paid sick leave. What must also be taken seriously is the right to rest of precarious workers, who, even when ill, often find themselves choosing not to take time off for fear of losing not only part of their pay but also their job.

In the short run, ways should be sought of linking sickness allowance to existing social insurance programs like the National Pension or the National Health Insurance. The problem of “uncovered individuals” if implemented in the framework of the National Health Insurance, which covers most of the precarious workers as well as regular employees and self-employed people. The option of linking sickness allowance with the National Health Insurance is appealing as sickness allowance by its nature requires administrative agencies like the National Health Insurance Service to meet procedural requirements such as issuance of medical certificate. Also, given that sickness allowance already has its legal base in Article 50 of the National Health Insurance Act, linking paid sick leave to National Health Insurance would add to administrative convenience. Whether the sick leave insurance scheme as proposed should have its own fund of contributions or be financed by raising the National Health Insurance contribution rate remains a matter of further discussion and social consensus.

It should be noted that when implementing a paid sick leave scheme in the form of a social insurance program, policymakers should consider reducing from it some of the regressive features of social insurance. For example, the employee share of contribution should not exceed 50 percent of the total contributions, an upper limit set by the International Labor Organization in 1952. Also, if the new paid sick leave scheme is implemented as part of the National Health Insurance, the contribution rate should be adjusted over time to levels equitable to both “workplace-base” participants and “residence-based” participants. How long a worker should wait until he or she receives sick pay is a question that needs further consideration. As soon as the new sick leave scheme takes root, ways should be sought to shave off the number of days it takes for a worker to receive benefits. The approach taken in Switzerland and Israel, whereby how many days a worker can have in paid sick leave is determined proportional to days of work performed, might not entirely be adequate for Korea, as it could create inequality in paid sick leave benefits according to occupational categories and standings. The number of days of paid sick leave given to an employee should be determined based on medical necessity, rather than days of employment. The sick pay may be paid at a fixed rate, preferably at not more than 70 percent of the worker's salary, given that the Industrial Accident Insurance ensures a 70-percent salary-replacement rate. It is important to set a floor and a ceiling so as to not allow the benefit amounts to vary too much across different income groups. Also, ways should be sought to tie the new paid sick leave scheme to the paid sick leave programs that are currently available to employees at public institutions and large private-sector employers.

Over time, paid sick leave will have to be tied to the National Pension and disability pension. As disability pension is paid after a period of at least 18 months has elapsed since the first diagnosis of one's illness or injury, the period over which paid sick leave spans needs to be extended up to 18 months. Policymakers may consider offering those of low socioeconomic status a longer benefit period, in which case there is a need for more frequent medical examinations. Determining who should be entitled to paid sick-leave for how long requires a consistent and equitable process of evaluation. Many OECD countries

have in place an evaluation system whereby whether and for how long a worker should have paid sick leave is determined based on a statement of diagnosis from a doctor working for a public institution.