

Derbyshire Welfare Rights Service

‘Work-Related Activity’ and Benefits Sanctions for Employment & Support Allowance (ESA) Claimants

This information will only apply to you if you are on ESA in the ‘Work-Related Activity Group’. If you are in the ‘Support Group’, you cannot be required to undertake any Work Related Activity and your benefit cannot be sanctioned.

If you receive Universal Credit instead of ESA, contact our Helpline and see our range of UC leaflets on the Derbyshire website.

You can find more information about ESA and how it works in the following leaflets:

- Employment and Support Allowance – a brief guide
- Challenging Benefit Decisions
- Employment and Support Allowance – Challenging a decision that you are fit for work.

What is ‘work-related activity’?

Remember that if you are on ESA in the Work-Related Activity Group, it is accepted that you have ‘limited capability for work’. You are not a job seeker. People who are on ESA cannot be required to undertake work or seek work.

If you receive ESA in the Work Related Activity Group (WRAG) you will be asked to do some ‘work related activities’, and you can have your benefit reduced (sanctions) if you do not comply with this. However, what you are asked to do must be reasonable, and you may dispute any decisions made about you.

‘Work-Related Activity’ is intended to help you prepare to go back to work when you are well enough. It is defined as ‘activity which makes it more likely that you will obtain or remain in work or be able to do so’.

It is forward-looking, referring to getting you back to work as soon as possible in the future, but not immediately.

Work-related activity should be reasonable for you in your circumstances and should be helpful and relevant to your needs and abilities.

It should NOT include you having to look for a job or doing work, and you cannot be made to undergo medical treatment.

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People who are not required to undertake work-related activity

As well as those in the ESA Support Group, the following should not be asked to undertake work-related activity:

- If you are a full-time carer – entitled to a Carer's Allowance or you have a 'carer premium' included in your ESA, you should not be required to undertake work-related activity.
- If you are a lone parent with a child under the age of 3 you should not be required to undertake work-related activity.
- If you are a lone parent with a child under the age of 13, you should only be required to undertake work-related activity during your child's normal school hours.

Health and Work Conversation – at the start of your claim

You may be asked to attend a mandatory appointment called a 'health and work conversation' at the beginning of your ESA claim.

Although being in the Support Group exempts you from work-related activity and Work-Focused Interviews (see below) it does not exempt you from the Health and Work Conversation, which is usually held before you are placed in an ESA group as it takes place around the fourth week of the claim.

You should be exempt from the appointment if you are treated as having 'limited capability for work' because:

- you are terminally ill
- you are receiving chemotherapy or radiotherapy for cancer, or you are likely to receive it within six months or you are recovering from treatment
- you have been given official notice not to work as you have been in contact with an infectious disease or contamination
- you are pregnant and there would be serious risk to your health or your child's if you do not refrain from work
- you are pregnant or have recently given birth, you qualify for Maternity Allowance (MA) and you are within the MA payment period
- you are pregnant or have recently given birth but you are not entitled to MA or Statutory Maternity Pay (from six weeks before the birth, to two weeks after)
- you are a hospital inpatient
- you have regular treatment such as weekly haemodialysis for chronic renal failure/plasmapheresis/regular weekly total parenteral nutrition for gross impairment of enteric function
- you provide care of at least 35 hours a week to a severely disabled person who receives benefits such as Attendance Allowance, Disability Allowance and personal Independence Payment or has made a claim and is awaiting the outcome – for more information see our leaflet 'Benefits for Carers'
- you are a disabled student in full time education (seek advice)

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- you are a young person in full-time non-advanced education and you are without parental support (seek advice)
- you are a lone parent caring for a child aged under 1 year
- you are the main carer for a child you adopted within the last year
- you only receive National Insurance credits through limited capability for work

The appointment is a discussion with a Work Coach about what can be done to help you build up confidence and motivation for returning to work. Attending the meeting is compulsory but any actions you agree to are not compulsory and you can't be sanctioned for not carrying them out.

What are Work Focused Interviews?

If you are placed in the Work-Related Activity group, you will usually be asked to attend a series of 'Work Focused Interviews' (WFI) with a Work Coach from Jobcentre Plus or an organisation working with them: you will not be expected to apply for jobs, but the interview will cover possible ways to get back to work, including education, training and rehabilitation.

The interview should assess your prospects for work and assist and encourage you to think about how to obtain work and to identify future work opportunities or possible self-employment that would be relevant to your needs and abilities.

- You should be told that you are required to attend WFI, and the date, time and venue should be arranged with you.
- WFI can be carried out at your home or over the phone if it would be difficult for you or harmful to your health to go to the Jobcentre.
- You may be asked what activities you would be willing to undertake to improve your chances of going back to work, anything you have done previously and any progress you think you have made.
- You may be asked about your skills, qualifications and training, work history, and paid or unpaid work you are doing, what you aim to do in the future.
- You may be asked if you have any caring responsibilities, or how your condition affects your ability to seek work or remain in work.

It is essential that you attend these interviews and participate in them – if you do not, and you have no good reason for doing so, your benefit may be sanctioned. If you have good cause for not attending, challenge any sanction decisions and seek advice and support. See below for the effect on your benefit.

Who doesn't have to take part in WFI?

You don't have to take part in WFI if:

- You are old enough to qualify for Pension Credit (seek advice on this – owing to pension-age reforms the age at which you may claim PC is changing)
- If you are a lone parent with a child under the age of one year
- You are only getting National Insurance Credits through limited capability for work

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Can my interview be put back or cancelled?

This can only be done with the agreement of your Work Coach. A WFI can be 'waived' (so it doesn't go ahead) if your Work Coach thinks it would not be of help to you because you are going back to work or likely to start work soon.

WFI can be deferred (put back) if the Work Coach thinks it would be more helpful and appropriate to hold it at a later date.

What is an Action Plan or Claimant Commitment?

A written 'Action Plan' should state the types of work-related activity you will be expected to undertake- plus how long they should take and what outcomes are expected.

You should make clear what you think you can and cannot do: show the Work Coach any doctor's letters you may have, and show the 'points' that you have received under your ESA assessment as these show how the DWP itself has assessed your disability. Make sure the adviser knows everything that may affect your ability to do work-related activity.

If you are given an Action Plan, keep hold of it. It will be important to refer to it later.

If you claim 'new-style ESA' the document is called a Claimant Commitment, and it should set out what you are expected to do, what sanctions you would face etc.

If the plan or commitment is no longer helpful or relevant to you, for instance if your condition has worsened, you can ask for it to be reviewed.

Work Related Activity

You cannot be required to apply for a job or do work, and you cannot be required to undertake medical treatment.

Your Work Coach may suggest various activities, such as voluntary work experience or the Work and Health Programme, which is also voluntary for disabled people. You cannot be sanctioned for not doing voluntary schemes.

Any placement must be appropriate, given your condition. You should not be expected to apply for jobs or undertake work tasks at a placement. You cannot lose benefit for refusing or ending a voluntary work placement.

Sanctions

A sanction is a reduction in your benefit, and is applied if you have not complied with the work-related activity you have been asked to do. It is referred to as failure to meet a 'compliance

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condition'. You can challenge sanction decisions, for instance if they were not properly stated in your Action Plan – seek advice.

Work Focused Interviews

If you fail to attend or take part in a Work Focused Interview – or you fail to make an arrangement with your Work Coach for a WFI at a future date – you can have your benefit sanctioned.

Work-Related Activity

You can be sanctioned if you fail to:

- Undertake activity specified in your Action Plan
- Undertake 'alternative activity' – this must be notified to you by your Work Coach and it must be reasonable to expect you to do it
- Make an agreement to undertake such activity at a later date

NB – Any decision to sanction you should come from a Decision Maker (DM) at Jobcentre Plus – a Work Programme provider cannot sanction you, although they can refer your case to the DM to consider a sanction.

How much are sanctions and how long do they last?

£74.35 a week will be stopped from your benefit – you may be left with a very small amount of money, especially if you have other income which effects your ESA payment. The minimum you can be left with is 10p weekly.

Any Housing Benefit you get should not stop because of the sanction.

Benefit can be reduced for an open-ended period until you comply with the condition, and then in some cases, an additional period.

- One week only if this is the first time you have failed to meet a 'compliance condition'
- Two weeks for a second failure within a year of the first sanction
- Four weeks for a third failure (or more) within a year of the first and second

If you have failed to comply for fewer than 7 days in one week and you then comply before the end of 7 days, the open-ended sanction will not apply for that week, just the relevant fixed-term sanction.

Sanctions stop if you are then counted as someone who does not need to undertake work-related activity or WFI (for instance if your condition worsens and you are placed in the Support Group).

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What should I do if I am sanctioned?

The best advice is to comply with the requirement as quickly as possible- and seek advice about disputing the decision if you think it is wrong. If you have good cause for not complying (see above) you should put this to the DWP as quickly as possible if you haven't already done so.

Hardship Payments

If you receive Income-Related ESA (paid as top-up if you are on a low income) you may be able to ask for non-repayable hardship payments.

You must continue to satisfy the basic rules for getting Income-Related ESA.

A Decision Maker will consider if you have any other resources they think you can use to get by (including other benefits but they can't count Child Benefit and Child Tax Credit) and also if you are in danger of running out of essential items such as food, clothing, heating or accommodation and the length of time for which this risk will apply.

Hardship Payments are set at 60% of the ESA allowance for a single person – this amounts to £44.61 weekly. The payment may be 80% of your ESA allowance if you claimed from April 2017 and you receive no additional benefit for being in the Work Related Activity Group, or you or a member of your family is seriously ill, or pregnant.

Can I appeal against a sanction?

You have the right of appeal but you must ask the DWP to look at its decision again first- this is called a Mandatory Reconsideration. You can find how to do this in our leaflet 'Challenging Benefit Decisions'.

Can I complain about Jobcentre Plus and/or a work scheme provider?

Yes – if you are unhappy with the service you have received you may make a complaint (which is separate from appealing).

Jobcentre Plus should manage complaints that are made about the Jobcentre Plus as well as complaints that are made jointly about the Jobcentre and a scheme provider. Scheme providers should make details of their complaints procedures available.

If you receive Universal Credit and not ESA, see our range of leaflets on UC or contact the Helpline for advice.

Additional information can be found on our website, visit www.derbyshire.gov.uk/welfarebenefits

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To keep up-to-date with benefit changes in Derbyshire go to
www.derbyshire.gov.uk/benefitnews

Benefits Helpline – 01629 531535 or email
welfarebenefits@derbyshire.gov.uk

Monday, Tuesday, Thursday, Friday
11.00am – 4.00pm