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# Employment and Support Allowance

## Personal Legal Services

**Employment and Support Allowance (ESA) is a benefit for people who are too sick or disabled to work and who meet certain conditions.**

There are two types of ESA:

- Contributory ESA, which you can get if you have paid enough National Insurance contributions
- income-related ESA which is paid if your income and capital are low enough.

You may be able to get both contributory ESA and income-related ESA, depending on your circumstances. If you are already getting Incapacity Benefit or Income Support because of sickness or disability, you can continue on that benefit, although your claim will be converted into ESA at some point.

ESA is paid by the Department for Work and Pensions (DWP).

### Who can get ESA?

To get ESA:

- You must be 16 or over and under state pension age
- You can't work because of sickness or disability, and
- You have to be ordinarily resident in the UK
- You must not be entitled to Statutory Sick Pay (this only applies to Contributory ESA)
- For income-related ESA, you must not have any immigration controls on your stay here that would stop you getting the benefit
- If you are an EEA national you must also have the 'right to reside' in the UK and be habitually resident here.

You can't get income-related ESA if you or your partner are getting Income Support, income-based Jobseeker's Allowance or Pension Credit

- Your National Insurance contributions will be assessed for the contributory ESA
- Your savings or investments worth will be assessed for income-related ESA.

Some people will be unable to claim income related ESA and will have to claim Universal Credit instead. That all depends on where you live as well as your personal circumstances. UC is being rolled out over the country in stages. If you claim ESA in Universal Credit area Job centre plus will decide if you should be on Universal Credit instead. Many of the ESA rules still apply to Universal Credit if you have limited capability for work. The term 'new style ESA' is some times used by the Department of Work and Pensions (DWP) when referring to Universal Credit for people with limited capability for work.

Contribution ESA will not come under Universal Credit. So some people can claim contribution ESA and Universal Credit together.

### Showing you have limited capability for work

To get ESA, you usually have to prove you cannot work by sending in medical certificates to the DWP.

During the first 13 weeks after you claim, you will usually be asked to fill in a medical questionnaire called ESA50. You must return it to the DWP within four weeks.

## The limited capability for work assessment

Most people will have a face-to-face medical assessment with a healthcare professional to decide if they satisfy the limited capability for work assessment. It is very important that you go to this as you may not be entitled to ESA unless you attend.

The medical assessment will look at your ability to perform a range of activities. It looks at both physical factors and mental health problems you may have that make you unfit for work.

Some people don't need a face-to-face medical assessment, for example, people who are terminally ill and women who are pregnant and there is a serious risk to either them or their child if they work.

## The limited capability for work related activity assessment

The limited capability for work-related activity assessment is usually carried out at the same time as the limited capability for work assessment although the test is slightly different. The point of this test is to decide how much money you will get and what further activities you will need to do to help you get back to work.

After this test, if you have a severe disability, you will probably be put in a group known as the support group. After the first 13 weeks of your claim, you will get an extra amount in your ESA known as the support component.

If you are not in the support group, you will be put in the work-related activity group. After the first 13 weeks, you will get an extra amount in your ESA known as the work-related activity component.

If you are put in the work-related activity group, you can only get contributory ESA for up to 365 days. If you are put in the support group, your contributory ESA is not time limited in this way. Income-related ESA is not time limited for either group.

## If you are told your benefit is to be converted to ESA

If you are currently getting Incapacity Benefit, Severe Disablement Allowance (SDA) or Income Support paid on disability grounds, you will have a work capability assessment before a decision is made to convert your current benefit into ESA.

If your benefit is converted into ESA, you will not have another work capability assessment during the first 13 weeks of your

claim. You will get the support component or the work-related activity component from the beginning of your ESA claim, rather than after 13 weeks. If you do not satisfy the limited capability for work assessment, you will not qualify for ESA.

## Work-focused interviews

After your work capability assessment, you will usually be expected to take part in an initial work-focused interview. However, this does not apply if:

- You're put in the support group following the limited capability for work-related activity assessment, or
- You've reached state pension age, if you're a woman, or
- You've reached the state pension age of a woman with the same date of birth as you, if you're a man, or
- You're a single parent and you're responsible for a child under the age of one who lives with you.

You may be required to have further work-focused interviews while you get ESA in the work-related activity group. A personal adviser will discuss your work prospects, the steps you are prepared to take to move into work and the support you can get. An interview can sometimes be waived or put off until later.

## Work-related activity

If you are in a work-related activity group, you may also have to undertake work-related activity as well as work-focused interviews. However, this does not apply if you are:

- A lone parent with a child under three (lone parents with a child under 13 only have to undertake work-related activity during normal school hours)
- A carer receiving Carer's Allowance or a carer premium as part of your ESA claim.

Work-related activity can be things such as voluntary work, work trials, or a training programme but you won't have to apply for jobs or undergo medical treatment.

## When you can be sanctioned

A sanction means Jobcentre Plus reduces your ESA. You can only be sanctioned if you are placed in the work-related activity group and you are required to go to work focused interviews or do work-related activity. Jobcentre Plus can't sanction you if you're someone who doesn't have to go to work-focused interviews or do work-related activity. You cannot be sanctioned if you are in the support group.

You can be sanctioned if you fail to take part in a work-focused interview without having a good reason for not doing so. It can also happen if you don't take part in a work-related activity you have been asked to do, for example go on a training course, and you didn't have a good reason.

If you had a good reason, you should not be sanctioned. For example, if you were not able to attend because you were too sick, this would be a good reason. It is important you tell the Jobcentre Plus this straight away. This is known as showing you had good cause.

If you are sanctioned, this will continue until you take part in a work-focused interview or undertake a work-related activity you were asked to do. After this, the sanction will continue for a further period of one, two or four weeks, depending on whether this is the first, second or third time you haven't complied with the Jobcentre requirements.

If you don't agree with the decision to sanction you, you can appeal against it. You can also ask for a hardship payment while you are appealing or waiting for your sanction to stop.

### **How to claim ESA**

You are encouraged to make your initial claim for ESA by telephoning Jobcentre Plus on: **0800 055 6688** or textphone: **0800 023 4888**.

It is also possible to make a claim in writing. You can download a claim form from **www.gov.uk**.

You must provide your National Insurance Number when you make a claim and proof that it belongs to you. You will also have to provide the National Insurance Number of your partner living with you if you are claiming income-related ESA. If you do not have a National Insurance Number, you should be given one when you make your claim.

You will be sent a statement about your claim which you must check but you do not have to sign it or return it. You will have to gather any further evidence required including a valid medical certificate. If you write your mobile number in the top right hand corner of your medical certificate, the DWP say they will text you to let you know when they get it.

### **If your benefit is converted to ESA**

You do not need to make a claim if the DWP converts your Incapacity Benefit, Severe Disablement Allowance (SDA), or Income Support paid on disability grounds into ESA. Instead, the DWP will automatically transfer you to ESA and your current benefit will stop.

However, you will still have to provide information for the DWP to work out whether you are entitled to ESA. For example, you will have to fill in a limited capability for work questionnaire.

### **How is ESA paid?**

ESA is usually paid direct into a bank, building society or Post office card account. If you cannot open or manage a suitable account, you should let the office which pays your benefit know. It is possible to pay the benefit by Simple Payment in some circumstances. You will be issued with a Simple Payment Card, which will allow you to collect your benefit at a PayPoint outlet displaying the Simple Payment sign.

### **How much is ESA?**

How much ESA you can get depends on whether you are entitled to contributory ESA or income-related ESA or both. It also depends on whether or not you are in the first 13 weeks of your claim. This is because you are entitled to the support component or the work-related activity component if you continue to get ESA after 13 weeks. Some people do not have to wait 13 weeks before they can get a component, for example, people who are terminally ill.

You will be entitled to income-related ESA if your income is less than the amount the Government thinks you need to live on. You'll get a basic allowance which tops up your income to the amount that the Government thinks you need. This basic allowance is less if you are under 25.

There are certain rules that are used to work out how much income you have. These include that some types of income, for example child maintenance, are ignored when working out your income and how much income-related ESA you should get.

On top of the basic allowance, you may qualify for some premiums, for example, if you are severely disabled or if you are a carer. You may also be able to get some money towards your housing costs if you own your own home. After the first 13 weeks:

- You will be entitled to a support component or a work-related activity component
- If your basic allowance was smaller because you are under 25, it will now be increased.

### **If your benefit is converted into ESA**

You may also be entitled to an amount known as a transitional addition. This is paid so you won't get less money than you were getting before. However, this money will be reduced over time and will eventually end.

## Working while getting ESA

Although, ESA is usually paid to people who are too ill or disabled to work, you may be able to get it even if you are doing certain types of work. Examples include working as a councillor, being a carer and doing work known as permitted work. Permitted work is work that can be done without affecting entitlement to ESA. The rules about permitted work are complicated but it is usually work of less than 16 hours a week where your earnings are no more than a certain amount.

If you want to find out more about permitted work, you should consult an experienced adviser, for example, at a Citizens Advice Bureau.

## Getting ESA backdated

If you were entitled to ESA before you made your claim, you may be able to get it for an earlier period. This is called backdating. ESA can be backdated for up to three months before the date of your claim, and you do not have to give a reason for your late claim. You should explain when you make your claim that you want to claim backdated benefit and give the date you became entitled to ESA.

## Waiting days before ESA is paid

If your period of limited capability began on or before 27 October 2014, most people cannot normally get ESA for the first seven days. These days are known as waiting days. It can be possible to get an advance during waiting days, contact your local Citizens Advice Bureau to look into this further. In some cases, you can get ESA for these waiting days, for example, if you have claimed ESA before in certain circumstances.

## Reporting a change of circumstances

If something changes that could affect whether you get ESA you must tell the DWP what's happened. Changes of circumstances include things like if you move house or if your condition improves or gets worse. If you deliberately fail to report a change of circumstances that affects the amount of benefit you are getting, you may be accused of benefit fraud or of causing an overpayment.

To report a change of circumstances, call the ESA helpline. You will be asked to confirm your National Insurance Number and your date of birth. All lines are open Monday to Friday, 8:00am - 6:00pm

Telephone: **0345 608 8545**

Welsh phone: **0345 600 3018**

Textphone: **0345 608 8551**

You can also use the 0845 code to call any of the 0345 numbers. Before you call, check with your phone company which code is cheaper for you. In Northern Ireland, you can call the ESA helpline on **0300 123 3012** to report a change of circumstances. Alternatively, you can call **0845 602 7301**.

## Civil penalties for causing an overpayment

In some cases in England, Wales and Scotland, you may have to pay a civil penalty if you do something which causes an overpayment. This can happen if, for example, you give wrong information or you keep quiet about something, and as a result you get more ESA than you're supposed to be getting. You can only be asked to pay this penalty if you haven't committed fraud. If you have committed fraud, different rules apply. You can appeal against a decision to impose a civil penalty.



“Throughout an incredibly painful and difficult time Alison provided a sensitive, well-explained and thorough service leaving me feeling reassured at all times. A first rate service all round!”

Client, 2016

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