



## *Employment & Support Allowance*

### **What is Employment & Support Allowance?**

Employment & Support Allowance (ESA) is a benefit for people who are unable to work because of illness or disability. The DWP call this having 'limited capability for work'. Employment & Support Allowance replaces Incapacity Benefit and Income Support for people who are unable to work for all new claims after October 2008.

There are two types of Employment & Support Allowance if you cannot work due to your health condition: contribution based ESA because you have previously worked and paid national insurance contributions or Income Related ESA because your household income is low.

**Contributory** Employment & Support Allowance is paid to claimants who have paid sufficient national insurance contributions over the previous two complete benefit years. As a rule of thumb this means you might qualify if you have been working full time for the past three years.

Contributory Employment & Support Allowance is paid at the single person's rate for a maximum of twelve months for those in the Work Related Activity Group; if you are placed in the Support Group (\*see below) there is no time restriction. If you have a partner or other household costs you might be able to also receive a 'top up' from income related ESA.

**Income related** Employment & Support Allowance is a means tested benefit and the amount you might get depends on your family circumstances and any other income or capital/savings you might have. You may be able to access help with mortgage interest costs. You can receive both contributory & income related Employment & Support Allowance at the same time.

One of our specialist benefit advisors can help work out your benefit entitlement – please come to one of our [drop-in sessions](#) for further advice and assistance.

### **When can I claim Employment & Support Allowance?**

You cannot qualify for Employment & Support Allowance if you are currently getting Statutory Sick Pay (SSP) from an employer. SSP is usually paid for 28 weeks. If your SSP has ended but you still get

company sick pay you might be able to also claim Employment & Support Allowance

You can claim Employment & Support Allowance if you have been self employed, or you are still employed but not getting SSP or if your work has ended or if you have not been working.

### **What do I need to do to claim Employment & Support Allowance?**

Claim by telephoning 0800 055 66 88.

When you make a claim for Employment & Support Allowance and for the first 13 weeks of your claim (this is called the Assessment Phase) you demonstrate that you are not well enough to work by providing a medical certificate (now sometimes called a 'fit note'); your GP usually will issue this, but you can sometimes also get one from your specialist or the hospital.

You need to make sure that you keep up to date with your medical certificates -if the certificate runs out your payments could stop.

### **The Work Capability Assessment**

Fairly soon after claiming ESA (during the Assessment Phase) you should be sent a 'limited capability for work' questionnaire (ESA50 form); this is the first step in the DWP making their own assessment of whether you meet the conditions to continue to receive Employment & Support Allowance

**Please see our factsheet:** [“Hints on completing the ESA50”](#)

**Note Income Related Employment and Support Allowance will gradually be replaced by Universal Credit.**

## The Work Capability Assessment

In most cases you will also be asked to attend a medical assessment. You can reclaim your travelling expenses and, if you can show that you cannot make it otherwise, ask for help to book and pay for a taxi; you will need a doctor's letter confirming you are unable to use public transport. You can ask for someone to visit you at home, but this can only happen in exceptional circumstances and you will again need a doctor's letter.

**Important Note:** If you do not return the completed questionnaire or do not attend the medical assessment your benefit could stop unless you contact the DWP and provide a good reason for failing to comply. You can appeal against a decision that you did not have 'good cause' for either not returning the ESA50 form or not attending the medical assessment but you will not be paid benefit whilst appealing.

To decide whether a claimant has limited capability for work the DWP apply their own Assessment. They use a series of activities and decide whether the claimant has any restriction on their ability to perform each activity. Depending on the how much difficulty is experienced points are awarded. The claimant must score in excess of 15 points to satisfy the Assessment. The activities used and the points allocated are laid out in law. It is important to note that this Assessment does not take into account whether the claimant can carry out their usual occupation or any work that they are qualified for – it is a general assessment of the ability to perform everyday actions in a *theoretical* work place setting. In some exceptional circumstances a claimant might be accepted as having limited capability for work, even if they do not score enough points to satisfy the Assessment, if there is a risk to their own or someone else's, physical or mental health if they were found not to have limited capability for work.

Some groups of people can be treated as having limited capability for work without having to score points under the Assessment if they meet specified conditions or are having specific types of treatment.

If the claimant is accepted as having limited capability for work a further assessment is applied and they are then placed in either the **work related activity group** or the **\*support group**. For people in EITHER group, the DWP accept they are not fit for work. For claimants who are placed in the work related activity group there is an expectation that they may have some ability to discuss their condition with the DWP and consider the barriers they face in finding work. There is no such requirement for those in the support group.

The DWP decision on whether you have limited capability for work overrides your doctor's assessment. If you are not happy with a decision on your limited capability for work or limited capability for work related activity please see our factsheet: "Challenging Benefit Decisions". If you are appealing against a limited capability for work decision you cannot receive payment of ESA during the mandatory reconsideration and may have to claim Jobseekers Allowance. Payment of ESA may restart once an appeal has been registered.

**You cannot be paid ESA if you reclaim following a negative decision unless you have a new condition or your existing condition has significantly deteriorated.**



Community Law Service offer specialist benefit advice to assist with identifying benefit entitlement, claiming benefits, understanding benefit decisions and registering benefit challenges and appeal. We can offer appointments to give advice and assistance to prepare for benefit appeals.