

Freedom of Information request IR 438/2013

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Information request

"If, as a result of a WCA, such claimants are found to have LCW and summoned to attend work focused interviews is the DWP advisor obliged to accept the claimant's employers position that the claimant is doing everything expected of them to maximise their chances of returning to work? "

I am well aware of what claimant's are expected to do if placed in the WRAG and yet the DWP answer is totally focused on the claimant rather than what my question covered, the DWP advisor. Please answer the question or justify why the DWP is refusing to do so.

In its response to my second question the DWP stated:

"However, the requirement to be actively seeking and available for employment would mean that that the claimant would need to demonstrate that these conditions were satisfied. This would mean that the claimant would need to be prepared to give up the original employment if a new opportunity arose."

Please direct me to the relevant legislation that enables the DWP to compel a claimant to terminate existing employment? (i.e. end an existing contract of employment by which the claimant may be receiving sick pay, pension contribution credits, private health care or other benefits).

I must also register my complete horror that a DWP employee could cite the Disability Discrimination Act 1995 in their response to my request. I would have thought that all DWP employees would have known that this act has been repealed and was replaced by the Equality Act 2010. Please explain why a DWP employee is apparently unaware of a key piece of primary legislation that has been enacted for 3 years?

A full history of my FOI request and all correspondence is available on the Internet at this address:

http://www.whatdotheyknow.com/request/employed_esa_claimants

DWP response

I am satisfied that the original reply correctly answered your questions, but the following clarifies the answer to your first question and deals with the supplementary point on your second question.

Advisers are not obliged to accept any assertion from an employer that their employee, and DWP claimant, is doing everything expected of them, to maximise their chances of returning to work.

Advisers will consider any evidence - including any provided by an employer - regarding the claimant's Limited Capability for Work, when they are conducting a work focused interview and agreeing an action plan.

Section 1 of the Jobseeker's Act 1995 provides that, in order to be entitled to Jobseeker's Allowance, a claimant must be actively seeking and available for employment. This means where a suitable job opportunity arises, the claimant must accept it. At that point, the claimant must decide whether or not to seek to continue with the previous employment. It may be that the new job is temporary and would not necessarily lead to the need to resign from the existing contract. This would of course depend on whether or not the employer accepted this.

Therefore, although our legislation certainly does not allow us to *require* a claimant to leave their employment, they may need to do so to meet the conditions of entitlement for Jobseeker's Allowance.

I apologise for the mistake in the legal reference to the Disability Discrimination Act, but this does not affect the principle as the equivalent provision is retained in the new Act.