Utrecht University WIA Reintegration Scheme and WIA Penalty Scheme

I. WIA Reintegration Scheme

Introduction

This scheme sets out the obligations of Utrecht University (UU) and its current or former employees regarding reintegration under the Work and Income (Capacity for Work) Act (Wet Werk en Inkomen naar arbeidsvermogen, WIA) and shall apply in follow-up to the UU absence protocol that relates to the first two years of illness.

Target group

The scheme shall apply to current or former employees who receive a benefit allowance under the Return to Work (Partially or temporarily Disabled Persons) Scheme (Wet Werkhervatting Gedeeltelijk Arbeidsgeschikten, WGA) based on 35-80% or 80-100% disability after 2 years of illness. If employees receive a benefit allowance under the Full Invalidity Benefit Regulation (Inkomensvoorziening Volledig Arbeidsongeschikten, IVA) (80-100% and permanent disability) or do not receive a benefit allowance (< 35% disability) this scheme shall not apply.

The Employee Insurance Agency (UWV) will determine whether an employee will receive a WGA benefit allowance and the level thereof. Current or former employees should direct any questions regarding WGA benefits to the UWV.

WGA excess bearer status

Utrecht University is the excess bearer (eigenrisicodrager, ERD) for the WGA. This means that Utrecht University is responsible for the costs of the WGA benefit allowance and the return to work (reintegration) of the relevant disabled current or former employee for a period of up to 10 years after a WGA benefit has been granted. Utrecht University will be supported by Robidus* in the execution of reintegration activities.

*Robidus supports and supervises employers in the implementation of laws and regulations, claims management and risk reduction in the field of social security.

Employer obligations

Utrecht University must make adequate reintegration efforts. This means that after a WIA benefit allowance has been granted, an assessment will first of all evaluate the possibility for the employee to be re-employed in their original position for their remaining earning capacity (part time) or in other appropriate work at the university. If this cannot be achieved, a request for dismissal will be submitted to the UWV. Even following re-employment or dismissal, Utrecht University will remain responsible for reintegration, with implementation facilitated by Robidus.

Reintegration with WGA benefit allowance

- Employees leaving employment

If an employee with a WGA benefit allowance cannot be re-employed and leaves employment entirely, Robidus will take over any reintegration activities from Utrecht University. Robidus will send the former employee a questionnaire twice a year containing questions regarding work, income and their health. Depending on an employee's personal circumstances, this may be followed up by a request to attend a consultation with an external occupational physician and reassessment at the UWV. In addition, an employment expert may be called in if there are opportunities available for reintegration.
• Employees in employment

If an employee with a WGA benefit allowance is re-employed at the UU in their own position or in an appropriate job suitable to their remaining capacity, Robidus’ WIA advisor will discuss the state of affairs with the university’s reintegration expert for the relevant employee. Depending on an employee’s personal circumstances, this may be followed up by a request to attend a consultation with an external occupational physician and reassessment at the UWV. If working hours can be increased, an external employment expert may be called in.

Employee obligations

Even when receiving a WGA benefit allowance, a current or former employee will still be obliged to actively seek out suitable work and to accept any such work, taking into account the possibilities outlined in the WIA assessment. Any current or former employee must respond to a request to attend a consultation with an external occupational physician and they must honour their agreements with any reintegration company or agreements in the context of an intervention.

In addition, any current or former employee is obliged to provide all information that may affect the WGA benefit allowance granted and that allows Utrecht University and Robidus to monitor the employee in terms of their reintegration process – even if the employee is leaving employment. For example, this includes passing on any changes of address, changes to income and changes to their health and work capacity.

Sections 27 to 30 of the Work and Income (Capacity for Work) Act (WIA) all set out obligations for current or former employees holding a WGA benefit allowance (see Appendix).

Penalties for non-compliance with obligations

In the event that current or former employees do not cooperate with their reintegration process, either at all or sufficiently, do not comply with agreements or fail to provide relevant information, this may affect their WGA benefit allowance in the form of a penalty measure. This has been outlined in detail in II. WIA Penalty Scheme.

This scheme, as amended in consultation with the University Labour Representation Board on 4 December 2019, shall come into force on 31 December 2019 and will replace all previous schemes.
II. WIA Penalty Scheme

Introduction

Since 1 July 2011, Utrecht University has been the excess bearer in respect of the Return to Work (Partially or temporarily Disabled Persons) Scheme (WGA) and, under the Work and Income (Capacity for Work) Act, is authorised to impose penalties if current or former employees do not comply with the obligations as outlined above in the WIA Reintegration Scheme and in this WIA Penalty Scheme.

In the application of penalties, the Executive Board of Utrecht University will act as the independent administrative body instead of the UWV. In doing so, the Executive Board shall be constrained by the provisions of the General Administrative Law Act (Algemene Wet Bestuursrecht, Awb). This means that the Executive Board must provide adequate reasons for its decision to impose a penalty and is bound by the decision-making periods of the Awb. It must also give the current or former employee the opportunity to submit a notice of objection against the imposed penalty.

Obligations

Under the Work and Income (Capacity for Work) Act, Utrecht University and the current or former employee are both obliged to do everything in their power to ensure the current or former employee is able to reintegrate as much as possible.

The WIA Reintegration Scheme sets out the obligations of the UU (based on section 42 of the WIA) and those of the current or former employee (based on sections 27 to 30 of the WIA). The reintegration obligations of the current or former employee in sections 27 to 30 of the WIA are divided into the following categories in the Measures Decree on Social Security Acts (Maatregelenbesluit Sociale Zekerheidswetten):

category 1: administrative obligations, duty of information provision and obligation to comply with supervision regulations.

category 2: duty of cooperation, including obligation to cooperate with medical examinations, attending a consultation at the UWV and responding to questions of the UWV.

category 3: obligation of the current or former employee to prevent disability, to cooperate with the reintegration process and to obtain suitable work.

category 4: the current or former employee may not cause disability intentionally and must refrain from any misconduct.

Penalty
If the current or former employee should fail to comply with these obligations, this may affect their WGA benefit. In such cases, the UU may impose a temporary or permanent penalty on the WGA benefit. There are minor and serious violations. The duration and level of the penalty will depend on the severity of the violation.

**Penalty grid**

The level of the penalty will be based on the standard penalty per category in accordance with the Measures Decree on Social Security Act. Utrecht University may decide to reduce or increase the penalty (please see under minimum or maximum below) if the violation of obligation can be attributed to the current or former employee to a greater or lesser extent. Based on the general principles of good governance, the UU must consider whether the penalty, in view of all circumstances of the case, is proportionate to the severity of the violation. There will be no penalties lower than € 25.

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<thead>
<tr>
<th>Category</th>
<th>Standard</th>
<th>Minimum</th>
<th>Maximum</th>
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<tbody>
<tr>
<td>1</td>
<td>5% of the benefit amount for at least 1 month</td>
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<tr>
<td>2</td>
<td>10% of the benefit amount for at least 1 month</td>
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<tr>
<td>3</td>
<td>25% of the benefit amount for at least 1 month</td>
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<td>4</td>
<td>Overall refusal of benefit allowance</td>
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**Repeat violations (recidivism)**

Repeat violations refers to a situation in which the current or former employee fails to comply with the same obligation for a second time within a two-year period. In such cases, the corresponding penalty (and the minimum penalty of € 25, where applicable) will be increased by 50%.

**Concurrence**

In the event of infringement of more than one obligation, where the failure to fulfil these obligations stems from a single cause, this will only result in the imposition of a single penalty (the most severe).

**Imposing penalties**

The UU will initially give the current or former employee a written warning. If their conduct is not corrected within two weeks, the current or former employee will be informed of the proposed penalty in the form of a proposed decision from Utrecht University. The current or former employee will again be given the opportunity to comply with the obligation within two weeks. If this does not occur, the employee will receive a final decision imposing a penalty.

The UU will inform the UWV of the level of the imposed penalty. The UWV will offset the penalty with the WGA benefit that will be paid to the current or former employee.

If the current or former employee should object to the imposed penalty, the objection procedure will come into effect. Any notice of objection must be submitted to the Executive Board of Utrecht University within six weeks after the final penalty decision was issued.

The objection will have no suspensory effect. The imposed penalty will be upheld until the penalty period has ended, unless the current or former employee’s objection is successful (Executive Board) initially or on appeal (court or Central Appeals Tribunal).
This scheme, as amended in consultation with the University Labour Representation Board on 4 December 2019, shall come into force on 31 December 2019 and will replace all previous schemes.

Appendix 1: Sections 27 to 30 of the Work and Income (Capacity for Work) Act (WIA)

Section 27. Duty to provide information and cooperation with supervision

1. Insured persons who have applied for a benefit allowance or are entitled to a benefit allowance under this Act and the institution to which a benefit is paid under this Act pursuant to section 71, will upon request or at their own initiative provide the UWV with all information, of which it must be reasonably clear to them that it may affect their entitlement to the benefit allowance, the level of the benefit or the payment of the benefit, as soon as possible, including any information in the context their reintegration. This duty does not apply if those facts and circumstances could be determined by the UWV as authentic data on the basis of statutory requirements or can be obtained from the administrative bodies to be designated by ministerial decree. Ministerial decrees will determine the data to which the second sentence applies.

2. Insured persons who have applied for a benefit allowance or are entitled to a benefit pursuant to this Act are required:

   a. to comply with any request from the UWV or from one or more persons appointed by the UWV to be present at a location to be determined by or on behalf of the UWV to answer questions as referred to in part b, to cooperate with examinations as referred to in part c, or to comply with supervision regulations as referred to in part d;

   b. to answer questions posed by the UWV or by one or more persons appointed by the UWV in connection with their entitlement to a benefit under this Act;

   c. to cooperate in examinations carried out by the UWV or by one or more persons appointed by the UWV;

   d. to comply with the supervision regulations established by the UWV that are necessary for the effective implementation of this Act;

   e. to provide the UWV with immediate access upon request to a document relating to their person as referred to in section 1 (1) under 1º to 3º of the Compulsory Identification Act (Wet op de identificatieplicht);
f. to refrain from any serious misconduct towards the persons and bodies responsible for the implementation of this Act during the performance of their activities.

3. The duties as referred to in subsections one and two apply mutatis mutandis in respect of:

a. the reintegration company that is carrying out the activities on behalf of the UWV or excess bearer; or

b. persons that have been appointed by a reintegration company as referred to in part b with the permission of the UWV or the excess bearer, provided that this is necessary for the execution of the responsibilities assigned to these persons and legal entities by law or contract.

4. Insured persons that are entitled to a benefit allowance under this Act and who do not comply with their reintegration obligations when participating in a reintegration process will inform the reintegration company of the relevant reasons immediately.

5. Insured persons that have applied for a benefit allowance or are entitled to a benefit under this Act are obliged to comply with the instructions issued by the UWV or by the expert appointed for that reason to be admitted for observation or to stay in a designated facility.

6. With regard to the application of subsections one and two, insofar as this should relate to compliance of the employee or former employee with the obligations regarding their reintegration, the excess bearer will act instead of the UWV.

7. This section applies mutatis mutandis to persons who are not insured under this Act during the waiting period, with the exception of the first day of that waiting period.

8. Employers who have applied for or are entitled to a grant as referred to in section 36 and persons, as referred to in subsection one, being not insured, who have applied for or are entitled to a provision as referred to in section 35 will upon request or at their own initiative provide the UWV with all information, of which it must be reasonably clear to them that it may affect the provision or granting or the duration or level of the reintegration instrument.

Section 28. Obligations to prevent the emergence and continuation of entitlement to benefit allowance under this Act

1. Insured persons will prevent the emergence of disability or reduced capacity for work and limited the continuation of disability or reduced capacity for work insofar as this can reasonably be expected of them.

2. During the waiting period and the extended period, referred to in section 24 (1), and the period referred to in section 25 (9), insured persons will be required:
a. to cooperate with the reasonable requirements or measures put in place by their employer or by an expert appointed by that employer that are aimed at enabling them to perform suitable work; and

b. to make sufficient efforts aimed at reintegration;

c. to undergo adequate treatment, according to general medical standards, for their illness or deficit.

For the purposes of this subsection, employer also means the excess bearer, referred to in section 1 (1) under h of the Sickness Benefits Act (Ziektemwet).

3. This section applies mutatis mutandis to persons who are not insured under this Act during the waiting period, with the exception of the first day of that waiting period.

Section 29. Duties aimed at increasing opportunities to carry out work

1. Insured persons that are entitled to a WGA benefit are required to seek or obtain suitable work to a sufficient extent.

2. In order to comply with the duty referred to in subsection one, insured persons that are entitled to a WGA benefit are in any case required:

   a. to undergo medical treatment or follow the instructions of a medical doctor if the UWV or the excess bearer or the reintegration company, acting on behalf of the UWV or the excess bearer, has issued such instructions and not to impede their recovery;

   b. to cooperate with activities or work aimed at their mobilisation into employment that the UWV or the excess bearer deem necessary to obtain opportunities to carry out suitable work;

   c. to contribute to adaptations of the workplace and to the personalised facilities that the UWV or the excess bearer have provided to obtain opportunities to carry out suitable work and, if necessary, attempt to achieve that adjustment and those facilities;

   d. to contribute to the drafting of the vision for reintegration and the reintegration plan;

   e. to comply with the obligations included in the vision for reintegration and the reintegration plan.

Section 30. Duties aimed at mobilisation into employment

1. Insured persons that are entitled to a WGA benefit allowance are required:

   a. to carry out suitable work if they are given the opportunity to do so;

   b. to seek suitable work to a sufficient extent; and
c. not to lay down requirements in relation to carrying out work that would hinder the acceptance or obtaining of suitable work.

2. Insured persons who do not use their remaining earning capacity, as referred to in subsection 7.2, fully and who are entitled to a WGA benefit allowance are required to register at the UWV as job seekers, if they are entitled to do so under section 30b (1) of the Work and Income (Reorganisation) Act (Wet Structuur uitvoeringsorganisatie werk en inkomen) and are required by the UWV or the excess bearer to do so.

3. Insured persons who are entitled to a wage-related benefit payment of the WGA benefit allowance and carry out work in an employment relationship are required:

   a. to refrain from any misconduct that could be regarded as a compelling reason within the meaning of Section 678 of Book 7 of the Civil Code (Burgerlijk Wetboek);

   b. to ensure that the employment relationship is not terminated by or at their request without the continuation thereof being related to objections such that continuation of that relationship could not reasonably be required of them.

4. Suitable work referred to in subsection one means all work that has been calculated and considered to be suited to the strengths and skills of the employee, unless acceptance cannot be required of them due to reasons of a physical, mental or social nature. Work that is not considered suitable relates to work on the basis of an employment relationship in Chapter 2 or 3 of the Sheltered Employment Act (Wet sociale werkvoorziening) and work on the basis of which a person is not considered as an employee within the meaning of Unemployment Act. Further rules regarding suitable work may be established by or pursuant to a General Administrative Order.

5. Absence of objection to or acquiescence with the termination of an employment relationship by an insured person, as referred to in subsection three, by or at the request of the employer will not result in violation of the duty referred to in subsection three, heading and under a.