

FIGHTING HOSTILITY WITH SOLIDARITY: REFLECTIONS AND ADVICE FOR EU AND EEA CLAIMANTS



By Edinburgh Coalition Against Poverty

<http://www.edinburghagainstopoverty.org.uk/>

Below you find some notes based on ECAP's experience in supporting EU citizens working in the UK and facing the DWP. Please note this article is by no means a statement of the law on EEA/ EU citizens' rights to benefits, this is a very complicated subject and what we are trying to do here is indicate areas which if relevant you need to investigate further – and above all we want to give solidarity and encourage migrant claimants to stand up for their rights and contest the unfair and discriminatory treatment they are getting.

1. Retaining Worker Status

It is really important to establish that your employment has resulted in you gaining EEA Worker status. Then if you lose your job it is vital to establish that you have EEA Retained Worker Status – we suggest you immediately register with the Jobcentre. Any period between your last day of employment and your registration will be used against your claim to demonstrate you have automatically lost your worker status.

If you are denied retained worker status in these circumstances you can demonstrate that you do indeed have this status by showing evidence of your job seeking activities within the period between the end of your last job and your registration as a Jobseeker. Keep evidence as this will be useful and make sure that this evidence is filled in your record on the first instance you meet your assigned job coach. They might tell you this is not necessary but it is. Often Jobcentre staff are completely unaware of the rights of EU and EEA citizens and seem to have very little knowledge of the tests that they are conducting.

You can also retain EEA worker status:

- if you are temporarily unable to work because of an illness or accident
- if you are undertaking vocational training
- if you have given up work because of the physical constraints of pregnancy or childbirth

Before arguing that you have retained your worker status, check whether you have ceased to be a worker. For example, if you are off work on unpaid sick leave but you can return to your job when you are better, you are still a worker and so you do not need to argue that you have retained your worker status.

2. Contest unlawful DWP Decisions

The main lesson from our victory is to keep contesting DWP decisions. Don't give up! In our case we persisted in pursuing the issue with different levels of decisionmakers. First we successfully contested the decision not to award Retained Worker Status. Then, having won that victory, we went back to the decisionmakers and made the case for Permanent Right to Reside, and our migrant comrade won that status. We ended up dealing with the EU dispute resolution team of decisionmakers, who proved ready to consider the evidence we presented.

Another lesson learnt is that many jobcentre staff who carry out these interviews have no idea what they are doing! Many don't appear to have had any training in residency rights and related issues. In our case a jobcentre interviewer, who appeared sympathetic, declined to take evidence of employment and job-seeking presented at a Habitual Residence Test, stating that it was not needed. The claimant was then denied retained worker status on the grounds that this particular evidence had not been presented! Thus it is important to research the significance of the tests/ appointments you are attending, and insist the interviewer take the evidence which you have ascertained is needed.

Expect that the DWP will try and put you through tests such as the Habitual Residence Test or the Genuine Prospect of Work test when they are not legally required – and be ready to resist this. In our case we continuously insisted that the GPOW was not required for our claimant, the DWP keep insisting it was, and then at the last minute the Jobcentre agreed with us and cancelled the test!

3. Investigate if you have the Permanent Right to Reside

If you have been living in the UK for 5 years or more you may well have gained the Permanent Right to Reside. This status means that you automatically meet the residency requirements for any benefits which need them.

To qualify for the Permanent Right to Reside you need to have had 5 consecutive years "meeting Treaty requirements" which could be as a worker (including if you retain your worker status); as a self-employed person (including if you retain your self-employed status); as a jobseeker; as a self-sufficient person; as a student; or as a family member of any of the above. The five years can be put together through a combination of the different ways of qualifying.

For the categories of self-sufficient person and student you need to have what is termed Comprehensive Health Insurance. As a EU Citizen you probably hold some form of a Comprehensive Health Insurance. Don't let them find excuses to deny your rights: On your first contact with DWP at the phone registration moment you will be asked many questions about your status. One of these questions will be about comprehensive health insurance.

The DWP often claim that to have comprehensive health insurance you need to have taken our private health insurance – but this by no means the only way you can obtain comprehensive health insurance. Remember that as a EU citizen your country will have very likely an agreement to cover for any medical expenses you could be subject. This is your comprehensive health insurance. So if you are not sure, just say you have one and don't answer no to this question as this can be used as an evidence of your lacking any health insurance and it will be hard to demonstrate otherwise. Follow the Work of the EU Rights Clinic for more info on this matter that resulted extremely useful for our claimant.

More info

Oficina Precaria – offer free solidarity and support for people in a precarious employment situation as a casual worker and as a migrant. We offer legal advice that takes care of answering questions and offers information on workers' rights and bureaucratic paperwork, completely free of charge.
<http://piescotland.org/en/>

EU Rights Clinic – a joint initiative of the University of Kent in Brussels, the Kent Law Clinic and ECAS, the European Citizen Action Service. Their notes on the E104 Form and Comprehensive Health Insurance resulted crucial in the successful application of one of our claimants case.
<https://blogs.kent.ac.uk/eu-rights-clinic/>

Aire centre – a specialist charity whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights.
<http://www.airecentre.org/index.php>

Child Poverty Action Group – provides excellent information from their Welfare Benefits and Tax Credits handbooks (see in particular their section on “right to reside”, advising bme communities project and benefit for migrants handbook:
<http://www.cpag.org.uk/>

Swansea Council – produced a useful guide for means tested benefits for EEE Nationals (Updated April 2017):
https://www.swansea.gov.uk/media/21976/Means-tested-benefits-for-European-Economic-Area-Nationals/pdf/EEA_Nationals_leaflet_new_version.pdf