

## The Gatekeeper's Guide

Addendum version 2: Eligibility for Permanent Incapacity Benefit (Restrictions) Act (the Gatekeeper Improvement Act) in connection with COVID-19 dated 010420

### Reason

The social consequences of the measures under COVID-19 mean that this also influences the way in which the employers' reintegration efforts are assessed in the context of the Gatekeeper Improvement Act (WVP).

### Introduction

If the employer has failed to fulfil its gatekeeper obligations without sound grounds, UWV (Dutch Employee Insurance Agency) will impose an obligation to continue to pay wages for a maximum of 52 weeks (Article 25, paragraph 9, WIA). The starting point is that the assessment of the reintegration report (RIV) takes place within the limits of reason. Due to the Covid-19 crisis, there may be situations that the obligations surrounding the RIV (art 25 WIA, regulation procedure first and second year of illness, policy rules gatekeeper assessment framework) threaten to exceed the limit. It must be established whether, in view of special circumstances, sufficient reintegration has in all fairness been completed and / or whether the expected procedure could or could not be followed. The same also applies to the RIV-EDV and the RIV ERD-ZW.

This report will not provide an answer to all situations that the implementation will be confronted with. Labour experts, insurance physicians and supporting disciplines will frequently be asked to provide customized solutions in these situations.

### Review

#### 1. Customization

The starting point of the assessment is still the Gatekeeper's Guide. However, if the review of the reintegration report leads to the conclusion that insufficient reintegration efforts are being made, we must consider the measures taken in the context of the Covid-19 situation. This means that we have to deliver customized solution. What does this mean? The employer will need to describe how Covid-19 has influenced the reintegration process or its recovery. On the basis of this, and as labour expert ('arbeidsdeskundige'), you must assess the plausibility and determine whether there are sufficient arguments to assume a sound ground for the possible stagnation of the reintegration

If there is reason to share the company physician's capacity report with the insurance physician to be assessed, the insurance physician (albeit with limited resources) has to assess if the company physician's advice regarding the working capacity can be followed.

The process supervisor and team support [leader] assess whether the RIV is complete. If documents have not been submitted or have not been filled in completely, they will need to assess whether the absence of the relevant documents is acceptable due to the COVID-19 measures taken. This is only possible if the documents explain why they have not been fully completed or if an accompanying letter explains why certain documents are missing. It is important to also pay attention to the position of the employee.

#### 2. Assessing the RIV

##### RIV may or may not be complete

- In principle, the policy is unchanged because information can also be exchanged electronically (even if, for example, the company is forced to close).
- No physical signatures [wet ink] on documents are required. The employee can express his vision of the reintegration with appropriate documents submitted (either in the RIV or in the application).
- If the completion period (5 working days) is likely to be exceeded due to Covid-19 and if the timelines from the RIV / WIA permits, some leniency is permitted. The Gatekeeper's Guide states: if there is an extraordinary reason that missing information cannot be submitted within 5 working days, a consultation with UWV is possible. This also provides sufficient time in the case of Covid-19 as well.

##### Substantive assessment of RIV

- More information is needed but the employer cannot be reached (for example due to company closure or sickness). The employer can be expected to carry out administrative tasks as usual (as is the case with company closings due to holidays). Contacts and assessments (for example by a labour expert – 'arbeidsdeskundige') can be deployed / carried out by telephone and, if necessary, supplemented / completed at a later stage by actual physical actions. If an employer cannot be reached in any way, a customized plan is provided. If necessary, the fact that the employer was unable to prepare for the situation will be considered.
- Assess the RIV as much as possible on the basis of the data from the company physician. The labour expert will still consult with the insurance physician in applicable situations. The insurance physician contacts the company physician if necessary, but if the data from the company physician is even somewhat plausible, we accept this as the starting point for the RIV test.
- If there is a difference of opinion and this difference persists after consultation with the company physician by telephone:
  - The insurance physician will decide whether sufficient information can be gathered from a phone consultation in order to substantiate if there is a different working capacity (FML is not necessary) than indicated by the company physician. If that is the case the labour expert then substantiates whether reintegration opportunities have been missed.

- If it is not possible to collect sufficient information by telephone (via employee and company physician) due to the requirement of a physical consultation, we must still assume the capacity as described by the company physician. The labour expert will assess whether on the basis of this capacity, reintegration opportunities may have been missed. Then there is a risk that, if this research shows that there are no missed reintegration opportunities, an extended obligation to continue to pay wages may unfairly not be imposed in this situation.

### How do we deal with assessing sound ground and/or repairing shortcomings?

In principle, the assessment of the sound ground remains as described in the Gatekeeper's Guide. However, new situations may be identified in connection with Covid-19.

The obligation to continue to pay wages has been imposed according to case law to remedy shortcomings in the reintegration. The employer must therefore be able to do this and if this is not possible as a result of Covid-19, no extended salary payment obligation will be imposed.

- The employer motivates in the RIV why and during which period the reintegration has stagnated
- Compulsory company shutdown related to Covid-19. This is particularly the case if the employee reintegrates into their own or other work at his employer's. We do expect from the employer that if an employee can be relocated in accordance with the possibilities of suitable work, there is (also to the employee) an irrevocable commitment by the employer that relocation will be realized after reopening.
- Not be able to meet – parts of - requirements in a track 2 route in connection with Covid-19. This may include issues such as trial placement / company closure of the new employer, volunteering / gaining work rhythm, or not having sufficient digital skills for remote guidance. This process may then be temporarily suspended until the end of the Covid-19 crisis and requires reconsideration and, where possible, adjustment of the plan.
- Physical inability to perform suitable work, for example due to a reduction in the workload or the inability to realize sufficient support at the workplace due to an imposed Covid-19 measure.

#### No solid ground applicable

- Insufficient research in track 1; this can be carried out 'as normal'. If actual workplace assessment is required for this situation, the employer or engaged labour expert may look for other ways to carry it out.
- Track 2 routes can in principle be continued as much as possible. In many cases, reintegration agencies can also organize their services remotely. However, there will also be situations where this is not possible, see also above. This should be considered.
- Threatened payment inability is not a reason to waive the continued payment of wages nor during the Covid-19 crisis. The fact that an employer is unable to meet his payment obligations cannot mean that reintegration efforts must then be considered "sufficient". Nor can it count as a "sound ground" for "insufficient efforts."
- In addition, the government compensates up to a maximum of 90% of the wage costs based on the NOW scheme. The government provides for the funding of labour expert research by the employer, and among other things, guarantees for company credits.

### 3. Assessment of the request for reduction

- If an employer reports that he is experiencing a problem with remedying shortcomings, we recommend submitting a request for reductions.
- In the reduction request, the employer motivates why and during which period the reintegration has stagnated.
- The same guidelines for a reduction request apply for when assessing the sound ground and remedying shortcomings.

### 4. National Wage Penalty Commission (LLC)

Before an extended continued payment of wages obligation is actually imposed on the employer it is first submitted to the LLC for binding advice. The LLC assesses whether the wage payment obligation is within the bounds of reasonableness, whether it has been sufficiently substantiated and whether mandatory procedures such as hearing both sides of the argument have been complied with. The LLC will also guard the limits of reasonableness in relation to Covid-19. The influence of the Covid-19 crisis on whether or not to approve the submitted extended wage payment obligations will be registered effective 1 April 2020.

### 5. After Covid-19

Even after Covid-19, we will have to consider RIV assessments that include a Covid-19 stagnation period. This means that even after this period, the assessment must consider the time during which reintegration activities could be carried out to a limited extent. In the RIV, the employer motivates why and during which period the reintegration stagnated.

### 6. Expert opinions

Expert opinions can be requested by employers and employees during Covid-19. These will be carried out by the UWV as much as possible and remotely. Creative solutions will be sought for this.

However, it will not be possible in all cases to arrive at a substantive solution, for example where a physical consultation with an insurance physician is necessary. If this is the case, the employer cannot be blamed for subsequent RIV assessments where no expert opinion was requested during the deadlock / stagnant reintegration period during Covid-19.

However, it does not release the employer and employee from the obligation to look for other ways to continue reintegration as much as possible.