

Community Law **Waikato**

Te Tari Ture aa-Hapori o Waikato

Part of the National Community Law Movement



Our mission is to provide free legal help to
those who cannot otherwise access it.

9 LEGAL RIGHTS WITH WORK & INCOME 2025



Legal rights at Work & Income NZ

Many people don't know that there is a law that protects people who have their income paid by the Ministry of Social Development - Work and Income New Zealand (W&I). The Social Security Act 2018 is the law that W&I follows.

This guide sets out what your legal rights are when you ask Work and Income for help or receive a payment from them.

legal rights

1. W&I must tell you about all of the financial help you might be entitled to.
2. W&I must be available to help you to apply for all your entitlements.
3. W&I must pay you back - pay if you are entitled to it.
4. You have the right to appeal W&I's decisions.
5. You must be warned before W&I sanction your benefit.
6. W&I must make sure that any repayments you make will not cause you undue hardship.
7. W&I must cancel any debt caused by their mistake.
8. You have a right to silence and legal help in W&I fraud investigations.
9. W&I must keep your information private. You have the right to see the personal information W&I have about you.

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Work and Income must tell you about all of the financial help you might be entitled to.

Sometimes it feels like the person on the other end of the phone, or across the desk from you is just making the rules up as they go along. But W&I has to follow the law (The Social Security Act 2018) when making decisions about someone's benefit and entitlements.

When you call W&I to ask for financial help they are required by law to look very carefully at your case and make sure you have been made aware of EVERY available benefit available to you.

Sometimes, the law also allows W&I to decide if your situation means that you are allowed a little more help than others - this is called "discretion"

Work and Income must also choose the BEST type of financial help available (e.g. a non-recoverable grant if it is available instead of a recoverable grant).

Work and Income must help you apply for all of your entitlements

Work and Income must help you apply for everything you are (or might be) entitled to. A verbal (spoken) application is fine, but you may also be asked to apply in writing.

If W&I ask you to apply in writing they must give you a paper application if you ask for one, and be available to offer any other help you need for your individual situation (that is reasonable).

Examples are helping you understand and fill out forms, telling you what documents you need, or paying for a birth certificate.



Please note

If Work & Income don't make you aware of, or help you apply for every entitlement that you should be getting, then you may be eligible for back-pay.



Work & Income must back-pay any benefits you don't get because they have not told you about them.

You *may* be able to get back-pay if W&I don't pay you for something that you were entitled to get.

If you think this applies to you, ask W&I to backdate the benefit under **section 318 of the Social Security Act**. W&I should then investigate and make a new decision.

Please note

Backdating a benefit due to a W&I mistake can be complicated, so it is a good idea to ask us for help.

Our lawyers and advocates help for free with benefit issues in the greater Waikato. Call us (free) on 0800 529 482, email reception@clwaikato.org.nz. We will be happy to see how we can help.

You have the right to review and appeal decisions Work and Income have made.

If W&I decline you, or make a decision you do not agree with, you do not have to just accept it. You have the right to ask for a review. You can also appeal most review decisions to an independent tribunal (the Social Security Appeal Authority) to check if the decision followed the law.

If the tribunal think that W&I have made a mistake, they will tell them to change it.

Nobody can punish you for exercising your rights, and it is free.

There is more information on page 32 on how to do this.



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You have a right to be warned before benefit sanctions or suspensions.

A '**sanction**' is where W&I reduces or cancels your main benefit because it believes you haven't complied with your obligations, such as work-test requirements or your "social obligations" as a parent.

If you get a warning about an obligation you have not made (like a work test), you have **five working days** to tell W&I why you had a good reason for not doing it. You can contact them and explain that you have a good reason for not meeting your obligation.



A '**suspension**' is where W&I will stop your main benefit if you have an outstanding arrest warrant.

If you get a warning about a warrant, you have **ten working days** to show you are trying to sort it out (contact the court straight away). W&I can suspend your benefit if you still have an outstanding warrant 28 days after it was issued.

There is one exception where W&I can suspend your benefit immediately without a warning. This is if you have an active warrant and the Police think you are an immediate danger to public safety. This should only apply if you are charged with a violent crime or you have a history of violent convictions.

Please note

W&I **must** send you a warning if they are going to sanction or suspend your benefit so that you have time to fix the problem. They can send you the warning through MyMSD. If you receive a warning from W&I then try and deal with it ASAP.



Repayments to W&I should not create undue hardship

If you owe W&I money they will arrange an amount for you to repay them out of your benefit every week. W&I are not allowed to make the repayment to be so much money that it places you and your whaanau in difficulty.



For example, if you got an advance from W&I and owed them \$600, they are not allowed to make the repayments so high that you can't afford to buy food for your whaanau, or put petrol in the car to take your tamariki to school.

These can be lowered to an affordable amount, or suspended until things improve. The law does not set a minimum amount you have to repay each week. The law does not say the minimum repayment is \$1 per week per advance..

You have a right to have a debt cancelled if the debt was caused by W&I

Ok, so no-one is perfect, we all make mistakes, and W&I does too sometimes. If W&I makes a mistake and that mistake leads to you being in debt with them then they can cancel that debt at any time.



An example of this would be if W&I have incorrectly decided your benefit start date, or they have wrongly calculated the money you earned from your part-time job. If you can show that they were wrong they are able to cancel the debt and you don't have to meet the write-off criteria.

In some specific circumstances where the original decision to create the debt is legally correct, W&I can write it off if it was caused by their error and you meet other conditions. For example, if you declared net (after tax) income because nobody told you to declare gross income (before tax).

These situations can quickly become very complicated and confusing. If you have a W&I debt that you don't agree with, contact us as soon as possible so we can see how we can help.



Your rights if you are accused of benefit fraud

Benefit fraud is being untruthful (including unintentionally or recklessly) to get money from W&I. It's a serious crime. The two most common areas that are investigated are undeclared income and relationship status.

If you're suspected of fraud, you'll be asked for an interview with an Investigator.

W&I must begin the investigation by contacting you in writing, giving you at least five working days' written notice (sometimes referred to as a "Section 11 letter") so that you have time to provide them with the information they're seeking, as well as seek legal help.

W&I has very clear rules for how they should behave during their investigations. At the beginning of any interview they must explain that anything you say can be used as evidence against you, that you have the right to remain silent, and that you can stop the interview at any time.

WARNING

DO NOT talk to an Investigator without seeking legal support first. What you say to them is evidence they can use against you in court and/or to create a debt.



Your right to have your information kept private

When you apply for a benefit you have to give W&I a lot of personal information and it is normal to wonder about how they keep that information safe. W&I have lots of rules that they have to follow to keep the information you give them while you are on a benefit safe and private.

Here is a brief list of rights about your personal information held by W&I and what they must do to keep it safe and secure:

- 1.They must collect information for proper purposes and must ask you first (limited exceptions apply).
- 2.They must keep it safe and only access it for a proper purpose. W&I cannot 'just go looking' at your files because they are curious about you.
- 3.You have the right to see a copy of it. Ask by emailing privacyofficer@msd.govt.nz, using a Personal Details form or online at www.msd.govt.nz/feedback.

Contact us for more help

Community Law often helps people to prepare for reviews and appeals and represents them in the process. Please contact us straight away to see how we can help you.

Our lawyers and advocates help for free with benefit and other legal issues in the greater Waikato. Call us (free) on 0800 529 482, email reception@clwaikato.org.nz. We will be happy to see how we can help.

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