

# Guidelines for differentiating between Section 9 and Section 13 (Employment Plan versus Employment Obligations)

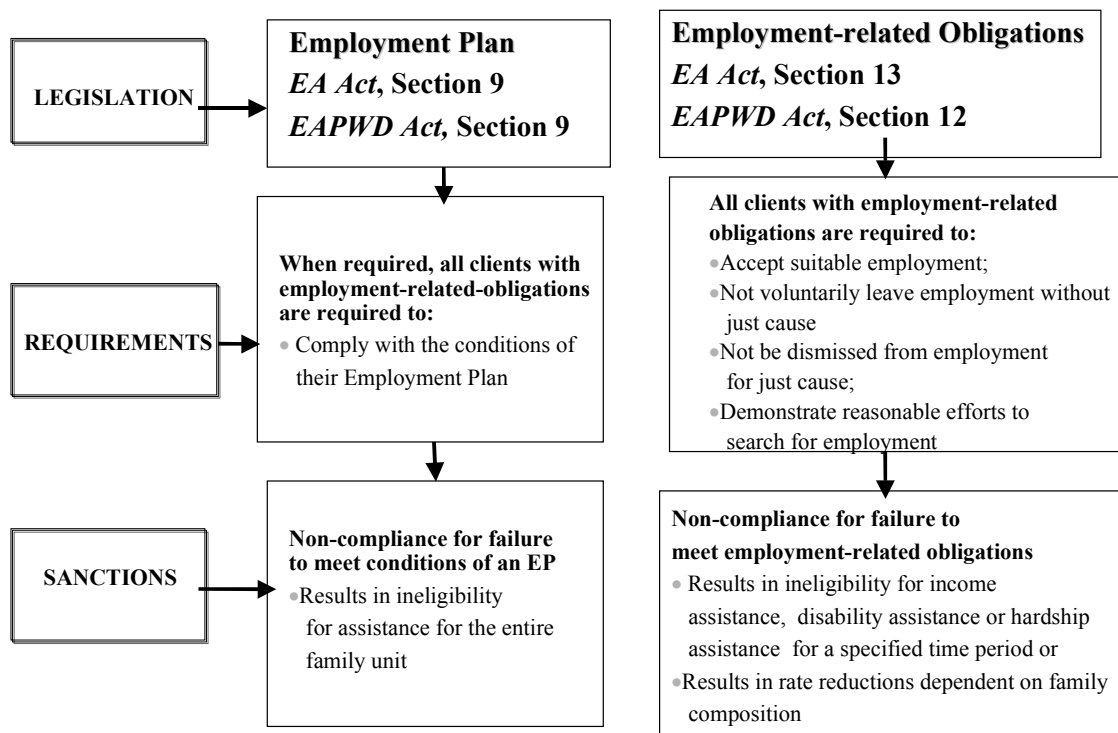
## Introduction

The ministry requires employable clients to search for, accept and continue in employment.

- When required by the Minister, employable clients must enter into and comply with an Employment Plan (EP) as defined under the *Employment and Assistance Act (EA Act)*, Section 9 & *Employment and Assistance Persons with Disabilities Act (EAPWD Act)*, Section 9.
- Subject to the conditions of an employment plan, all employable clients are required to comply with the conditions of meeting employment-related obligations as defined under the *EA Act*, Section 13 and *EAPWD Act* Section 12.

The following chart describes the differences between Employment Plan and Employment-related Obligations.

## EMPLOYMENT PLAN VERSUS EMPLOYMENT OBLIGATIONS



A client can be non-compliant due to their failure to meet employment-related obligations and/or comply with their EP. The following case studies provide clarification regarding the application of sanctions using *EA Act* Section 9 and 13 and *EAPWD Act* Section 9 and 12.

It is important to note the effect of the phrase ‘Subject to the conditions of an employment plan’ in Section 9. This means that Section 9 takes precedence where the two are in conflict. Thus, if meeting the conditions of an employment plan causes non-compliance with Section 13, sanctions should not be applied.

The following case scenarios assist to provide clarification regarding the relationship between Section 9 (Employment Plan), Section 13 (Consequences of not meeting employment-related obligations) and Section 10 (Failure to provide information).

## 1. Case Study One

### Circumstance

The activities of the EP are similar in nature to the conditions of section 13. A person who fails to comply with the conditions of their EP is in violation of both section 9 and section 13. In this circumstance the section 9 sanctions take precedence.

### Example

A client has an EP. The program/activities for the EP are Supervised Independent Work Search. The EP sets out the activities the client must demonstrate for a Supervised Independent Work Search.

It has been determined that the client has failed to comply with the activities as outlined in their EP. They have also failed to demonstrate a reasonable work search (for further details on definition of reasonable work search see comparison table – page 6). In this situation the client has failed to meet the requirements of section 9 and section 13. In this case where the client fails to demonstrate a reasonable work search and their EP is SIWS, the section 9 consequences take precedence. The sanction applied would be ineligibility.

**Reminder: the conditions of Section 13 can not be entered as activities on a client’s EP. Reasonable efforts to search for employment are implied in the activities for SIWS but the EP cannot specifically quote “a client must demonstrate reasonable efforts to search for employment.” See EP Standards, Section C.2.**

### Guidelines for applying sanctions

See EP Standards and BCEA Policy, Section 7.6.

## 2. Case Study Two

### Circumstance

The activities of the EP are different from the conditions of Section 13. The client complies with their EP but fails to fulfil the requirements of Section 13. The client is subject to the Section 13 sanctions.

### Example 1

A client has an EP. The EP states that the client “must attend school in the evenings.”

If the client attends school as required by the EP, but does not fulfil the requirements of Section 13 (fails to demonstrate reasonable work search for employment), the Section 13 sanctions apply.

Note: An exception occurs when, due to the conditions of the employment plan, the client could not reasonably have been expected to meet the conditions of section 13. I.e., the employment plan requires the client to attend a short-term course leaving very little time to search for employment. The wording of Section 9 “subject to the conditions of an Employment Plan” means that Section 9 takes precedence when the two are in conflict. Thus, if meeting the conditions of an employment plan causes non-compliance with Section 13, sanctions should not be applied.

### Example 2

A client has an EP. The EP states that the client will participate in the JP program.

If the recipient attends JP as required by the EP, but fails to fulfil the requirements of Section 13 (fails to accept suitable employment), the Section 13 sanctions apply.

### Guidelines for applying sanctions

There may be legitimate mitigating circumstances that preclude a client from meeting their employment-related obligations, see EP Standards, Section D.1a and D.2a.  
See Sanctions e-learning and BCEA Policy Section 7.6.

## 3. Case Study Three

### Circumstance

The activities of the EP are different than the conditions of Section 13. If a client fulfils the Section 13 requirements, but fails to comply with the EP, the client is subject to the Section 9 sanctions.

### Example

A client has an EP. The EP states the client must attend school in the evenings.

If the client does not comply with the conditions of their EP (does not attend school), but does fulfil the requirements of Section 13, the Section 9 sanctions apply.

### Guidelines for Application

See EP Standards and BCEA Policy, Section 7.6.

## 4. Case Study Four

### Circumstance

The activities of the EP are different from the conditions of section 13. If a client fails to comply with their EP and fails to comply with the Section 13 requirements, the client is subject to the Section 9 and the Section 13 sanctions.

### Example

A client has an EP. The EP states that the client “must attend school in the evenings.”

If the client does not comply with the conditions of the EP (does not attend school) and does not fulfil the requirements of section 13 (fails to make reasonable efforts to search for employment), then the sanctions for both Section 9 and 13 apply.

### Guidelines for applying sanctions

- Sanctions are applied concurrently. See Sanctions e-learning and BCEA Policy Section 7.6.
- Sanctions are applied from the date non-compliance is determined and continue until the sanction time has elapsed. Example: if a client reapplies for assistance one week after they are determined ineligible under Section 13 and Section 9, they continue to be ineligible until the two month sanction under Section 13 has elapsed. The sanction under Section 9 is removed once they are determined to be eligible for BCEA. However, if the client reapplied for assistance three months after they were determined ineligible, then the sanction for Section 13 would no longer apply as the two month sanction period had already elapsed.
- If the client appeals the decision, two separate Requests for Reconsideration forms (HR100's) are required.
- There may be legitimate mitigating circumstances that preclude a client from meeting their employment-related obligations, see EP Standards, Section D.1a and D.2a.

## 5. Case Study Five

### Circumstance

Ministry staff receive 3<sup>rd</sup> party information that a client may not be compliant with their EP or may not be meeting their employment-related obligations. Ministry staff attempt to contact the client as per the EP Standards and the client has failed to respond. The client is subject to the Section 10 sanctions, failure to provide information.

### Example

A client has an EP. The EP states the client will attend the Job Placement Program.

The JP Service Provider notifies the ministry that the client has failed to attend their JP meetings and they also believe that the client has refused suitable employment. Ministry staff attempt to contact the client a first time with no success. A second attempt is made and a subsequent letter is sent to the client. It cannot be determined without client contact if the client is non-compliant with Section 9 or Section 13. In this case the client has failed to meet the requirements of Section 10, failure to provide information.

### Guidelines for applying sanctions

See EP Standards Section B.2a, B.2c.

## Employment Plan and Employment Obligations Comparison Chart

	<b>Employment Plan</b>	<b>Employment Obligations</b>
<b>Legislation</b>	<i>EA Act</i> Section 9 & <i>EAPWD Act</i> Section 9 EA Regulation Section 29 & 30 and EAPWD Regulation Section 25 & 26	<i>EA Act</i> Section 13 & <i>EAPWD Act</i> Section 12 EA Regulation Section 29 (4) and EAPWD Regulation Section 25 (4)
<b>Interpretation</b>	When required by the Minister, all clients with employment-related obligations: <ul style="list-style-type: none"> <li>➤ Must enter into an employment plan *</li> <li>➤ Must comply with the conditions of their employment plan.</li> </ul> <p>*Note: There are very limited number of exceptions. See Policy Manual Section 6.5A (Page 3)</p>	Subject to the conditions of an employment plan, clients with employment-related obligations: <ul style="list-style-type: none"> <li>➤ Must accept suitable employment</li> <li>➤ Must not voluntarily leave employment without just cause.</li> <li>➤ Must not be dismissed from employment for just cause.</li> <li>➤ Must demonstrate reasonable efforts to search for employment.</li> <li>- Employment-related obligations as stated above cannot be included as specific activities in the Employment Plan.</li> <li>- Reasonable efforts to search for employment are implied in the EP but the EP documents the specific and measurable activities the client is expected to complete.</li> </ul>
<b>Definitions</b>	<b>Employment Plan</b> – a legal document that outlines the activities and expectations clients must follow in becoming employed or more employable, including the timeframe. <b>EP Activities</b> – specific activities the client is required to participate in to find work or become more employable. Activities must be clear, concise, factual, specific, measurable, achievable, realistic and time-bound. <i>Refer to the Employment Plan Guidelines and Employment Plan Standards for additional information.</i>  NOTE: The EP Activities cannot include the conditions of Section 13. See EP Standards, Section C.2.	<b>Suitable employment</b> - available employment, which the person is able to perform, that pays at least the minimum wage. <b>Reasonable work search efforts</b> are defined using the following standards: <ul style="list-style-type: none"> <li>- Having an up-to date resume</li> <li>- Demonstrating actions to distribute resume to potential employers</li> <li>- Documenting work search activities on the Work Search Activities Record (HR77). <i>Reasonable Work Search Activities are listed on the HR77 form.</i></li> </ul> <b>Just Cause</b> includes but is not restricted to: <ul style="list-style-type: none"> <li>- having a physical or mental condition which precludes maintaining employment;</li> <li>- sexual or other harassment; discrimination;</li> <li>- dangerous working conditions; following a spouse to new employment;</li> <li>- leaving an abusive or violent domestic situation;</li> <li>- having to care for a child or other immediate family member who has a mental or physical condition which requires the person to care for them; or reasonable assurance of another job.</li> </ul>
<b>Sanctions</b>	<ul style="list-style-type: none"> <li>- Sanctions for non-compliance with an EP, results in ineligibility for assistance for the entire family unit.</li> <li>- If a client reappplies they are considered new applicants and must meet all eligibility criteria, e.g. three-week work search, two-year independence etc.</li> <li>- Where it has been determined a person is non-compliant with their EP and has not provided legitimate mitigating circumstances for the non-compliance, the sanction is ineligibility and the client file is closed.</li> </ul>	Sanctions for not meeting employment-related obligations are either ineligibility for income assistance, disability assistance or hardship assistance or rate reductions dependent on family composition. <b>Failure to accept suitable employment, voluntarily left employment without just cause, or dismissed for just cause:</b> <ul style="list-style-type: none"> <li>- Consequence – Ineligibility for singles and couples; \$100 rate reduction per adult sanctioned for family units with dependent children</li> <li>- Period of time – two calendar months from whichever of the following is later: the date of the application for assistance; or the date the default occurred.</li> </ul> <b>Failure to demonstrate reasonable work search:</b> <ul style="list-style-type: none"> <li>- Consequence – Ineligibility for singles and couples, \$100 rate reduction per adult sanctioned for family units with dependent children.</li> <li>- Period of time – one calendar month from whichever of the following is later: the date that the default occurred; or, the date that the Minister is satisfied the recipient is demonstrating reasonable efforts to search for employment.</li> </ul>

