

Part 2: Frequently Asked Questions

- Must I have a job description and contract for my PA?
- Can I employ a friend or relative?
- Can I choose whether a man or woman works for me?
- When should I take Employment Legal Advice?
- How do I find the right Employment Legal Advice?
- How do I find the right Employer's Liability Insurance policy?
- Can I choose when my PA takes their holiday leave?
- How do I work out their holiday or annual leave entitlement?
- How do I work out how much to pay them?
- What happens if I don't like the PA I've employed?
- What records do I need to keep?
- What happens if my PA doesn't arrive, or there's an emergency and I'm left without support?

► **Must I have a job description and contract?**

Yes. You do need to have a job description and contract as these are required by employment law. They help you and your PA understand what you can expect from each other.

► **Can I employ a friend or relative?**

People using a Direct Payment may not normally employ a spouse, a civil partner, the other member of an unmarried or same sex couple. Nor can they employ a close relative or the spouse of the partner of any of these living in the same household as them. A close relative in this context is a parent, sibling or child.

However, one of these otherwise excluded groups can be employed where it is necessary to meet the person's needs or

in the case of a child, to promote the child's welfare. For the Council to be satisfied that this is necessary and appropriate the person should clearly demonstrate the reasons why in their Care and Support Plan.

The exclusion of these groups should not prevent people employing live-in PAs where there is a primarily contractual rather than personal relationship.

► **Can I choose whether a man or woman works for me?**

You can only specify the sex of the person you want to employ if you have an exceptional reason, for example if the work involves intimate personal care. Otherwise you would be going against equality legislation.

► **When should I take employment legal advice?**

If you are able to access Employment Advice we suggest you take this at the earliest opportunity, before advertising the job or making approaches to potential candidates for personal assistance.

► **How do I find the right employment legal advice?**

You could ask your solicitor or contact Sheffield Law Society – visit their website at www.sheffieldlawsociety.co.uk or call them on 0114 2723655.

► **How do I find the right Employer's Liability Insurance policy?**

There are many specialist insurance agencies – for examples visit the Sheffield Directory website:

www.sheffielddirectory.org.uk. You may already have household insurance that includes this cover. Always make sure you check what the company offers as they may offer different types of cover.

The Money Advice Service can provide general advice about getting insurance:

www.moneyadviceservice.org.uk/en/categories/help-with-insurance.

► **Can I choose when my PA takes their holiday leave?**

You can make rules about when your PA should have leave. You should make sure this is clear in the employment contract. Read more about holidays in Part 1 on page 16.

► **How do I work out their holiday or annual leave entitlement?**

Holiday time starts to build up from the day your PA starts. Currently a person should get a minimum of 5.6 weeks of their normal working week, capped at 28 days maximum.

If your PA works set days each week calculate their holidays in days:

- PA works 5 days per week: 5×5.6 weeks per year = 28 days paid holiday per year.
- PA works 2 days per week: 2×5.6 weeks per year = 11.2 days paid holiday per year.

If your PA works different amounts of time on different days you can calculate their holidays in hours:

- PA works 30 hours per week: 30×5.6 weeks per year = 168 hours per year.

► **How do I work out how much to pay them?**

If your PA is of school leaving age and under 24 then the National Minimum Wage applies. At the time of writing this is £6.70 per hour for people aged 21 and over. You can find out more about the minimum wage at **www.gov.uk/national-minimum-wage-rates**.

The government has introduced a new mandatory National Living Wage (NLW) for workers aged 25 and above, initially set at £7.20. You can find out more about the NLW at **www.gov.uk/national-minimum-wage-rates**.

Normally we would treat rates over £8 per hour as enhanced rate of pay and this level of pay would need to be justified. You should pay your PA their normal rate if they work at weekends or bank holidays.

Hourly rates are agreed as a gross cost. This means that a PA's tax, National Insurance contributions and any contribution they want to make towards a pension are included in the hourly rate. Employer on-costs such as employer's National Insurance contributions, employer's pension's contributions and holiday cover are not included in the hourly rate and will be funded additionally.

Here's an example that may help you

A Personal Assistant gets paid £7.85 an hour and works 37 hours per week all year. They are 40 years old and don't want a pension.

The gross salary would be $£7.85 \times 37 =$ **£290.45** per week. Their take home salary would be **£257.42**. This is the gross salary minus tax and National Insurance contributions.

The on-costs would be **£51.74** per week. This is the employer's National Insurance contribution and funding for holiday cover. The total weekly cost of the package = **£342.19** per week.

► **What happens if I don't like the PA I've employed?**

You do not have to keep your PA if your relationship breaks down and cannot be made to work. You should have a way of dealing with discipline issues and grievances, and you should make sure any steps you take are in line with employment law. Read more about resolving problems with your PA in Part 1 on page 14.

► **What records do I need to keep?**

For your Direct Payment you have to keep bank statements and basic accounts for what you receive and spend for 6 years. Our website has more information about this:

[www.sheffield.gov.uk/caresupport/adult/how-get-](http://www.sheffield.gov.uk/caresupport/adult/how-get-support)

support. You also have to keep a record of payroll and documents like insurance certificates and employment contracts. If someone else looks after the money for you, they have to keep these records. Read more about the checks you must make on page 6.

► **What happens if my PA doesn't turn up for work, or there's an emergency and I'm left without support?**

Your Care and Support Plan should include plans for an emergency such as your PA being off sick. You may choose to make arrangements with an agency to provide cover, or ask your family or friends to provide support. If your cover plans fail and you find yourself in an emergency situation without support please contact the Council.