

Becoming an employer

A guide to your responsibilities and things for you to consider



PA Employer Guides: part 2

WORKING TOGETHER AT ITS BEST



Disability Sheffield Clinical Commissioning Group



Sheffield



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Introduction

Thinking about employing a Personal Assistant (PA) or already employing a PA (rather than using an agency)? Fantastic - this guide is for you!

This guide aims to help you to be a good employer and takes you through the tasks that you'll need to complete, giving you hints on things that are helpful for you to know. There are certain actions that you must do as an employer to make sure you and your PAs are protected and safe, but don't worry there's a lot of help and support available.

You may be an employer of PAs because you're an adult with support needs, or may be a parent or carer for a child or adult who has support needs.

This guide is relevant whether you're hiring one PA or a number of PAs.

The information in this guide has been created by those who employ their own PAs and PAs themselves, so it gives you an honest reflection of what you need to think about and put in place to be a good employer.

It provides you with information and advice on the steps you should think about when recruiting a new PA.

Remember, you don't have to organise everything yourself, make all the decisions on your own, or deal with the paperwork. You're in control so you can decide to do as much (or as little) as you want to. You could choose support from a family member, a friend or through a Direct Payment Support Service.

A great place to find information is the comprehensive Skills for Care Employing Personal Assistants Toolkit. Website:

<https://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Information-for-individual-employers/Information-for-individual-employers.aspx>. Or call them on 0113 245 1716.

Also you can refer to the list of support services at the end of this document.

Creating a contract of employment

What to include

When you've advertised, interviewed and offered the role (see our 'Recruiting a PA Guide: part 1') you'll then need to provide a contract of employment to your new PA. This lets the PA know what's expected of them and outlines the terms and conditions of the job being offered. Some of the information in the contract is required by law but there are parts you can add too. There are many templates available for you to use. See the links at the end of this document.

The items you must include are:

- length of a probationary period (a length of time to trial your PA)
- rates of pay and when the PA gets paid
- holiday entitlement (including arrangements for public holidays)
- hours of work
- date the employment begins
- place of work
- what the PA should do and get paid if they are sick
- pension arrangements
- how they should give you notice if they want to quit and how much
- notice they need to give
- how the contract can be changed and how your PA may be made redundant.

The items that you might like to include:

- what your PA can expect from you and what you expect of your PA
- a code of conduct - the expected standard of behaviour from your PA, such as how they show respect for you, your home and possessions
- the dos and don'ts, like not smoking or drinking when at work or if you allow personal use of mobile phones, suitable dress code, etc.

There are certain procedures you should also have a disciplinary and grievance procedure, to explain how you or your PA will resolve concerns. You also should have a procedure about how you will keep your PA's information private and secure.

These procedures can be either explained in the terms and conditions, or you can have separate documents.

If your agreed Support Plan changes you may need to change the contract you have with your PA. You may want to have a clause in the contract of employment explaining this. You should describe how you'll advise them if you do have to change how and when they work.

ACAS are a great source of information. They give employers and employees free, impartial advice on workplace rights, rules and best practice. They also offer training and help to resolve disputes.

Website: <https://www.acas.org.uk/>

ACAS helpline: telephone: 0300 123 1100.

Text relay: 18001 0300 123 1100.

Payroll services and HMRC

If you're employing a PA then you need to calculate and pay their wages. To calculate wages certain deductions and employment rules need to be followed which can be complicated.

You can do these yourself or you can ask someone else to do this for you, like a payroll company.

Payroll help

There are many payroll companies that can help you to pay your PAs. They will calculate all the hours and pay, meet your Tax and National Insurance requirements and keep all the necessary records for you.

You will get money in your Direct Payment to cover the costs of using a payroll company.

Tax and National Insurance (NI)

You will need to deduct Tax and National Insurance from your PA's wages. It is also likely that you will have to pay National Insurance contributions as an employer. Don't let this put you off. This can be arranged by a payroll company, (the extra costs are included in your Direct Payment).

Tell HMRC

If you employ a PA, you or your payroll company need to make sure that you tell Her Majesty's Revenue and Customs (HMRC) at www.gov.uk/new-employee.

Advice if you do your own payroll

You can find out more about this from HMRC <https://www.gov.uk/browse/employing-people/payroll>.

If you don't use a payroll service, we strongly advise you to follow all HMRC rules and advice.

Self employed PAs

Some PAs could be self employed, however this isn't always you or your PAs choice. HMRC decide if the PA meets the criteria to be self employed or employed. If the person you are employing is already set up as a self employed worker, they'll have a Unique Tax payer Reference (UTR) that they should give to you.

In this situation they are responsible for paying their own Tax and National Insurance. They should provide you with regular invoices for the work they have done.

ACAS can help advise you on whether your PA is self employed or employed.

Wages

Remember a payroll company can provide information and support.

Deciding the rate of pay

The rates of pay that you choose should be based on the skills, knowledge and expertise required by your PAs to safely support you. For example you'd pay a higher rate of pay for specialist communication skills or knowledge of how to use certain types of equipment. You need a reasonable rate that will attract the right kind of PA for you.

You can discuss and agree the rates of pay with your social worker or healthcare representative as sometimes these are already set.

National Living Wage

You'll need to pay your PAs at least the National Living Wage (previously called the National Minimum Wage) which is set by law. You can find out more about the National Living Wage and up-to-date rates at:

www.gov.uk/national-minimum-wage-rates.

Costs to cover your employment responsibilities

The hourly rates of pay for your PAs are paid at a gross rate. This means that the PA's tax, National Insurance contributions and any contribution they want to make towards a pension are included in their hourly rate of pay.

Employer costs such as Employer's National Insurance contributions, employer's pension's contributions, pay for your PA's holiday cover and payroll service costs are paid in addition to the rates of pay. These are funded additionally in your Direct Payment.

Statutory pay

Employment law says you must look after the best interests of your PA.

This includes paying them at times when they are not at work, including:

- Statutory Sick Pay (not self-employed).
- Statutory Maternity / Paternity / Adoption Pay.

All of these costs can be recovered from HMRC so there is no extra cost to you. Your payroll provider will be able to calculate these.

Not all PAs will be able to receive these payments as it depends on whether they have paid National Insurance Contributions. PAs who only earn a small income may not earn enough for this. The limits and thresholds are set by the HMRC. Again, your payroll provider will advise you about this.

Payslips

Your PA has the right to know how often and how much they will be paid. You should also tell them how they will be paid, such as by cheque or by bank transfer into a bank account.

You should never pay your PA in cash.

You must also make sure they get a payslip which explains what has been paid and what deductions have been made, such as tax or National Insurance.

Your payroll provider will provide these.

You'll need to keep a timesheets of what times and hours your PA works. This will help to calculate wages and produce a payslip.

Hours of work

Night time working

If your contract with your PA includes them working at night, you need to be clear whether they are working 'sleeping' or 'waking' nights.

'Sleeping nights' are nights where your PA sleeps in your home and is available if you need them, but they're not disturbed more than 3 times during the night or for longer than 1 hour in total. You pay your PA a fixed rate for a 'sleeping night' rather than an hourly rate.

'Waking nights' are when your PA is expected to be awake and active . Waking nights should be paid at least as much as the usual hourly rate.

Working time directive

An employee shouldn't be expected to work more than 48 hours a week - normally averaged over 17 weeks. They should also have at least a 20 minute break every 6 hours and have 1 day off a week or 2 days off every fortnight.

This law is sometimes called the 'working time directive' or 'working time regulations'.

Employees can choose to work more hours by opting out. Get a letter from your PA if they are going to do this. Before agreeing, you should consider what other responsibilities or work your PA has and whether it's safe. Think about tiredness or the impact of working many hours each week over a long period of time.

There are some relevant exceptions where you may ask your PA to work more than 48 hours a week on average. These are:

- where 24-hour staffing is required
- as a domestic servant in a private household

You can contact ACAS to get further advice on working hours.

Retainer wages

You may choose to pay a retainer. This is a wage that can be paid at times that your PA is available to work on their usual rota, but you are not available. For example you may be in hospital and not require your PAs support. A retainer enables a wage to be made, usually for less than the usual pay such as 75% or 50%. This secures your PA's income and encourages them stay in your employment while you're unavailable. It's usually agreed for a fixed period of time, for example 2 weeks.

Holiday Pay

Remember a payroll company can calculate this for you.

If you employ a PA they will need to take a break or some time off work.

PAs are entitled to paid annual leave. This can be calculated using the HMRC calculator - <https://www.gov.uk/calculate-your-holiday-entitlement>. The amount of holiday is based on how many hours they work.

Employees must be paid at their normal rates of pay for this time off.

Holiday time starts to build up from the day your PA starts work.

Currently a person should get a minimum of 5.6 weeks of their normal working hours per week.

You can control when your PA takes their holiday time. If there are times when you know you won't need their support you can ask them to take holiday at this time, but you must make sure this is written into the contract.

You must make sure your PA takes their holiday each year. They can't be paid for this time instead.

Your PA may request holiday time and you can decide if it is okay for them to have the time they have requested. Before agreeing the time be sure that you have cover organised and in place. Remember, holiday pay has been built into your Direct Payment to pay for the cover you need whilst your PA is away.

If you don't agree to the request, then you must have a reason and explain this to your PA. For example this might be when the PA or person who would provide the cover is unavailable.

If your PA leaves their job they are entitled to be paid for any holiday they have not taken. Similarly, if your PA leaves and has taken more holiday time than they had built up (accrued) before their leaving date you must deduct this off their final wage.

You should clearly explain this in the contract or terms and conditions.

Bank holidays

Bank holiday entitlement

There is no entitlement in law to bank or public holidays, so a PA who works on bank or public holidays has no automatic entitlement to an enhanced rate of pay. If you do not want your PA to work on bank or public holidays you can arrange for them to take paid holiday from work. This must be taken from their holiday entitlement as described above.

Remember, there is a lot of help available to you to work all this out. You don't have to do it by yourself!

For the latest government information:

www.gov.uk/browse/working/time-off. Or call ACAS - on 0300 123 1100.

Pensions

Your Payroll service can arrange this and do it for you.

All employers are required to provide a pension and make pension payments. You will only need to automatically enrol them if they meet certain criteria, which is based on their age and how much you pay them. This is called automatic enrolment.

Every employer needs to complete an online form called a Declaration of Compliance telling the Pensions Regulator whether you have eligible staff or not.

Remember, your Direct Payment will cover the employer costs of pension contributions.

Further information can be found at:

www.thepensionsregulator.gov.uk/employers.aspx.

Employers liability insurance

Employers Liability Insurance covers you if your PAs have an accident at work and will help you pay compensation if an employee is injured or becomes ill because of the work they do for you. They also provide you with legal advice and cover.

You should buy an enhanced policy as it will offer you better cover for employment advice and redundancy support and payments.

You are required to get Employers' Liability Insurance (ELI) as soon as you become an employer. Your policy must cover you for at least £5 million and come from an authorised insurer.

Your Direct Payment will have money added to cover this cost.

More information is available at:

<https://www.gov.uk/employers-liability-insurance>.

Redundancy

Your Payroll service can help.

Sometimes unfortunate reasons may mean that you have to make your PA redundant, meaning you no longer require them to work for you. Your PA has a right to be told the reasons why you are making them redundant, so you should arrange to meet with them to discuss your reasons.

Your PA may be entitled to redundancy notice and pay, so check the latest government information for the statutory entitlements.

The amount of notice will depend on your contract. The redundancy payment will be dependent on the length of employment service and age of your PA.

Your Employer Liability Insurance may cover this, if not the Direct Payment will cover these costs.

Please see our fact sheet on PA redundancy information. See:

<https://www.sheffield.gov.uk/home/social-care/employing-a-personalassistant>.

<https://www.gov.uk/browse/employing-people/dismissals-redundancies>.

You can also call ACAS on 0300 123 1100. They can help you calculate redundancy and advise you about making someone redundant.

Other considerations

Travel

In some situations you may need to pay travel expenses or a mileage allowance to your PA. For example, your PA may have to use their car to take you to appointments as part of their role or they have to start work at a different place than the usual place of work. You should agree a fixed rate to pay and state the arrangements in the contract of employment.

If your PA doesn't start work from a regular or fixed place because you need them to start work or end work from a different location, it is possible that the additional time your PA spends travelling may be treated as working time.

You should discuss and agree the arrangements with them before they start work.

You can find out more about HMRC's approved rates for mileage at www.gov.uk/expenses-and-benefits-business-travel-mileage/rules-for-tax.

Employing someone from outside of the UK

There are rules about employing people who are not UK Nationals. If you're employing PAs you must follow the guidelines.

A new immigration system applies to people arriving in the UK to work from 1 January 2021.

EU citizens moving to the UK to work need to get a visa in advance.

Please visit <https://www.gov.uk/guidance/right-to-work-checks-employing-eu-eea-and-swiss-citizens>.

Confidentiality

You should provide your PA with information and/or training so they understand the importance of confidentiality and how to maintain this in their work. The Health and Care Professions Council (HCPC) toolkit has good advice: <https://www.hcpc-uk.org/standards/meeting-our-standards/confidentiality/>.

You may want to include information in your contract that says that if your PA doesn't keep information confidential then you may take them through disciplinary procedures. There are some things that your PA must tell others about, such as if they suspect somebody is being abused. They're protected from any action being taken against them if they do this. Watch the video on data security for PA employers here: <https://www.youtube.com/watch?v=sm9Zeyr4jAI>.

Record keeping

Personal details of your PAs should be kept safe and secure. Under the Data Protection Act 1998 you have legal duties relating to employee records.

Take care when recording and storing information about your PA. You must treat a PA's personal information with care, including personal information people give in their job application.

Information you no longer require (like application forms for people that did not get the job) should be destroyed carefully.

Financial records such as information on payroll must be kept for 3 years.

You'll find more details in the Information Sheet on GDPR Guidance: <https://www.sheffield.gov.uk/home/social-care/direct-payments-managing-your-care>.

What next?

Once your PA is in place, you should think about how you will work together and build a strong working relationship. Good employers provide their staff with information, guidance, training and supervision, so think about what your PAs might need to do their job.

Our third guide 'Being a Good Employer' takes you through what you need to know.

Useful links and support available

Please see Sheffield City Council's website for Direct Payments Information and the Recruiting a Personal Assistant guide part 1 and Being a Good employer part 3.

<https://www.sheffield.gov.uk/home/social-care/employing-a-personal-assistant>.

Also see: <https://www.disabilitysheffield.org.uk/support-for-individual-employers-and-personal-assistants>.

For Downloadable and printable samples and support documents

<https://www.skillsforcare.org.uk/Employing-your-own-care-and-support/Information-for-individual-employers/Templates.aspx>.

You'll find sample documents like:

- contract
- Payslip
- Policy declaration form
- Timesheet
- Holiday request form
- Sickness absence recording form
- Data protection policy
- Data sharing form
- Confidentiality policy

Covid-19 information and support

Local information

<https://www.disabilitysheffield.org.uk/peoplewhoreceiveadirectpaymenttofundtheirowncare>

Data security

<https://www.youtube.com/watch?v=sm9Zeyr4jAl>.

Helpful organisations

Sheffield City Council

Adult Social Care

Tel: 0114 273 4567, option 5. Email: asc.howdenhouse@sheffield.gov.uk

Children's Services

Tel: 0114 273 4567, option 4. Email: CYPF-LDD@sheffield.gov.uk

Mental Health Services

North Sheffield Recovery Service: Northlands: Tel: 0114 226 3636

South Sheffield Recovery Service: Eastglade: Tel: 0114 271 6451

NHS Sheffield

Clinical Commissioning Group

Tel: 0114 305 1000. Email: sheCCG.sheffield@nhs.net

Continuing Health Care

Tel: 0114 305 1700. Email: sheCCG.sheffieldCCG@nhs.net

Local voluntary and community organisations

For a list of voluntary and community organisations visit the Sheffield Directory: www.sheffielddirectory.org.uk

Age UK Sheffield:

www.ageuk.org.uk/sheffield/ Tel: 0114 250 2850.

Disability Sheffield:

www.disabilitysheffield.org.uk Tel: 0114 253 6750.

Sheffield Mencap & Gateway:

www.sheffieldmencap.org.uk Tel: 0114 276 7757.

Sheffield Carers Centre:

sheffieldcarers.org.uk Tel: 0114 272 8362.

Sheffield Young Carers:

sheffieldyoungcarers.org.uk Tel: 0114 258 4595.