



10 Employment Advice

Many people prefer to use Direct Payments to employ their own personal assistants directly as employees. This gives them the most control over the assistance they require, but it carries the most responsibility.

This advice sheet contains key information that you will need to know as an 'employer and includes references to other more detailed advice on specific areas available from SCIL

Rights and responsibilities

- You have responsibility for your employee's 'Terms and Conditions' of employment.
- As an employer you have to abide by UK Employment Legislation (Statutory Employment Rights).
- You must ensure that you only employ people who are legally entitled to work in the UK. If you intend to employ anyone who is not a European Union or British Citizen, they will need to provide UK Home Office proof of entitlement to work in the UK.

You can get support with the responsibilities of being an employer from a Direct Payments Support Worker.

Key points

- Working conditions and practices, including Health and Safety (Usually referred to as 'Terms and Conditions'), usually defined in a Contract of Employment
- Employers Liability Insurance: a legal obligation of any employer. It can be paid for with the Direct Payments funding. (Note: Household insurance does **not** cover you)
- Wages
- Holiday pay
- European Working Time Directive
- National insurance and Tax contributions. (Note: This is not necessarily always the case; it depends on your employee's circumstances.)

Others may choose to contract with self-employed individuals or independent agencies. Domiciliary care providers or Care Agencies must comply with the Care Standards Act, and be registered with the Care Quality Commission (CQC) Local Authorities can only contract with CQC 'Registered' care providers to arrange domiciliary care. Direct payments users are not limited to contracting with registered domiciliary care providers where the provider does not provide personal

care, but should be aware that when contracting with a Provider for Personal Care the Provider must be CQC registered.

Fundamental Statutory Employment Rights (The Law)

The following statutory employment rights apply to **all** employees regardless of their length of service or hours of work:

1. Protection against discrimination on the grounds of: race (ethnicity), sex (gender), sexuality (sexual orientation), disability, age, religious belief (faith), and trade union membership.
2. **All** employers **must** abide by the Statutory Minimum Wage (the minimum rates of pay stated in law). The **minimum** wage October 2010 is:
For employees aged:
 - 16 to 17 £3.64 per hour
 - 18 to 20 £4.92 per hour
 - 21 up £5.93 per hour

In October 2011 the Minimum Wage will change to:

For employees aged:

- 16 to 17 £3.68 per hour.
- 18 to 20 £4.98 per hour.
- 21 up £6.08 per hour.

(Note: It is however, very difficult to recruit and retain good quality personal assistants if you are only paying the minimum wage.)

3. The right to equal pay and not to have unlawful deductions from pay
(*For further information refer to Advice Sheet No.7 Paying Your Staff*).
4. The right to make a complaint of 'Unfair Dismissal' if dismissed on the grounds of:
 - anything cited in point No.1 above

Or for Dismissal:

- without giving minimum Statutory Notice
- without following a Disciplinary Procedure for employees who have worked continuously for 12 months or more
- Note: Dismissal of anyone due to Pregnancy is **automatic** 'Unfair Dismissal'.

5. The employee's right to receive a 'written statement of **'main employment particulars'** within eight weeks of starting work, and who have worked at least 4 weeks. This must include the following: Rate/s of pay, when, and how wages/salary will be paid, and other information e.g. notice period, holiday entitlement etc. The written statement will also incorporate the title of the job and/or a brief description of the work for which the employee is employed (*For further information refer to Advice Sheet No. 6 Contracts*).

Statutory employment rights exist to ensure fair and equal treatment; to protect employees' rights; to protect individuals from exploitation by employers and to provide employers with a framework which will protect them from unfair claims from employees. They arise from employment law and related legislation (e.g. equal opportunities). They include: Contractual matters, wages, holiday pay, National Insurance, Income Tax, and Insurance. Some of these are compulsory requirements regardless of individual circumstance. Others depend on qualifying criteria e.g. Entitlement to Statutory Sick Pay: The employee must earn £102 per week or more (For year 2011).

Income Tax and National Insurance

The deduction of National Insurance and Tax from employees, and payment of Employers National Insurance contributions are the responsibility of the employer and are a legal obligation. If you do not make these when and where they are due you will be liable. (*For further information refer to Advice Sheet No.9 Income Tax and National Insurance Contributions*).

Health & Safety

Employees should not be put at risk of harm while at work. Employers should ensure a healthy and safe working environment, e.g. making sure that there are no hazardous surfaces or equipment, and the employee conforms to safe working practices, e.g. proper 'manual handling' techniques. (*For further information refer to the Guide to Employing Personal Assistants*)

Hours of work and the 'European Working Time Directive'

The European Working Time Directive is a law which states your employee should not have to work more than 48 hours a week (Sunday to Saturday). Your personal assistant can opt to work more than 48 hours a week, but they **must** sign a disclaimer (we can provide one). Your personal assistant has a statutory entitlement to a 20 minute break if they work more than 6 consecutive hours a day. For further more detailed information. (*For further information refer to Advice Sheet Working Time Regulations*)

Holidays

All employees have a statutory entitlement to 5.6 weeks paid holiday, including Bank Holidays per year pro rata.

(Note: Bank Holidays are included in the 5.6 weeks, and are treated the same as any other working day)

Night workers

If a personal assistant works night shifts or does sleep-in duties, you must pay wages for the hours they are on duty; available for work or on call. The regulations for night shift workers, sleepovers and live in employees are complex, so we recommend you discuss this with your support worker.

Insurance

Employers are legally required to have Employers Liability Insurance. Public Liability insurance and extra insurance for your or your assistant's car **may** also be necessary. (*For further advice please refer to Advice Sheet No.8 Insurance*).

Statutory Sick Pay (SSP) and Statutory Maternity Pay (SMP)

Employers have a duty to pay Statutory Sick Pay (SSP) and Statutory Maternity Pay (SMP) to any employees who satisfy the qualifying conditions (*refer to No.7 Paying your Staff*).

Recruiting and managing your PA's

It is the employer's responsibility to recruit staff and by planning ahead ensure that they are available to work when required. The assistant will look to the employer for direction in the tasks to be done, when and how they are done. (*For further advice refer to the Guide for Employing Personal Assistants*)

The employer must be prepared for staff absences, due to illness or holiday, and have alternatives to call on when this happens.

Further advice is available from your DP Support Worker or from the organisations detailed at the back of *Take control of your life: An introduction to the Direct Payments Scheme*.

We try to ensure that the information given is accurate, but strongly advise that you check it for yourself.