

# **Employing your own Personal Assistants**

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## **Deciding who you need**

If you are going to employ someone using direct payments you need to think about the type of person you want and the things you want them to do.

A good place to start is by writing a job description. This would include a list of the different things you need your personal assistant or care worker to do. It should also include the days and times you need them to work for you.

You could list any skills, experience, or training you would like your personal assistant to have. For example, if your direct payments are to help you go out then you may want someone who has a car.

An Independent Living Adviser at Southampton Centre for Independent Living can help you to prepare a job description if you wish.

## **Finding a personal assistant**

### **People you know**

You can use direct payments to employ someone you know, like a friend or neighbour. You can also employ a relative who does not live with you. If you want to employ a close relative or partner who lives with you, you will need to talk to your Care Manager, Social Worker or Care Co-ordinator

Employing someone you know can be a good idea because they may understand your needs and you may feel more comfortable with them. However, this can change your relationship with that person because you become their employer as well as being their friend or relative. You should think about whether you would be comfortable telling them what to do, or talking to them if they have done something you don't like. You should be clear at the start about the work you need them to do and about how you will sort out any problems.

### **Advertising**

You could put an advert in a local shop window or on a notice board. This can be quite effective if you want to recruit someone who lives near you. SCIL can make some postcards for you if you wish.

A common way of finding personal assistants is to place an advert in a local newspaper. SCIL can place an advert on your behalf if you wish and can act as a point of contact for people interested in your job. This means you do not need to give out your personal details in your advert.

### **Interviewing**

July 2011

SCIL cannot choose your personal assistants for you. It is your decision who you want to employ. So once you have people interested in your job you need to decide whether you want to interview them. Interviews give you a much better idea of what the person is like and if they would be good at the job.

SCIL can also support you with planning and holding your interviews. In most cases interviews take place in your home so that people can see where they might be working, but you can hold interviews elsewhere if you prefer.

It is a good idea to plan the questions you want to ask people at interviews. You should choose questions which will help you decide who would be best at the job. SCIL can give you some examples of questions you could ask.

If you decide you do not want to employ someone you can ask SCIL to write to them on your behalf and tell them they have been unsuccessful.

For more advice or information on finding your personal assistants please contact Southampton Centre for Independent Living.

## **Using someone who is self employed**

You should always treat your personal assistants as employees unless you are certain their work with you counts as self-employment.

It is up to HM Revenue and Customs to decide whether a particular situation is self-employment. Neither you nor your personal assistants can decide this.

If you control the work your personal assistants do and when they do it then they are almost certainly employees.

If the answer to **all** the following questions is **yes** then the situation is probably self-employment:

- Does the worker provide the main items of equipment needed for the job themselves?
- Will the worker be agreeing to do a job for a fixed price, no matter how long it takes?
- Can the worker hire someone else to do the work for them?
- Can the worker decide what work to do and when?
- Does the worker regularly work for a number of different people?

Self employed workers are:

- Responsible for their own insurance.
- Responsible for their own tax and National Insurance.
- Not entitled to holiday pay, sick pay or other employee benefits.

You should think carefully before treating a personal assistant as self-employed. HMRC may disagree with you and may decide that your personal assistant is actually your employee. If this happens you may have to pay tax and National Insurance on everything you have paid to your assistant.

If you are at all unsure then you can contact Southampton Centre for Independent Living and you can also contact HMRC on 08457 143143.

## **Being a good employer**

If you use direct payments to employ people then as an employer you have certain responsibilities. These advice sheets give you a short introduction to some of the things you should consider:

### **Employment paperwork**

All employees should have a **job description** that lists the different work they are expected to do.

As well as the job description, all employees should have a document that lists the key terms and conditions of their employment. This is called a **statement of particulars**. There are several things that must be included in a statement of particulars, for example, place of work, hours of work, pay rates, holiday arrangements etc. The statement of particulars needs to be given to your employee within two months of starting work with you.

Southampton Centre for Independent Living can help you to prepare a job description and statement of particulars. If you prefer you can get advice from ACAS on 08457 474747, or you can contact your local Citizens' Advice Bureau.

### **Trial period**

A trial period gives you and your employee time to settle in. You can make sure that you have chosen the right person for the job. It also gives your employee the chance to make sure they are happy with the job. Trial periods are usually for three or six months. During this time you and your employee would normally only need to give one week's notice if you want the employment to finish. Even during the trial period there is a formal process you should follow if you want the employment to finish. The process is at the end of this sheet called "if things don't work out". Details of any trial period should be included in the statement of particulars.

## **Equality**

All employees and potential employees should be treated fairly and equally. For example, you should not discriminate on grounds of gender, race, religion, disability, ethnicity, sexuality or age etc.

## **Health and safety**

As an employer you must make sure your employees work in a safe environment. You should identify any risks or dangers your employees may face when working for you and take precautions to prevent any harm to them. This is called a risk assessment. You should carry out a risk assessment wherever your employee works, even when this is in someone else's home.

It is important to do a risk assessment because your employer's liability insurance may not cover you if you have not taken precautions to make sure your employees are safe.

Some of the things you should consider are:

- Ensuring your home is safe, for example, making sure nothing is left lying around that could cause someone to trip over.
- Providing clear instructions on food hygiene and safely preparing meals
- Providing clear instructions on safely using any equipment, for example, kettles or hoists etc.
- Making sure your employee is able to do the job. Identifying any training that would make their job safer, for example.
- Providing gloves or other safety equipment for certain tasks
- Providing clear instructions on minimising the spread of infection caused by contact with bodily fluids.
- Speaking to your employees about any concerns they have and asking them to let you know if they see anything that may harm them.

It is a good idea to write down your risk assessment so you can share it with your employees and have a record of what you have done. It is also a good idea to review it each year in case anything has changed.

You can find more information on risk assessments on the Health & Safety Executive website, [www.hse.gov.uk](http://www.hse.gov.uk). Or you can call their info-line on 0845 345 0055.

## **Training**

As part of your risk assessment you should make sure your employees are properly trained for the tasks you ask them to carry out. For example, if you require them to use a hoist or other equipment you may wish to send your

employees on a suitable training course. SCIL can offer information on how you can access training for your carers. If you do not ensure that your employees are properly trained then this may affect your Employer's Liability Insurance in the event of a claim.

### **Working hours and paid holiday**

- You cannot insist that your employees work more than 48 hours per week on average.
- You must also allow your employees to take rest breaks. Employees are entitled to a break of at least 20 minutes if they work for six hours.
- Employees are entitled to a break of at least 11 hours each day, and a break of 24 hours each week (or 48 hours each fortnight).
- There are special rules for night workers.
- All employees are entitled to 5.6 weeks paid holiday per year.
- You must pay your employees at least the National Minimum Wage.
- You need to keep records of when your employees work for you.

### **National minimum wage**

To be a good employer you must pay your personal assistant above the national minimum wage. This rate changes in October every year, so you will need to check it with your SCIL Independent Living Adviser, your payroll provider or HMRC.

### **Employee benefits**

There are payments you must make to your employees if they qualify for them, for example, Statutory Sick Pay and Statutory Maternity Pay.

### **How to get the most from your employees**

It can take time for you to get to know your employees. It can also take time for your employees to get to know you and to understand the work you want them to do. It is a good idea to set clear boundaries at the start of the employment. This can save a lot of misunderstanding later on.

It can be confusing if you ask your employee to do something that is very different from what is on their job description. It can be useful for both of you to review the job description regularly and to praise an employee for good work. This lets them know when they are doing things right and it can encourage them to carry on doing a good job.

### **Insurance**

If you use direct payments to employ people you will need to have insurance to protect you as an employer. It is important that you have insurance in place before your employees start work.

- You need **employer's liability insurance** in case your employee is injured whilst helping you because you may have to pay compensation.
- You need **public liability insurance** in case your employee causes an injury to someone or damages their property whilst they are working for you because you may have to pay compensation.

It is up to you what insurance company you use. SCIL can give you information on companies who have policies designed for people employing personal assistants.

You will need to make the insurance company aware of any situation or conditions that may increase the chance of a claim being made against the policy. If you do not do these things then the insurance company may not pay out for future claims.

## **If things don't work out**

If you are not happy with an employee's work you should tell them as soon as you can. It is important to be clear about exactly what it is that you are not happy with and how you would prefer the task to be done.

Most work problems can be sorted out informally by discussing things with your employee. If this does not work then there is a formal process you and your employee must follow as a minimum.

### 1. Put it in writing

If your employee has a grievance (complaint) he/she must put this in writing to you. As the employer you must put in writing to your employee the reasons why you are considering disciplinary action or dismissal.

### 2. Meet and discuss

You must then have a meeting with your employee. Both of you should have time before the meeting to consider the other's complaint. At this meeting your employee is allowed to bring someone with them. After this meeting you need to tell your employee your decision and their right to appeal.

### 3. Appeal

If your employee appeals you must arrange another meeting with them. After this meeting you must give your employee your final decision.

## **More information**

The information in this sheet is only a short guide to what your responsibilities are as an employer. You can get more information on your responsibilities as

an employer from ACAS on 08457 47 47 47 ([www.acas.org.uk](http://www.acas.org.uk)). You can also get your own legal advice from a solicitor or employment adviser. If you would like further information on being an employer you can contact Southampton Centre for Independent Living

## **Staying safe**

### **Background checks**

For your own safety and the safety of any children in your home you should carry out checks on your personal assistants,

Southampton Centre for Independent Living can support you to make these checks.

### **References**

It is strongly recommended that you ask your personal assistant for two referees. One of these should be their last or their current employer.

Things you could ask the referees include:

- How reliable is he/she?
- Is he/she always on time?
- How much time has he/she had off sick?
- Is he/she trustworthy?
- Is there anything that means he/she would not be good at the job?

Suffolk Independent Living can take up references on your behalf if you wish.

### **Criminal Records Bureau Check (CRB)**

If you employ someone it is strongly recommended that you ask them to have an enhanced check by the Criminal Records Bureau (CRB). This checks to see if the person has been in trouble with the police.

The checks are carried out by your local authority and you can get the form from them. The form will need to be filled in by you and your employee and returned in the envelope provided.

Once the check has been done by the Criminal Records Bureau they will let your local authority know and they will forward the information onto you.

## **Arranging backup cover**

When you use direct payments you are responsible for arranging your own support. It is likely that at some point your usual personal assistants won't be

able to work for you. For example, they may be ill or take holiday. You should plan for what you will do when this happens so that your care arrangements don't break down.

There are a number of people who you could consider for providing backup cover:

- You can use friends and family, as long as they do not live in the same house as you.
- You can arrange for your personal assistants to cover for each other.
- You may want to keep in touch with former personal assistants as they may be able to cover the work.
- You could try to find people who only work for you when your regular personal assistants cannot work, but this can be difficult because most people want regular work.
- You can use a care agency

### **What should I do if I still cannot find cover?**

You should keep your back-up arrangements up to date. It is a good idea to check regularly that the people or organisations you plan to use are still able to provide you with cover.

SCIL can help you to make back up arrangements but SCIL does not employ any personal assistants and cannot organise your care for you.

### **Document checks**

The law means that all employers need to make some basic checks on every person they want to employ. By doing these checks you can make sure you are not breaking the law by employing illegal workers.

There are penalties for employing someone who is not allowed to work so it is important that you carry out these checks.

### **Documents you should see:**

You should check that each of your employees has any one of these:  
You should keep a photocopy of the document for your own records.

- A passport that shows the person is a British Citizen
- A document giving the person's permanent National Insurance Number and name and a full birth certificate issued in the UK, which includes parents' names.
- A passport or national identity card from any country in the European Union or Iceland, Liechtenstein, Norway or Switzerland. (For some

Eastern European countries you should also check that the person registers with the Home Office.)

- A passport or other Home Office document which states the holder has a current right to live and work in the United Kingdom
- An Application Registration Card from the Home Office to an asylum seeker stating that the person can work in the UK

If someone does not have one of these documents there are other checks you can instead. For more information on these you can contact SCIL.

If you have carried out these checks and found out that someone is not allowed to work you can refuse to employ that person.

You can call the Employers' Helpline for further advice on 0845 010 6677.

## **Paying your personal assistant**

If you are employing people you need to work out their wages. This is called a payroll.

### **Doing your own payroll**

Doing your own payroll gives you more flexibility. For example, you can decide how often your employees are paid. You will need to set up a PAYE scheme with HMRC and you can do this by setting up a Simplified Deduction Scheme. Before you start employing anyone you should ring the HMRC helpline on 0845 6070143. They will give you advice and send you a starter pack. There is also a Business Support Team who can visit you in your home.

### **Payroll services**

If you do not wish to run your own payroll then you can buy a payroll service, but you will need to make sure you have enough money in your direct payments to pay for the service. An Independent Living Adviser from SCIL can help you to work out your budget if you wish. .

For more advice or information on payroll services you can contact your SCIL Independent Living Adviser.