

A simple guide to employing a Personal Assistant

If you have a direct payment, there are lots of different arrangements you can use if you want to employ staff to help you with your day to day life. Where payroll services are required, not agency or self-employed PA's, the worker makes a referral to Direct Payment Support Services (DPSS) who will then contact you.

You need to bear in mind that the legal requirements and responsibilities vary according to the option that you choose.

1. Agency workers from day one:

You can decide to use agency staff instead of employing staff yourself. This means you have a contract with the agency and you pay them for the service.

The agency pays the person who works for you.

You should check any contract with the agency carefully and make sure that you understand it before you sign up to use an agency worker. You should also set out and agree what the worker can use in your home.

You need to inform them of any permanent or temporary jobs that you have available as an employer.

You must not discriminate against them as this would be in breach of the Equality Act 2010 www.equalityhumanrights.com

You are responsible for their health and safety.

After 12 weeks' continuous employment in the same role an agency worker is generally entitled to the same terms and conditions as permanent employees. There are some exclusions to this principle. You would need to liaise with the agency to clarify this.

For further information please see:

<https://www.gov.uk/agency-workers-your-rights> and <http://www.acas.org.uk>

2. Using someone who is self-employed

You can use someone who is self-employed. Sometimes they set themselves up under their own company.

They are responsible for paying their own tax and national insurance.

You need to be aware that both HMRC and Employment Tribunals have occasionally ruled that self-employed people were actually employees. This often arose where a person worked just for one employer and did not have the right to substitute someone else in their place if they were unavailable. You should seek professional advice to avoid this happening.

You might find it useful to use HMRC's online tool to see if someone should be regarded as self-employed.

Further info please see <http://tools.hmrc.gov.uk>

3. Main responsibilities of an employer and employing a personal assistant

Terms and Conditions

You need to provide a written statement of terms and conditions within two months of their employment. This is normally part of a contract of employment.

For more information and an example of terms and conditions: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services

Job description/person specification

It is sensible to have a detailed job description which sets out what you need help with.

For more information and an example of Job description/person specification: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services

In addition to the above:

Consider what do you think is relevant experience?

Would you take on someone with no experience or an apprentice or do you feel they need a certain number of years in caring?

What levels of numeracy/literacy is required?

Do they need a driving licence?

Should they have a First Aid certificate?

Will they have to work with pets?

By Law you must provide payslips

You will probably find it easier to use a payroll service provider. Direct Payment Support Services (DPSS) offer a payroll and support service.

Sunday working

You can't force someone to work on Sundays. Even if they agree, they can opt out of Sunday working by giving 3 months' notice.

Further info: www.gov.uk/sunday-working

Health and safety

You need to provide a safe place of working and you need to assess any health and safety risks to you and your staff and take any relevant action.

Further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or www.hse.gov.uk

4. House rules

It's useful to set out some house rules.

Here are some examples:

- do you need them to knock on the door before they come in?
- do you want to give them a key?
- should they take their shoes off?
- using their mobile when they are at work?
- will you provide free tea/coffee/water etc?
- smoking/alcohol rules
- use of a car
- rules on breaks
- start/finish times/your approach to punctuality
- reading your newspaper
- dress/hygiene standards.

5. Pre-employment checks

References

It's always a good idea to get a couple of references from previous employers.

For more information and an example of a letter asking for a reference:

www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services

Right to work

By law you must check the person has the right to work in the UK. If you don't do this, you may be breaking the law and could be fined up to £20,000.

Further info: <https://www.gov.uk/check-job-applicant-right-to-work>

6. Family members

There are rules about using direct payments to employ family members. Generally you cannot use the direct payment to employ a partner and or any close relative who reside at the same address as you unless defined within the Summary Support Plan and with prior agreement with NCC. For any queries relating to this, please discuss with your care worker or refer to Norfolk County Council's Direct Payment procedure.

7. Children

If you plan to employ children, there are laws about the age they can work and the work they can carry out.

For further info: <https://www.gov.uk/child-employment/minimum-ages-children-can-work>

8. Safeguarding and DBS checks

It is a criminal offence to employ anyone who is on a 'barred list' and there are rules on who can work with vulnerable adults and children. It is therefore a good idea to get a Disclosure and Barring Service (DBS) check done on the person you plan to employ.

To obtain a DBS check, please contact the Direct Payment Client Services Team on 01603 223392 or DPCST@norfolk.gov.uk.

For further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or <https://www.gov.uk/government/organisations/disclosure-and-barring-service>

9. Pregnancy/maternity/paternity/ flexible working/parental rights

These issues are complicated and we recommend that you take advice before you make any decisions.

There are lots of rights that staff have if they are pregnant

For further info: <https://www.gov.uk/working-when-pregnant-your-rights>

Staff also have the right to take maternity and paternity leave. There is also a right for the mother and father to have shared parental leave if certain conditions are met.

Further info: <https://www.gov.uk/search?q=maternity+leave>

<https://www.gov.uk/paternity-pay-leave>

<https://www.gov.uk/shared-parental-leave-and-pay>

All employees have the right to parental leave.

Further info: <https://www.gov.uk/parental-leave>

Employees also the right to request flexible working

Further info: <https://www.gov.uk/flexible-working>

Employees have the right to have time off to deal with an emergency involving a dependant. A dependant could be a husband or wife, partner, child, grandchild, parent, or someone who depends on an employee for care.

More info: <https://www.gov.uk/time-off-for-dependants>

10. Training/apprentices

You should consider whether your employee needs further training.

You might want to consider having an apprentice. There are special rules for apprentices.

Further info: <http://www.employingpersonalassistants.co.uk/training-and-qualifications/>

<https://www.gov.uk/further-education-skills/apprenticeships>

11. Pensions

This is complicated and we recommend that you seek independent financial advice. It is only for the P.A's that are employed directly by you and paid under P.A.Y.E (payroll) that pensions need to be considered. Agencies are responsible for their staff pensions and self-employed worker should set up their own pension.

The Government has introduced a system of 'auto enrolment' which could mean that you have to provide workers with access to a workplace pension scheme.

Further info: <https://www.gov.uk/workplace-pensions-employers>

<http://www.pensionsadvisoryservice.org.uk/>

<http://www.thepensionsregulator.gov.uk/>

12. Redundancy

If employees have two years' service or more, they have the right to receive a redundancy payment if they are made redundant or if the employer dies.

It is important in these cases that you contact Direct Payment Support Services in the first instance.

Further help: Redundancy Payments helpline: 03303 310020 www.gov.uk/redundancy-payments-helpline

13. Insurance

If the P.A's is employed directly by you, not through an Agency or Self-employed, you must take out employer's liability insurance which includes public liability insurance. You will be auto-enrolled for Independent Living Insurance, through our insurance partner Fish Insurance and this will be paid directly for you.

Contact the Direct Payment Client Services Team on 01603 223392 or visit www.fishinsurance.co.uk for more information.

14. Confidentiality

You must make sure that whoever you employ keeps all your affairs strictly confidential.

Data protection/security of data

You need to make sure that any data you hold about your employee is kept secure.

There are data protection rules which you must follow relating to employees.

You can be fined if you don't comply with registration and/or the rules on using any personal data.

Further info: www.ico.org.uk

15. Resolving disputes between family members

You need to have a way of resolving disputes if you use family members, such as mediation.

Further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or

<https://www.gov.uk/government/publications/family-mediation>

National Minimum Wage, especially night workers

You must follow the rules on National Minimum Wage.

If you don't you may be breaking the law and/or be subject to a big fine.

You need to make sure that any wages you pay meet the National Minimum Wage.

It's important that any night workers who are 'on call' are paid correctly and you need to allow enough money for this in your budget.

Further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or www.gov.uk/national-minimum-wage/what-is-the-minimum-wage

16. Statutory sick pay (SSP)

SSP is paid when the employee is sick for four days in a row (including non working days).

Further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or www.gov.uk/employers-sick-pay/entitlement

17. HMRC

It is likely that you will have to register with Her Majesty's Revenue and Customs (HMRC) and to follow their rules for annual returns, employer's tax/national insurance contributions etc.

You must comply otherwise you face fines and in worse case scenarios criminal prosecution.

Most people find it easier to use a payroll service to help you comply with your responsibilities. Direct Payment Support Services can provide this if you require this service.

Further info: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or www.hmrc.gov.uk/employers/

18. Keeping up to date on employment law

You will need to keep up to date.

Fish Insurance offer a 24/7 helpline for Employer Support on 0344 982 2480.

Further help: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services or www.gov.uk

19. Discrimination

You must not discriminate against anyone on grounds of their age, race, religion/belief, sex, marital status, sexual orientation, because they are pregnant/on maternity/paternity leave, because they are a transsexual or because they are disabled. You must make sure that you follow the equal pay principles.

You must not discriminate against them directly, indirectly, harass them or victimise them.

If a member of staff is disabled, you must make sure that you comply with the duty to make reasonable adjustments which is designed to assist them overcome any disadvantages they may have at work.

You may need training to ensure that you are aware of the issues that are involve. Direct Payment Support Services in conjunction with Fish Insurance will be running training workshops across the Country which you will be invited to.

Further information on all the above including several codes of practice

www.equalityhumanrights.com

Further help and advice

If you decide to employ a personal assistant Direct Payment Support Services (DPSS) offer support to recruit one. Also offering ongoing advice in your role as an employer. Contact us on 01603 223392 or DPCST@norfolk.gov.uk

Employment law is complex and changes overtime. We strongly recommend that you choose a payroll service and an ongoing employment support package to help you, and to protect both yourself and your employees.

The Direct Payment Support Services web page has all the information, links and templates you will need: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services

Pension Auto-Enrolment

The Pension Regulator writes to all new employers to advise them of the responsibility to set up and pension for each or their employees.

The Pension Regulator will also ask you to nominate a contact. This can be yourself or Direct Payment Support Services (DPSS).

Recent rules stated that any employee from age 22 up to State Retirement Age earning approx. £192.00 per week must be enrolled on a pension scheme. If your employee does not qualify though, they are entitled to ask you for one and if they do so you must provide one.

All Personal Assistants P.A(s) employed under direct payments who meet the pension criteria should be enrolled with a Pension Provider.

The SU or their representative (DP holder) needs to:

- Chooses a Pension Provider
- Advises the Pension Regulator of the nominated contact (their Payroll Provider)
- Advise your Payroll Provider of the pension scheme reference number in order for them to process the pension payments.

Once this is done you or DPSS will be able to complete a Declaration of Compliance and carry out the remaining pension auto-enrolment process.

Please note:

Payroll Providers are not able to suggest which Pension Provider you should use.

There are many Pension Providers including NEST (National Employment Savings Trust) which was set up by the Government to allow all Employers access to a Pension Provider.

For information: www.norfolk.gov.uk/care-support-and-health/direct-payment-support-services

If further guidance is required, please contact:

- The Pensions Regulator on 0845 600 1011
By email to customersupport@autoenrol.tpr.gov.uk or www.thepensionregulator.gov.uk

As the Employer, if you do not comply with Pension Auto-Enrolment responsibilities this could lead to financial penalties which can start at £50 per day for people with 1-4 employees