

Employment status of Personal Assistants

Overview

This information sheet outlines the necessary information and documentation to consider when hiring a self-employed Personal Assistant (PA). The Direct Payment Support Service strongly advises contacting us or using the employers helpline of your insurance provider, should you also employ a Personal Assistant. This is because the information below is providing guidelines only. The key factor is the nature of the working relationship between yourself (or anybody hiring a PA on behalf of somebody else) and your PA. Misclassification can lead to financial penalties and potential legal consequences in an Employment Tribunal.

What is a Personal Assistant?

A Personal Assistant (PA) is someone who provides support to a Disabled Person who has care and support needs, assisting them to live independently. This role can vary widely based on the specific needs of the employer.

Why is Employment Status Important?

- Determines the rights of the Personal Assistant and responsibilities of the employer.
- Ensures correct tax and National Insurance Contributions (NIC).
- Incorrect status can lead to unpaid tax, penalties, and loss of benefits.

Employment Status: Employee vs. Self-Employed

Employee Status

As an employee, you work under a contract of employment for an employer. This status comes with specific rights and responsibilities.

Key Characteristics:

- **Contract:** The Personal Assistant will have a formal contract of employment.
- **Control:** The employer controls when the Personal Assistant works, including how, when, and where the Personal Assistant performs their tasks.
- **Provision of Equipment:** The employer provides the necessary equipment and resources for the Personal Assistant to work.

- **Payment:** The Personal Assistant receives a regular wage or salary, and their employer deducts tax and National Insurance contributions (NICs) through Pay As You Earn (PAYE).
- **Benefits:** The Personal Assistant is entitled to benefits such as holiday pay, sick pay, and pension contributions.
- **Responsibility:** The employer is responsible for the Personal Assistants working conditions and for complying with employment law.

Rights as an Employee

An employed Personal Assistant is entitled to: -

- Minimum wage (Currently £11.44 per hour)
- Paid holidays (Currently 5.6 weeks pro rata)
- Sick leave and pay
- Maternity/paternity leave and pay
- Protection against unfair dismissal
- Redundancy pay

Self-Employed Status

As a self-employed Personal Assistant, the Personal Assistant runs their own business and provide services to their clients. This status can offer greater flexibility but comes with additional responsibilities.

Key Characteristics:

- **Control:** The Personal Assistant has control over how, when, and where they work.
- **Financial Risk:** The Personal Assistant bears the financial risk of their business, including the potential for profit or loss.
- **Provision of Equipment:** The Personal Assistant provide their own equipment and resources.
- **Payment:** The Personal Assistant invoices the person contracting for their services, and the Personal Assistant is responsible for managing their own taxes and National Insurance Contributions.
- **Flexibility:** The Personal Assistant can work for multiple people and sets their own pay rates and hours.

Responsibilities of a Self-Employed Personal Assistant:

- Registering with His Majesty Revenues and Customs (HMRC) as self-employed
- Keeping accurate financial records
- Completing annual self-assessment tax returns
- Paying their own income tax and National Insurance Contributions

- The Personal Assistant is responsible for arranging their own insurance, such as public liability insurance
- Managing their own training and professional development

Guidelines for Determining Employment Status

Factors to Consider:

1. **Control:** Does the person contracting the Personal Assistant control the Personal Assistants work schedule? (More control suggests employment.)
2. **Mutuality of Obligation:** Is the person contracting the Personal Assistant obliged to offer work, and is the Personal Assistant obliged to accept it? (Yes indicates employment.)
3. **Substitution:** Can the Personal Assistant send someone else to do their work? (Ability to substitute suggests self-employment.)
4. **Equipment and Resources:** Does the person contracting the Personal Assistant provide the tools and equipment needed for the Personal Assistant to do their job? (Provided by client suggests employment.)
5. **Financial Risk:** Does the Personal Assistant have a chance of profit or risk of loss? (Financial risk suggests self-employment.)

Please note this information sheet provides general guidance and should not be considered legal or financial advice. Always seek advice for your specific circumstances.

The Direct Payment Support Service hope you have found this information sheet useful.

The Direct Payment Support Service is available Monday to Friday from 9am until 5pm using the telephone number and email address below and on the first page of the information sheet. Any emails that are received will receive a reply within three working days.

The Direct Payment Support Service contact details: -

Tel: 0370 779 1300

Email: dpsupportservice@hants.gov.uk

The Direct Payment Support Service has further information sheets on various topics, including:

- Introduction to Direct Payments
- Information on Advocacy
- Acting as an Authorised / Nominated person
- Introduction to PPL Virtual Wallet
- Information on Insurance providers
- Information on Payroll providers
- Introduction to employing a Personal Assistant
- Guide to employing your own Personal Assistant
 - Including interview question templates and job advertisement templates
- Ending a Direct Payment