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Before your personal assistant starts

These are the key tasks that you should do before your personal assistant starts work. This section contains quite a lot of information, but it is all essential.

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Contract of employment

For each person that you employ you must have an agreement, also called a 'contract of employment', between you and them so that you are both clear about each other's responsibilities. This is important because it gives details of employment rights, responsibilities and duties - these are called the 'terms' of the contract.

You should send two signed copies of the contract of employment to your new personal assistant and ask them to sign both. They keep one copy and send the other one back to you. You must provide this within two months of taking on a new employee.

What to include in the contract of employment

- Your name and the name of the personal assistant
- The job title (e.g. personal assistant) and main duties
- The place of work (e.g. your home address)
- Start date and type of contract
- Probationary period
- Notice period for both of you
- Salary and when it will be paid
- Working time, hours and breaks
- Holiday entitlement
- Sick leave and sick pay arrangements
- Pension arrangements
- Reference to disciplinary and grievance procedures
- What happens when you are away
- Redundancy
- Confidentiality
- Dismissal

Download a template 'Contract of employment' from our website at www.skillsforcare.org.uk/templates.

This section explains more about the information in the contract.

NOTE: If you want to make any changes to the contract of employment, you must consult with your personal assistant, explain the reasons for any changes and listen to alternative ideas for changes. If you do not, then your personal assistant may have the right to take legal action. Once any changes are agreed, you must confirm them in writing within one month.

The first four sections have not been included here because they do not need further explanation:

- your name and the name of the personal assistant
- the job title and main duties
- the place of work (e.g. your home address) - if your personal assistant will be expected to work outside the UK, you should include this here
- the date when employment begins or date of continuous employment.

Remember that the contract must state what the employment arrangement is, for example, whether the job is full-time or part-time.

Probationary period

This is an amount of time when you can find out what your new personal assistant is like, and allows them to think about whether they are suited to the job.

Set a probationary period that is suitable for you, for example, three months.

It is a good idea to set aside some time to speak with your personal assistant during the probationary period so that you can both talk about what is working well or not going so well. You could also use this to talk about any training that your personal assistant needs.

At the end of the probationary period you should either confirm that you would like your employee to continue their role, that you would like to extend the probationary period or that you want to end their employment.

Notice period for both of you

If your personal assistant wants to stop working for you, the 'notice period' is the amount of time that they must work after they have told you that they want to leave.

If you decide that you do not want your personal assistant to work for you anymore, this is also the amount of time that your personal assistant will need to work once you have told them that they must leave your employment.

You should make sure that the notice period gives you enough time to employ another personal assistant.

If your personal assistant has worked for you for over one month but less than two years, the minimum legal notice period must be at least one week (you can agree on a longer period of time if you want). If they have worked for you for two years or more, the legal minimum notice period is two weeks - plus an extra week for every additional year that they have worked for you (up to 12 weeks).

The notice period can be different during the probationary period, and in cases of dismissal for gross misconduct or gross negligence, notice is not paid.

Salary and when it is to be paid

This is where you say how much your personal assistant will be paid, when you will pay them (for example, weekly or monthly) and how you will pay them (for example, BACS or cheque).

As an employer you have a legal responsibility to deduct National Insurance and income tax.

There is more information about paying your personal assistant later in this booklet.

Working time, hours and breaks

This will be the hours that you want your personal assistant to work. It is also an opportunity to say what the process is if your personal assistant is going to be late or is unable to turn up for work.

You must not ask your personal assistant to work an average of more than 48 hours per week, unless they have given their voluntary consent to 'opt-out' in writing. An employee can cancel the opt-out agreement at any time by giving seven days notice.

Your personal assistant is allowed to have regular rest periods of:

- a minimum of 11 consecutive hours rest in any 24-hour period
- a minimum 20 minute rest break if their working day is longer than six hours
- one day off out of every seven days
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

For young people (under 18) the maximum working week is 40 hours, other than in exceptional circumstances. These hours may not be averaged out and there is no opt-out available. If you employ someone in this age group you must also give them a break of 30 minutes every four and a half hours worked.

You must also allow 'reasonable' paid time off to your personal assistants for things such as:

- attending ante-natal appointments
- training.

In some situations, you must allow your personal assistant unpaid time off, for example, for family emergencies and time to perform public duties, such as jury service or acting as a school governor.

If your personal assistant asks to work flexibly, you have a legal responsibility to consider this request if they have worked for you continuously for at least 26 weeks. You can refuse these requests on reasonable grounds. If you agree to any changes, you should update the contract of employment. Only one request can be made every 12 months.

Holiday entitlement

Holiday entitlement

You should say how much holiday your personal assistant is entitled to per year and when the holiday year starts and finishes, for example, 1 January – 31 December.

It is good to be clear about things like how bank holidays will be treated and the process for agreeing time off. Download a sample 'Holiday request form' from our website at www.skillsforcare.org.uk/templates.

Most full-time workers are legally entitled to a minimum of 5.6 weeks paid holiday per year – you can choose to offer more. The statutory paid holiday entitlement is capped at 28 days.

If your personal assistant works part-time, in a flexible pattern or works irregular hours, it might be easier to calculate their holiday allowance in hours rather than days.

For example, someone who works five or six days per week is entitled to 28 days paid holiday, including bank holidays; and someone who works two and a half days per week is entitled to 14 days paid holiday, including bank holidays.

You can use an online calculator to help - visit www.gov.uk/calculate-your-holiday-entitlement.

Holiday pay

Holiday pay must be based on the worker's average pay. So, if their normal pay includes extra money for working unsociable hours, so must the holiday pay.

If someone stops working for you, they are entitled to be paid for any holiday that they are due but have not taken.

Fixed or contracted hours	Normal weekly pay
Shift work with fixed hours	An average of the number of fixed hours worked in the last 12 weeks at an average hourly rate
Casual work	An average of the pay received each week (in which your personal assistant was paid) for the last 12 weeks. If your personal assistant was on holiday or sick for all of or part of one of these 12 weeks, do not use this week but go back one further week or more if necessary

Visit the Government website for more information about holiday entitlement rights at www.gov.uk/holiday-entitlement-rights.

Bank and public holidays

You can count any days off for public or bank holidays towards your personal assistants statutory holiday entitlement – but only as long as you pay them for those days off. You do not have to give your personal assistant paid time off for bank and public holidays, but you need to be clear about this in their contract of employment.

Sick leave and pay arrangements

Statutory sick pay (SSP) is paid to employees who are unable to work because of illness.

- SSP is paid at the same time and in the same way as you would pay wages for the same period, for up to 28 weeks.
- If your personal assistant is unable to work for four or more days in a row, you must pay SSP. SSP starts on the fourth day that your personal assistant is off.
- For up to seven days of sickness your personal assistant can self-certificate. After seven days your personal assistant will need to produce a statement of fitness (or fit note) from their doctor.
- You do not have to pay SSP if your personal assistant earns less than £118.00 (before tax) per week - this is the 'Low Earnings Limit'.
- You must keep all records of sickness periods lasting for four days in a row or longer and all SSP payments that you make. You can use a form provided by HMRC to keep these records.

Download a sample 'Sickness absence recording form' from our website at www.skillsforcare.org.uk/templates.

More information

Calculate your employee's statutory sick pay (GOV.uk)

This website will help you to calculate SSP.

Visit www.gov.uk/calculate-statutory-sick-pay

Statutory sick pay: record sheet (GOV.uk)

Download this sheet to record details of an employee's sickness absences for SSP.

Download from www.gov.uk/government/publications/statutory-sick-pay-record-sheet-ssp2



Pension arrangements

Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards it. This is called 'automatic enrolment.'

There is more information about providing a pension later in this booklet.

Disciplinary and grievance procedures

This section should explain how problems will be dealt with and you should also write a disciplinary or grievance procedure which goes into more detail.

Before taking disciplinary action using the procedure, you will need to be certain that:

- the matter cannot be resolved through informal mediation
- you have investigated the matter fully
- your personal assistant is told that they will be called to a disciplinary meeting and have the right to be accompanied by a fellow employee, friend or a trade union official of their choice.

At the disciplinary meeting, make sure that:

- your personal assistant knows the details of the allegation
- they have the opportunity to put across their side of the matter
- any disciplinary measure is appropriate to the circumstances.

If a warning is given, it should tell your personal assistant:

- the level of improvement required
- the date by which it is to be achieved
- what will happen if it is not
- how to appeal.

Visit the ACAS website for more information about disciplinary and grievances at www.acas.org.uk.

What happens when you are away

This section should say what happens when you are away, for example, on holiday without your personal assistant or if you have to go into hospital.

Visit the Government website for more information about short-term working or lay-off at www.gov.uk/lay-offs-short-timeworking.

Confidentiality

You will hold confidential information about your personal assistant, and they will know things about you that you would not want passed on. This section should outline how you will both keep this information confidential.

You should ask each other before you share any information with anyone else. This should be with informed consent, which means that you understand the consequences and have had no pressure put on you.

You should make it clear to your personal assistant exactly who they may share information with and in what situation, for example, if you only want them to share information with people who really need to know it, such as other people or organisations that provide you with support; and only if you are not able to give that information yourself. No information should be shared with anyone, even your family or friends, against your wishes. If a personal assistant breaks a confidence, this should be treated as a disciplinary matter.

Sometimes they may have to share information about you without your agreement, such as in medical emergencies, if they thought you were being abused by someone else, or if you have broken the law or if they believe that you intend to break the law.

There is also information that you need to hold about your personal assistant. This should be kept securely so that other people cannot access it.

Dismissal

This section should say how your personal assistant will be dismissed under certain circumstances, such as gross misconduct or gross negligence.

You can read more about dealing with disputes and problems at work, in our 'Sorting out problems' booklet.

Paying your personal assistant

You can do this yourself or use a payroll scheme, such as a local accountant or a direct payment, personal health budget or user led support organisation.

Doing it yourself

- You will need to contact HMRC to register as an employer.
- It is your responsibility to decide on the correct employment status of your personal assistant - the HMRC 'Check employment status for tax' tool can help at www.gov.uk/employment-status-indicator.
- The Low Incomes Tax Reform Group has guidance to help you to register with HMRC and run a payroll at www.disabilitytaxguide.org.uk.

More information

Is your PA employed or self-employed? (Low Incomes Tax Reform Group)

This factsheet will help you to understand more about employment status.

Download from www.skillsforcare.org.uk/EmploymentStatus

Understanding the employment status of personal assistants (Skills for Care, 2017)

This guide explains why it is important to understand employment status, how the wide spectrum of the role influences employment status and where to find more information.

Download from www.skillsforcare.org.uk/PAEmploymentStatus

Being an employer – a guide (Low Incomes Tax Reform Group)

This website has guidance and support for individual employers about tax status and setting things up.

Visit www.disabilitytaxguide.org.uk



Using a payroll scheme

Payroll schemes can:

- make sure that your personal assistant's tax, National Insurance and pension contributions are deducted correctly
- tell you how much Employers National Insurance to pay
- sort out your paperwork
- deal with the tax office (HMRC) for you.

You can ask your direct payment or personal health budget adviser or local support organisation about payroll providers. You might be able to find local accountants who will do this for you very cheaply. If you receive a social care or health direct payment this should include money to cover payroll costs.

How much should I pay my personal assistant?

You must pay at least the minimum wage. This changes every year so call the Pay and Work Rights Helpline on 0300 123 1100 for the latest rate or visit www.gov.uk/national-minimum-wage. You must also give your personal assistant a payslip.

Personal assistants must be paid at least the national living wage (or the national minimum wage for workers 24 and under) while they are on call or working a sleepover; this includes sleeping time.

More information

National Minimum Wage and National Living Wage rates (GOV.uk)

This website has the latest National Minimum Wage and National Living Wage rates.

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



Employment allowance

Individual employers can claim the National Insurance Contributions Allowance and reduce their National Insurance Contribution bill by up to £3000 a year. Find out more at www.gov.uk/claim-employment-allowance.

Providing a pension

As an employer, you have a legal duty to help your personal assistant to save for retirement if:

- they are aged between 16 and 74
- they work in the UK
- you deduct income tax and National Insurance Contributions from their wages.

Automatic enrolment

All employers must automatically enrol certain workers into a workplace pension scheme and make contributions towards it. Your personal assistant can choose to opt out of your scheme at any time. If they do opt out, you must refund all payments made by your personal assistant. The table below will help you to work out if your personal assistant qualifies for automatic enrolment. Please check the thresholds and responsibilities every April as they may change. (Please note, this table is correct at November 2019)

	Your personal assistant's monthly gross earnings:	
Age of PA:	£833 a month or less	Over £833 a month
16-21	personal assistant does not need to be put into a pension scheme	personal assistant does not need to be put into a pension scheme
22 – state pension age	personal assistant does not need to be put into a pension scheme	personal assistant must be put into a pension scheme and you must pay into it
State pension age – 74	personal assistant does not need to be put into a pension scheme	personal assistant does not need to be put into a pension scheme

If any of your personal assistants fall outside of the above age and earning criteria, then you only need to put them into a pension scheme if they ask.

If you have worked out that you do not have any personal assistants to put into a pension scheme, you still have other tasks to carry out in order to meet your legal duties. For example, you still need to write to them to tell them how automatic enrolment applies to them.

You need to complete The Pensions Regulator's 'Declaration of compliance' to tell them that you have complied with your automatic enrolment duties.

Support with pensions

If you use a payroll scheme, they might also help you with providing a pension.

More information

Workplace pension duties (The Pensions Regulator)

This online tool will help you to work out your duties as an employer.

Visit www.thepensionsregulator.gov.uk/en/employers

Most popular questions (The Pensions Regulator)

This website answers some of the most popular questions about pensions for personal assistants.

Visit help.thepensionsregulator.gov.uk/faq/carers



Redundancy

Redundancy is when you ask your personal assistant to leave, either because you do not need to employ them anymore or because you need to reduce the number of staff that you have.

If you make your personal assistant redundant you must comply with the law around redundancy. Your personal assistant will have certain rights, which may include:

- redundancy pay
- a notice period
- consultation
- time off to find a new job.

If your personal assistant has worked for you for two years or more, you must pay statutory redundancy pay. This table explains what they are entitled to, depending on their age.

Age of your personal assistant:	Statutory redundancy pay entitlement
Under the age of 22	Half a weeks pay for each year that they have worked for you
22-40	One weeks pay for each full year that they have worked for you
41 and over	One and a half weeks pay for each full year that they have worked for you

Some insurance companies will help with redundancy payment cover as part of independent living insurance, depending on the reason and circumstances for the redundancy.

NOTE: There are no set rules regarding consultation if you are making less than 20 people redundant. However, it is good practice to consult with your personal assistant on the redundancy situation.

Ring the ACAS Redundancy Service Helpline for free advice on 0330 123 1100.

Maternity, paternity and adoption rights

Your personal assistant is allowed to have maternity, paternity, adoption and parental leave and pay.

Maternity leave and pay

All pregnant employees are entitled to paid time off for ante-natal care and 52 weeks maternity leave, made up of 26 weeks ordinary maternity leave and 26 weeks additional maternity leave. You can offer more additional maternity leave if you wish.

Paternity leave and pay

Fathers and partners may be entitled to two weeks paternity leave. They may also be eligible for additional paternity leave and pay if their partner returns to work before the end of their maternity/paternity leave.

Adoption leave and pay

Where a child is adopted the position is similar.

Parental leave and pay

An employee is allowed reasonable time off to deal with an emergency involving a dependant. A dependant can be a spouse, partner, child, grandchild, parent or someone who depends on them for care. For more information visit www.gov.uk/time-off-for-dependants.

Your personal assistant may be entitled to parental leave (unpaid leave to look after their child's welfare). Parental leave is limited to four weeks for each child, each year. Eligibility for parental leave is explained here www.gov.uk/parental-leave/entitlement.

Employers can get back most or all of these payments from the income tax and National Insurance Contributions that you pay.

Visit the Government website for more information about leave and pay for employees at www.gov.uk/browse/working/time-off.

Health and safety

You have a legal responsibility to make sure that your personal assistant remains safe and healthy whilst doing their job.

As an employer you must:

- carry out risk assessments on your home, including around any pets that you keep
- think about any training that your personal assistant needs
- tell your personal assistant about health and safety, including fire safety
- record (and possibly report) any accidents that take place in your home
- take out employer's liability insurance.

If you employ five or more people you will need a health and safety policy. Visit the Health and Safety Executive website for free guidance and support, including a model policy, at www.hse.gov.uk.

Download a sample 'Safety in the home checklist' and 'Risk assessment' from our website at www.skillsforcare.org.uk/templates.



More information

Health and Safety Executive

This website has free guidance and support about your health and safety responsibilities as an employer.

Visit www.hse.gov.uk

Health and safety in the home (RUILS, 2013)

This video will help you to think about what health and safety measures you need to put in place around the home.

Visit www.youtube.com/watch?v=CKYwWRzXUcg

Moving and assisting (RUILS, 2013)

This video will help you to think about how your personal assistant can support you safely with moving and assisting.

Visit www.youtube.com/watch?v=GmyhmiUfQYk

Insurance

Individual employers need to have employer's liability insurance to make sure that you and your personal assistants are protected if an accident or incident happens.

The specific details of your insurance policy can differ between companies, but they typically include three key elements:

- employer's liability
- public liability
- legal expenses.

It might also be useful to have comprehensive home, travel and/or car insurance, depending on the support that your personal assistant provides.

- **Employer's liability insurance and/or public liability insurance** is essential. As an employer you have a legal duty to insure against accidents or injury to your staff, or accidents or injury caused by them while they are working for you.
- **Employer's liability insurance** covers you if your personal assistant makes a compensation claim because they have been injured or fall ill as a result of their work.
- **Public liability insurance** covers you if anyone else makes a compensation claim because they have been injured or if their property gets damaged, by you or your personal assistant.

If you receive a direct payment or personal health budget, you should check that your local authority or clinical commissioning group has included employer's liability insurance in the amount that it gives you.

- It is a good idea to have **comprehensive house insurance** to cover your property and its contents. You may want to include cover for accidental damage. You should tell your insurer that you are employing people to work in your house.

- You may also need to think about **travel or car insurance**, for example, if your personal assistant is going to be using your car. If you will be travelling with your personal assistant in their car, they will need to be insured to use their car for work.

It is worth looking carefully at what your insurance policy covers and any benefits it may include, for example:

- some insurers specialise in independent living insurance and offer free employment advice
- some independent living insurance policies may also help you to meet the costs involved in making staff redundant (depending on circumstances) and/or recruitment costs for a replacement personal assistant following a dispute.

Your direct payment or personal health budget adviser, local support organisation or the organisation that provides any funding that you receive can give you options for taking out insurance.



More information

Q&A on insurance for individual employers and personal assistants (Skills for Care)

This document answers some of the most common questions about insurance for individual employers and personal assistants.

Download from www.skillsforcare.org.uk/PAInsurance

Independent living: expert advice and information (Fish insurance)

This website has lots of tips and information about the insurance that you need and covers other aspects of employing a personal assistant.

Visit www.fishinsurance.co.uk/independent-living-insurance-information/

Keeping records

As an employer, by law, you need to keep the following records – these are called **statutory records**:

- tax and national insurance information
- for most workers it is advisable to keep records of individual hours worked to enable averaging over a period, to meet the requirements of the Working Time Regulations 1998
- holidays, again for the Working Time Regulations 1998
- pay, to ensure that the requirements of the Minimum Wage Act 1998 are being met, and to meet the statutory requirement that workers are issued with wage slips
- paid sickness for more than four days and Statutory Sick Pay
- accidents, injuries, diseases and dangerous occurrences. The Health and Safety Executive can advise on particular requirements and necessary assessments.

NOTE: All confidential information should be stored in a secure place.

Visit the Government website for more information about keeping personal data and record keeping at www.gov.uk/personal-data-my-employer-can-keep-about-me.



More information

Data security for people who employ PAs (Disability Sheffield)

This guide and video explain more about data protection and security for individual employers.

Download from www.disabilitysheffield.org.uk/admin/resources/digi-sec-guidev6.pdf

Watch the video at www.youtube.com/watch?v=sm9Zeyr4jAI

Personnel data and record keeping (ACAS, 2011)

This booklet explains why keeping accurate personnel records is important, and gives basic information about setting them up.

Download from www.acas.org.uk/article/717/Advisory-booklet-Personnel-data-and-record-keeping

