

# Automatic enrolment in the care sector

## Who is included?



December 2015



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# Who is included in the automatic enrolment duty?

A person may be subject to the automatic enrolment legislation if they are:

- aged 16 to 74 (inclusive), and
- work or ordinarily work in the UK ...

... whether or not they are full time or part time, permanent or temporary.

However, the *truly* self employed are **not** subject to automatic enrolment.



## Who is the employer of the personal care assistant?

- If the carer is **employed** by *another* company (perhaps because the carer works for an agency or their own limited company), the service user will **not** be considered the employer.
- If the carer is **paid** by another company or agency, **that** company will have the responsibility for any automatic enrolment duties, **not** the service user.



## What if the carer says they are self employed?

- The service user should **not** assume that a carer **is** exempt from automatic enrolment, just because they tell you that they are self employed.
- The service user should consider if the carer is normally expected to do the work themselves.
  - If, at any time, the carer **can** freely substitute somebody else, then they **can** be considered truly self employed.
  - However, if they **are** normally expected to do the work themselves (unless they are *unable* to do it themselves, eg they are on holiday or sick), the carer is considered to have a contract to perform work or services '**personally**' ...
    - ➔ and the service user will need to judge whether or not the carer is doing the work **as part of their own business.**

## Is the carer working as part of their own business?

If a carer considers themselves self employed **and** has a '*personal*' contract:

- The service user will need to consider whether the carer is **working as part of their own business** or not.
- There are some factors that will help decide if the carer is working as part of their own business. Does the carer:
  - have control of the hours they work?
  - have their own public liability insurance?
  - provide care services for other people?
  - register themselves as self-employed with HMRC?
  - **not** get paid when on holiday or unable to work due to sickness?
- ➔ If most or all of the above are true, it would be reasonable to consider that they **are** undertaking the work as part of their own business.
- If they **are** undertaking the work as part of their own business, they can be considered 'truly self-employed' and are **not** subject to automatic enrolment.



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## Summary

- A person may be subject to the automatic enrolment legislation if they are aged 16 to 74 (inclusive) and work or ordinarily work in the UK.
- If the service user does **not pay** their carer, the service user will **not** be responsible for any automatic enrolment duties.
- If the carer considers themselves self employed ...
  - a. if the carer has to do the work or services '**personally**' and ...
  - b. the service user considers the carer is **working as part of their own business**

➔ then the carer **is** truly self employed and **not** subject to automatic enrolment.

So, if the service user **is** considered the 'employer' of any carer who is **not** truly self employed, then they will have automatic enrolment duties for them.

