

About this guide

There are lots of advantages to employing someone to provide you with care and support, but being an employer is a big responsibility.

There is a lot of important information in this guide that will help you to make sure that you are a good employer and meeting all of your responsibilities. It will help you if you are thinking about asking for a Direct Payment so that you can employ someone. It will also help you if you are already employing someone. It explains:

- ✓ what a direct payment is and how it can be used to employ someone;
- ✓ how to choose the right person;
- ✓ employing a family member or friend;
- ✓ paying your employee, and making employer contributions;
- ✓ working hours, regular breaks and time off;
- ✓ preparing a written statement of employment particulars and contracts;
- ✓ insurance, and health and safety;
- ✓ the things that you can do to make sure you are a good employer;
- ✓ what to do when things go wrong (discipline and grievance);
- ✓ record keeping;
- ✓ redundancy; and
- ✓ alternatives to employing a personal assistant (PA).

Redcar & Cleveland Borough Council
Adult Social Care

Public Guidance

Employing a Personal Assistant

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If there is anything in this guidance that you do not understand, please speak to your health or social care worker using the contact details provided at the end of the guide.

1. What is a Direct Payment?

If you have had your needs assessed, and we have agreed that you are eligible for council funded support, you can ask for a direct payment.

A direct payment is a sum of money that the Council pays directly to you so that you can arrange your own care and support services or buy your own equipment to meet your needs.

Direct payments give you much greater choice and control over your care and support. By choosing a direct payment you are not limited to using services and organisations that the Council has contracts with. This means that you can think creatively about how to meet your needs and improve the outcomes that are agreed in your Plan.

2. Using a direct payment to employ someone

Some people use their direct payment to employ someone to provide their care and support. This person is usually called a **personal assistant**. There are several benefits to employing a personal assistant:

- ✓ you choose who you want to work for you;
- ✓ you decide what you want them to do;
- ✓ you decide when you want them to work; and
- ✓ you know that the same person will be providing you with care and support.

When you employ a personal assistant, you will become an 'employer' and will have a number of responsibilities and legal obligations to your employees.

It might help you to talk to someone who is already employing their own personal assistant. You should also contact specialist organisations who can provide you with independent advice about becoming an employer. Details of organisations that can provide this service are on the last page of this guide.

3. What will my Direct Payment pay for?

The Council has agreed a set rate that we will pay as a Direct Payment to enable you to employ a Personal Assistant. The hourly rate that we

pay is enough to cover the minimum wage that they must be paid (see below). It also provides enough for you to pay:

- employers' tax and national insurance contributions;
- employer pension contributions;
- employer liability insurance;
- paid holidays for your employee;
- cover for while your employee is on holiday;
- redundancy payment for staff who have worked for you for more than 2 years; and
- training and development.

It would not be advisable to pay the whole of your full hourly direct payment to your employee(s) because of the additional elements besides wage outlined above, provided that you adhere to the National Minimum Wage rate (see details below). It would be advisable to build up a surplus in your direct payment account as a safeguard against the elements outlined.

4. Choosing the Right Person

Some people already know who they want to employ – for example it may be a family friend, or someone else who you know and are comfortable with. If you do not already have someone in mind, you will need to think about how you find the right person to work for you. Here are some things that you should consider:

Advertising the job

You will need to advertise the job. This could be an advert in the newspaper, job centre, or on the internet for example.

Writing the job description and person specification

You will need to write a job description that includes information such as what the person will have to do to help you, hours of work, where they will be working and how much they will be paid. It should also have

information about skills, experience, training and qualifications and personal qualities you are looking for.

Choosing people to interview

Once you have received all of your applications, you should consider each of them to see who you think might be suitable. This process is called shortlisting.

It is very important that you are fair when you select someone for interview. By law you must not discriminate against any person on the grounds of sex, race, disability, age, religion or belief, marriage or civil partnership, pregnancy or maternity, gender reassignment or sexual orientation. You may want to consider seeking legal advice around your recruitment process.

The interviews

You need to think about where you are going to interview someone, and what questions you want to ask them. You should always have at least one other person to help you interview. This could be a family member or friend, an independent advocate or someone from an organisation that specialises in recruiting personal assistants. Having someone with you to give a second opinion can help you to make the right choice, but the final decision is always yours. You must be comfortable with the person who you are employing.

Offering the job

When you have decided who you would like to employ, you will need to offer them a job. When you offer the job to them, it should be subject to satisfactory references and checks (see below).

You will also need to tell the other candidates that they have not been successful, and you might have to give them feedback about their interview and the reason that they were not offered the job.

If you are finding it difficult to recruit a personal assistant contact to your social worker, they can discuss the next steps. Your social worker may

refer you to our Direct Payment Support Service (if you have not already been referred). Or in exceptional circumstances, discuss the possibility of employing a close relative, or offering an enhanced rate.

Make the necessary checks

A number of checks should be made before formally offering someone a job.

- **References:** Ask for at least one reference from a previous employer or someone else who knows the person well. If the person who you want to employ hands you a reference, you could telephone the person who has written the reference to make sure that it is genuine.
- **Disclosure and Barring Service (DBS) Checks:** A DBS check will tell you if the person you want to employ has a criminal record. You should always carry out an enhanced DBS check if the person who is being cared for is under 18 years old or a vulnerable adult, or if the personal assistant will be working unsupervised if there is someone aged under 18 in the house.



• **Are they entitled to work in the UK:** You will need to see original copies of documents that prove that the employee has the right to work in the UK.

For more information about making checks before you employ someone: www.gov.uk/browse/employing-people
For more information about recruiting a personal assistant: www.employingpersonalassistants.co.uk

5. Can I pay a member of my family?

Direct payments cannot usually be used to pay a close family member/partner who lives with you, to provide you with care and support. In some cases, exceptional circumstances apply and your social care worker will discuss this with you. Any agreement to pay an appropriate family member/partner must be authorised by the Assistant Director of Adult Social Care. This process can take up to 28 days from the date of your social care worker receiving your request.

If we agree that it is appropriate to pay a family member/partner, this will be a time-limited agreement, written down in your Plan, and reviewed after 6 months or earlier if necessary.

If we do not agree that it is appropriate to pay a family member/partner and you disagree with our decision, you should in the first instance talk to your social care worker.

If we agree that you need support to manage your Direct Payment, you can choose to pay a family member/partner to manage the direct payment for you – for example to arrange and pay for your services, or to keep records for you. Again, this must be written down in your Plan.

6. What is considered an 'exceptional circumstance'?

There is no set definition for exceptional circumstances and every case will be considered on its own facts with your well-being as the priority.

Examples could include, but are not limited to:

- your care needs are intermittent and unpredictable to an extent that recruiting someone else to meet your needs is not possible;
- significant effort has been made to find alternative means which has been unsuccessful and this is the only way for your support to be delivered; or
- it is the only way of meeting your needs due to a sudden breakdown of other service arrangements.

Even if you know the person who you are employing, you will still need to carry out a DBS check if the person who they will be caring for is under 18 or a vulnerable adult, or if they will be left unsupervised in the same house as someone who is under 18.

You should also check that the employee is entitled to work in the UK and keep a copy of any documents that they provide.

7. Registering with HMRC

When you first employ staff, you will need to register as an employer with HMRC. You must register before their first pay day and can do this by phoning HMRC.



For more information about registering with HMRC:
www.gov.uk/payee-for-employers

8. Paying your Employee

There are lots of rules and regulations that you have to follow when you employ someone. It is important to get this right from the start; otherwise, there could be serious financial penalties. Here are some of the things that you have to think about:

How much you are going to pay, and how often?

Currently, employees who are aged under 21 must be paid at least the National Minimum Wage according to their age. Employees who are aged 21 and over must be paid at least the National Living Wage. The law could change in the future and the rates of pay change often so you will need to keep up to date with the current rates.

You also need to decide how often you are going to pay them. This could be weekly, 4 weekly or monthly.



To check the current rates for minimum wages:
www.hmrc.gov.uk/nmw

Setting up your Payroll

You need to make sure that your employee is paid the right amount of money; on time and that all deductions are made for income tax, national insurance, and pension contribution. You will also need to make sure that they receive a payslip that shows how much they have earned and

any deductions that have been made.

You can either:

- **Run your payroll yourself**

Running your own payroll can be very complicated and if you get it wrong, you could be fined. You will have to register as an employer with HMRC and pay your employees as well as operate PAYE.

- **Use a payroll provider**

The payroll provider will make the necessary arrangements, including registering with HMRC. Your health or social care worker can put you in touch with organisations that can provide you with a payroll service. Usually, this can be paid for with your direct payment.

PAYE Exemptions

PAYE is the HMRC system that collects income tax and national insurance from employment. You are exempt from PAYE if none of your employees is paid £123 or more a week, gets expenses and benefits, has another job or gets a pension.



For more information about PAYE and payroll:
www.gov.uk/pay-for-employers

Enrolling your employee into a pension scheme

All employers are legally required to automatically enrol eligible staff into a pension scheme and contribute towards it. You must enrol and make an employer's contribution for all staff who:

- Are aged between 22 and the State Pension age.
- Earn at least £10,000 a year.
- Work in the UK.

This is subject to change, and you should keep up to date with current legislation.



For more information about pensions, and check what your duties are:

www.thepensionregulator.gov.uk

Paid holidays and time off

Currently, your employee is allowed a minimum of 28 days/5.6 weeks paid holiday per year (to include public holidays although there is no specific statutory right for your employee to take annual leave on public holidays unless your contract of employment for them requires this). The actual number of days off, that someone is entitled to depend on how many days they work per week. For example, someone who works 5 or 6 days a week is allowed 28 days paid holiday (5.6×5). Someone who only works 2 days a week would have 11.2 days off (5.6×2).



If your PA works less than 5 days a week, you should use the holiday allowance calculator:

www.gov.uk/holiday-entitlement-rights

Employees are also allowed 'reasonable' paid time off work to attend things such as training and ante natal appointments and unpaid time off, for example to complete jury service.

Statutory Sick Pay

Currently, if your employee takes time off sick, you are responsible for paying statutory sick pay, from their fourth day off up to a maximum of 28 weeks. If they are off for more than 7 days, they will need to get a "fit note" from their doctor to confirm that they are unable to work.



For more information about Statutory Sick Pay:

www.gov.uk/statutory-sick-pay/overview

Maternity, Paternity, Adoption and Shared Parental Leave and Pay

Currently, employees are usually entitled to paid time off work if they have a baby or adopt a child.

- Eligible employees are entitled to take up to 52 weeks of maternity or adoption leave. Statutory Maternity and Adoption Pay must be paid for the first 39 weeks.
- Fathers can choose to take either 1 or 2 weeks paid Statutory Paternity Leave.
- Parents can now choose to share their time off and receive Statutory Shared Parental Pay.

As an employer, you can usually reclaim any statutory payments you have to make from HM Revenue and Customs (HMRC). If you cannot afford to pay, you can apply for HMRC to pay you in advance.

If your employee tells you that they intend to take maternity, paternity, adoption or shared parental leave, you should make alternative arrangements.



For more information about maternity, paternity, adoption and shared parental leave, including a calculator to help you work out statutory pay: www.gov.uk/employers-maternity-pay-leave

9. Working hours and regular breaks

You cannot ask your employee to work for more than 48 hours per week unless the employee has volunteered and put it in writing.

Your employee is also allowed regular breaks:

- A minimum 20-minute rest break if their working day is longer than 6 hours.
- A minimum of 11 consecutive hours' rest in any 24-hour period.
- At least 1 day off each week, that is one day off out of every seven.

Taking a personal assistant on holiday

If you decide to take your personal assistant on holiday with you, so that they can continue to provide you with care and support, you still need to allow them regular breaks. If you are away for more than a few days, it is likely that your personal assistant will have to work for more than 48 hours per week. This means that they will have to write to you to confirm that they are willing to do this. You should keep a copy of this letter in your records.

10. Written Statement of Employment Particulars

If you employ someone, you must give them a written statement of employment particulars no later than their employment start date. This will stand as their contract of employment and include the main conditions of employment, including:

- Your name.
- Employee's name, job title and start date.
- Salary - how much and how often it will be paid.
- Hours of work (and if the employee will have to work Sundays, nights or overtime).
- Holidays – how many days, and whether this includes bank holidays.
- The place of work (usually your home address), and any other location where the employee may have to work



More information about written statements, including a template that you can download:

www.gov.uk/employment-contracts-and-conditions

Changing a Contract

Sometimes you may need to change your employee's contract. This

could be because your care and support needs have changed. You may need to increase or reduce the number of hours that they work or need them to perform different tasks for you. It could be because you decide to move to a new house and so their place of work will change.

If you need to change the contract, you must talk to your employee about it, explaining what the proposed change is, the reasons for the proposed change and how it will affect them. You will need their agreement before you can make any change to their contract. Once they have agreed, you must update their written statement at the earliest opportunity and no later than 1 month of the change taking place.

If they do not agree to the changes, you should take independent advice from an organisation such as ACAS or take independent legal advice about the next steps.



For more information about varying a contract:
www.acas.org.uk/varyingacontract

www.gov.uk/your-employment-contract-how-it-can-be-changed/getting-agreement

Making sure you have the right insurance

- **Employer Liability Insurance:** You must have Employer Liability Insurance from an authorised insurer. This insurance will help you to pay for compensation if your employee has an accident or becomes ill because of the work they do for you.

You may not need employer liability insurance if the person who works for you is a close family member. You can check this at www.gov.uk

- **Home Insurance:** If your personal assistant is working in your home you should tell your home insurance provider as this may affect your policy.
- **Car Insurance:** If your PA will be driving your vehicle, you must

tell your car insurance provider as it may affect your policy. If the personal assistant will be using their own vehicle to carry out their duties, you should check that their policy covers them for business use.

11. Health and Safety

You have a responsibility to make sure that your employee is safe and healthy at work. There are a number of things to consider, including but not limited to:

- Carry out a risk assessment of your home, to identify anything that could result in an accident, injury or infection. If you do identify any risks, you will need to think about how you can reduce the risk or stop it from being a risk altogether.
- Make sure that you regularly talk to your employee about health and safety, for example when you have your monthly catch up.
- Record, and possibly report any accidents that involve your employee and take place in your home.
- Take out employer's liability insurance.
- Think about any training that your employee might need, for example if they need to help you to move about, they may benefit from People Movement training so that they don't injure themselves.



For more information about Health and Safety:
www.hse.gov.uk/healthservices

12. Being a Good Employer

Being a good employer is not just about having the right paperwork and paying someone on time. It is about supporting and developing your employee and making them feel valued so that they want to carry on working for you. These are some of the things that you can do:

Induction: On your employee's first day, meet with them to go through

their contract/written statement and make sure that you are both clear about what is expected. You can also show them around, talk about health and safety, tell them where things are kept and go through any house rules, for example which rooms they can go in, whether they can use your phone and how they should handle your money. It is also a good idea to explain any personal boundaries – it is easy for these to become blurred as you get to know your employee and your relationship becomes more relaxed.

Regular catchups (supervision): You should set some time aside on a regular basis to have a one-to-one with your employee where you can talk about what is going well, discuss any issues or problems with their performance, and think about any training that your employee might need to help them do their job. This meeting is usually called supervision and should take place at least monthly. It is a good idea to take notes at this meeting and keep a record of them in case there are any problems in the future.

Communication: If you want to have a good working relationship with your employee you must have good communication. Your employee needs to know that you are sharing information with them and being open and honest. Your employee also needs to know that they can come to you if they have any issues or concerns.

Training and Development: Your employee is likely to need training or qualifications that will help them to do their job and develop their skills and confidence. The Council offers a number of training courses that



For more information about managing a Personal Assistant, or for information about possible funding to train your personal assistant: www.skillsforcare.org.uk

You can also email the Council for information about courses that we offer for Personal Assistants at: workforcedevelopment@redcar-cleveland.gov.uk.

Personal Assistants can access – for more information speak to your health or social care worker.

13. When things go wrong: Discipline and Grievance

If you have good communication with your employee and have regular supervision meetings with them, you should be able to address any problems that arise as soon as they become an issue. This will stop them from getting worse and prevent either of you from having to take things further. But sometimes these issues cannot be resolved informally and you both need to know what to do if this happens.

Discipline is the action that you need to take if you are not happy with your employee's performance or behaviour. A grievance is something that the employee is not happy about – this could be the way you are treating them, or a change that you have made to their job without their agreement.

As an employer, you should have a Discipline and Grievance Policy that clearly sets out the rules for what is acceptable and unacceptable behaviour. This could include:

- Timekeeping.
- Absence.
- Health and safety.
- Performance
- Use of your facilities.
- Discrimination, bullying and harassment.
- Personal appearance.
- Types of conduct that might be considered as 'gross misconduct.'

The Policy should also include information about the process that you will go through if your employee breaks these rules or is not performing well in their job. It should also include the process that the employee needs to go through if they are not happy about their employment or the way that you are treating them.



ACAS Code of Practice and Guide to Discipline and Grievance at Work: www.acas.org.uk

The Policy should follow the ACAS code of practice on disciplinary and grievance procedures.

14. Keeping Records

As an employer, currently, 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 the requirements of the National Minimum Wage legislation are being met, and to meet the statutory requirement that workers are issued with pay statements.
- paid sickness (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.

It is also helpful if you keep records of the following information, as this can be useful evidence if there are any disputes:

- Your recruitment and selection process for at least 6 months
- Any supervisions or formal meetings that you have with your employee
- Any disciplinary action or grievances

All information that you keep about your employees must be stored in a secure place.

15. Redundancy

If your care and support needs change, or you decide that you no longer want to employ a personal assistant, it is likely that you will have to make your employee redundant.

If you have to make your employee redundant, you currently must give them the following statutory notice:

- at least 1 weeks' notice if they have been employed for more than 1 month but less than 2 years; or
- two weeks' notice if the employee has been employed by the employer continuously for two years and one additional week's notice for each further complete year of continuous employment, up to a maximum of 12 weeks. For example, if an employee has worked for 5 years then they are entitled to 5 weeks' notice.

If your employee has worked for you for 2 or more years, they will be entitled to a redundancy payment. The amount of redundancy pay depends on their age, weekly wage and how long they have worked for you.

Before making someone redundant, you should seek independent advice from an organisation such as ACAS to make sure that you are acting fairly. You should also consider seeking independent legal advice regarding redundancy.



The ACAS website has lots of useful information and guidance about redundancy:

www.acas.org.uk/redundancy

Further information about redundancy, including Information, including a calculator for statutory redundancy pay:

www.gov.uk/calculate-employee-redundancy-pay

16. What if I do not want to be an employer but I still want a Personal Assistant?

Although there are lots of advantages to employing your own personal assistant, not everyone wants to take on the responsibility. Another option that you could consider is using your Direct Payment to pay an agency to provide you with a personal assistant. If you do this, the

agency will be the employer and will be responsible for most of the things that are described in this guide.

Depending on the contract that you have with the agency, you may be able to choose your preferred personal assistant, and if that personal assistant is off work, the agency will make arrangements for someone else to provide your care and support.



For more information about agencies that might be able to help you, you can speak to your health or social care worker, or visit the Redcar and Cleveland PIN at **www.peoplesinfonet.org.uk**

Contact Details Adult Social Care

Directorate of Adults & Communities
Adult Social Care
Redcar and Cleveland Borough Council
Seafield House
Kirkleatham Street
Redcar
Yorkshire
TS10 1SP

Telephone: 01642 771500

For Adult Social Care email:

AccessAdultsTeam@redcar-cleveland.gov.uk

For general council enquiries email:

contactus@redcar-cleveland.gov.uk

Website: www.redcar-cleveland.gov.uk

Relay UK (for deaf, hard-of-hearing, and speech impaired people)

Office hours: Monday to Thursday: 8.30 am - 5.00 pm and Friday:
8.30 am - 4.30 pm.

If you need help in emergency when our offices are closed, you can
contact the

Emergency Duty Team: 01642 524552.

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