

# Direct Payments Becoming an Employer Guide

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## 1. Introduction

You or the person you're looking after may be able to have direct payments from social services so that you can buy the care services you need. These payments could be used to pay a care worker to provide you or the person you're looking after with care. If direct payments are used in this way, the person receiving direct payments will become the employer of whoever they pay to provide them with care. The employment agreement is between these two people and does not directly involve social services.

This can give you or the person you care for freedom and flexibility about your choice of care worker. You can interview and choose for yourself the person you would most like to provide your care.

This guide is for people who are considering using direct payments to employ staff. We cannot provide employment advice but this guide highlights some of the issues that you need to think about. **It is not a comprehensive guide to employing staff.**

### 1.1. Getting the right advice and help

It is essential that you seek independent advice before you decide to use direct payments to become an employer. You may wish to talk to your solicitor, Citizens Advice, a user led organisation (for example Age UK, Disabled Living Foundation) or an independent direct payments support service provider.

Examples of support service providers are available on our Support Services List, although we do not commission any providers so you may choose a provider that meets your needs. They can provide advice and ongoing support with direct payments, including about using direct payments to employ staff.

The first consultation with a support service is usually free but there are charges for ongoing services. You can pay the charges from your direct payments account.

There is also useful free information on a number of websites:

[HM Revenue and Customs \(HMRC\)](#)

This website has a wide range of information and tools for you to use.

<https://www.gov.uk/employing-staff>

You can phone the HMRC employer helpline:

0300 200 3200 Employers

0300 200 3211 New employers

0300 200 3212 (Textphone) Employers who are deaf or hearing or speech impaired

### Skills for Care

This website includes a comprehensive toolkit for employing your own personal assistant.

<http://www.skillsforcare.org.uk/Recruitment-retention/Employing-your-own-care-and-support/Employing-your-own-care-and-support.aspx>

### PA Net

This is a network for personal assistants and their employers. Membership is free. There is information about direct payments, employing a personal assistant and various topics including employment law on their website. You can talk to other members through their e-forums.

[www.panet.org.uk](http://www.panet.org.uk)

### Acas

This website provides information, advice, training, conciliation and other services for employers and employees to prevent or resolve workplace problems.

[www.acas.org.uk](http://www.acas.org.uk)

## **1.2. Employer responsibility**

It is important to make sure that everything is done properly. You as the employer are responsible for making sure that all legal requirements are met and for being a good employer. There can be financial consequences for you if you do not meet requirements.

You are responsible for all costs of employment. This includes costs such as redundancy payments, fines and interest (for example for late payment of PAYE). You must have employers' liability insurance – this is required by law. You can pay the premiums from your direct payments account. It is your responsibility to make sure that you have the right insurance cover and that you pay your insurance premiums on time each year.

## 2. Becoming an employer

Using your direct payment to directly employ the care and support you need means you have more choice and control over who provides your care and support services and when they are provided. Becoming an employer means that you have responsibilities to the people you employ and we strongly recommend that you use one of the direct payment support services to support you if you use direct payments to employ your own staff.

The direct payment support services will be able to keep you up to date with changes in employment legislation, developments within independent living and help with most aspects of employing your own staff.

They can supply a range of services like payroll (paying wages, tax and National Insurance contributions, dealing with HMRC; keeping appropriate records); help with recruitment, selection and screening services; advice about the insurance you will need; advice about staff matters (dealing with staff performance issues, health and safety issues)

You are still responsible as the employer even when you pay someone to help you. You do not have employer responsibilities if you use agency staff or if the person providing your support is self employed. However, there are things you need to check when using an agency or a self employed person because in some situations you may be the employer or things may not be quite as clear as they seem. There are also still some legal responsibilities towards this type of worker, for example you must ensure that you do not discriminate against the worker on the grounds of the nine protected characteristics. This website has more information about protected characteristics.

<https://www.gov.uk/discrimination-your-rights/types-of-discrimination>

### 2.1. Using an agency

If you use an agency to supply staff, you will usually have a contract or agreement with the agency not with the staff member. Usually the agency is the employer; the agency manages the staff that they supply to you; and the agency is responsible for insurance and all other requirements.

When using an agency, you should always:

- Make sure that the agency is employing the staff that they will send to you, rather than supplying someone that you will employ yourself.
- Make sure that the agency is not linking you with a self employed person – see also next section.
- Make sure that the agency is registered with the Care Quality Commission which regulates services.

Please also read our **Using an Agency** fact sheet.

## 2.2. Self employed people

Even if someone you want to work for you tells you that they are self employed, it is your responsibility to **check** whether they are genuinely self employed or will be your employee. It is important to get this right because it affects how tax and National Insurance contributions are calculated and what you have to do.

If you get it wrong, and HMRC rules that the person is your employee rather than being self employed, you may have to pay extra tax, National Insurance contributions, interest and penalties.

The HMRC website can help you decide whether or not a person is self employed. HMRC can provide a decision about employment status if you are unsure.

<https://www.gov.uk/new-employee/check-status>

If HMRC decides that the person is self employed, you will not become the employer.

This means that the self employed person is responsible for insurance cover and all other arrangements, including their own training.

Self employed people are free to choose if and when they work for you. They are also unregulated (for example by an employer or the Care Quality Commission). You must decide if this will work for you.

## 2.3. Making sure your employee is entitled to work in the UK

You are responsible for making sure that anyone you wish to employ is legally entitled to work in the UK **before** they start working for you. You have to do certain document checks. You can be fined if you do not do them.

You can offer employment once the checks are completed and you are satisfied that the person can legally work in the UK. There is more information on the GOV.UK website.

<https://www.gov.uk/legal-right-work-uk>

<https://www.gov.uk/government/collections/employers-illegal-working-penalties>

## 2.4. Registering as an employer

When you first employ someone, you **must** register as an employer with HMRC if **any** of the following is true:

- the person's earnings meet certain thresholds
- you provide them with employee benefits
- they have another job or a pension

Most people will have to register as an employer. You can find information about which employers need to register and how to register on the HMRC website.

<https://www.gov.uk/register-employer>

## 2.5. Pay, PAYE and National Insurance

You have a responsibility to deduct PAYE (Pay As You Earn) tax and National Insurance contributions from your employee's pay. You have to keep records of how much has been paid, any deductions made and report your payroll information to HMRC.

Tax and National Insurance contributions must be paid to HMRC by set dates. If payments are late, HMRC may charge you penalties and interest.

Making sure you get things right is easier if you use a payroll service, like one of the support services on our Direct Payment Support Services List. Support service charges can be paid from your direct payments account.

You can get more information on the HMRC website:

<https://www.gov.uk/payee-for-employers>

## 2.6. Other Responsibilities

As an employer you must know what rights and responsibilities apply to you and your staff. We cannot cover all employer responsibilities here, but some examples are listed below. You must:

- Provide your staff with written information that defines their terms and conditions of employment within 2 months of employment.
- Pay no less than the minimum wage and keep up to date with minimum wage information.
- Allow eligible employees to take maternity leave and pay statutory maternity pay (SMP). Most SMP can be reclaimed.
- Pay statutory sick pay (SSP) if your employee is unable to work because of sickness and qualifies for SSP. We recommend that you accumulate funds in your direct payments account to cover contingencies like this.

- Be aware of Working Time Regulations – maximum hours that people can work.
- Ensure that your employee receives their statutory leave entitlements – you must keep up to date with any entitlement changes.
- Be aware that you may have to offer a pension scheme to your employees.
- Ensure that you do not discriminate in the way you select your employees or treat them during their employment

You will need to think about a range of things like:

- What you want your personal assistant to do and what hours you want them to work. If you need someone who can drive, will they drive your car or their own? You should ensure that they have a valid licence, that their car is roadworthy if they are going to drive you and that they are covered by insurance.
- Writing job descriptions (the tasks you want them to do), person specifications (the personal qualities you would prefer in a personal assistant, for example their skills, minimum training, experience, understanding of any special needs, including cultural and religious)
- Contingency plans - what you will do when your personal assistant takes annual leave, is sick or needs other unplanned time off work; what your personal assistant will do if you go on holiday or are admitted to hospital.
- How and where you will advertise for staff.
- How you will make decisions about getting the right person for the job – short listing, interviewing, taking up references, criminal record checks.
- Keeping records of the process followed.
- Written terms and conditions of service – the contract.
- Having a probationary or trial period for your personal assistant.
- What induction and additional training they will need.
- How you will prevent and deal with problems. Your personal assistant will probably want some feedback from you about whether they are meeting your needs in the way you expect. You will also have to consider how you will manage poor performance. We strongly recommend that you seek advice from one of the support services on our Direct Payment Support Service List about managing performance. If you have to discipline or dismiss a staff member, you must be fair and operate within the law. Otherwise you may face legal proceedings or have to pay out on an unfair dismissal and/or redundancy claim.
- Health and safety at work

You can find a range of information and tools for employers in the 'Employing people' section of the GOV.UK website.

<https://www.gov.uk/browse/employing-people>

You can find information about taking on a new employee on the HMRC website: <https://www.gov.uk/new-employee>



## 2.7. Recruiting staff

You must comply with employment legislation when recruiting staff so we strongly recommend that you have support to do this. You must ensure that your recruitment process is legal - and you need to stay safe.

We recommend that you use one of the direct payment support services to advise and assist you. If you decide not to use this support, there are some basic things that you should consider when recruiting and employing staff. Information on the Skills for Care website may help you.

<http://www.skillsforcare.org.uk/Recruitment-retention/Employing-your-own-care-and-support/Employing-your-own-care-and-support.aspx>

## 2.8. Keeping yourself safe:

A good way of keeping safe is to use one of the direct payment support services to provide help and support. They can also carry out a criminal records check on anyone that you want to employ.

Here are some suggestions that we ask you to think about when you advertise for and meet people to see if they are suitable:

- Applicants will want to know your general location, but it is not a good idea to put your address, telephone number or details about yourself in the advertisement. You could ask someone you trust to support you by allowing you to use their contact details (you must get their permission first). Your local Jobcentre Plus will advertise for free and may help you to write the advertisement. You could also ask one of the support services on our direct payment support service list to receive applications for you.
- Interview people away from your home address if you can and have someone you trust with you to support you. You could ask a family member, friend, someone who has supported you in the past. Some of the direct payment support services may have an office that you can use or be able to support you through the interview process.
- Make sure you ask for at least 2 written job references from the people you interview and follow them up.
- You might want to arrange for someone you trust to spend some time with you when your employee first starts work.

Looking ahead, you should also think about how you will ensure that your employee will maintain confidentiality about you.

It is always possible that some people may try to take advantage of you and / or abuse you. Sometimes the abuse is obvious, for example if someone physically or verbally abuses you, or if your money or belongings are being taken or used without your permission.

Other abuse is less obvious and sometimes happens after you have built up a relationship with someone. This can happen if a person slowly takes control of your money but makes it seem as if they are doing you a favour. The person may not give you any privacy, or may make all the decisions about what you want to do.

If you think this is happening to you or you are in any way concerned, please contact our Adult Helpdesk on **01452 426868**.

## **2.9. The Disclosure and Barring Service – criminal records checks**

We strongly recommend that Disclosure and Barring Service (DBS) checks are carried out for anyone you intend to employ. Checks include the person's criminal history as well as identifying people who are barred from working with children or with vulnerable people.

Some of the support services on our Direct Payment Support Service List can arrange for the DBS check to be carried out for you. Charges can be paid from your direct payments account. If you are using staff supplied by an agency, you should check with the agency that any staff they supply have had a satisfactory criminal records check. Please refer also to our Using an Agency fact sheet.

## **2.10. Professional relationships**

Working on a one to one basis with someone is unlike any other job. Try to maintain a friendly professional relationship with your personal assistant rather than becoming friends. Remember that you are the employer and may have to talk to your personal assistant if you are not satisfied about their work or if other problems arise.

Although some friends and relatives can make good personal assistants, your relationship may change once you become their employer.

## **2.11. Training**

You should consider what induction your personal assistant will need to give you the support that you want. For example, they will need to know what you expect, the 'house rules' and where things are kept. It is best to give clear instructions in a step by step way – you cannot assume that a new personal assistant will know how to do things at first. Try to be consistent in what you want so that there are no misunderstandings.

You must ensure any staff you employ are able to carry out the tasks you expect of them and do not put you or them at risk of being injured. If your personal assistant will be supporting you with moving and handling tasks, they will need to have moving and handling training. If there is an accident, insurance companies are unlikely to pay out unless the personal assistant has been trained by an appropriate moving and handling trainer.

Employers must provide their staff with instruction, information, training and supervision. Some of the direct payment support services will be able to suggest what prior training and experience will best suit your needs and about what training is available.

Some basic training topics are:

- Moving and handling
- First aid
- Infection control
- Food hygiene
- Administration of medication
- Health and safety

You may also want to consider other specialist courses, such as dementia awareness, autism, diabetes, and so on.

## **2.12. Health and safety**

As an employer, it is your responsibility to provide a healthy and safe workplace for your staff and not to do anything, or ask them to do anything, that may cause them to be injured.

Your personal assistant is responsible for not doing anything that might endanger their own or your safety.

You will need to:

- carry out some risk assessments on your home, e.g. can your personal assistant always move or transfer you safely; have they been trained in safe handling techniques; do you need to move the furniture to make moving around safer, are there risks associated with pets or other animals.
- think about any training 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 employers' liability insurance.

If you employ more than five people you will need a health and safety policy. You can find more information on the Health and Safety Executive website.

<http://www.hse.gov.uk/simple-health-safety/index.htm>

### 2.13. Insurance

**Before you employ anyone, you are legally required** to have employers' liability insurance. This is protection to cover legal costs and compensation. The cost of the employers' liability insurance premium is included in your direct payments. You are responsible for making sure that premiums are paid on time.

The insurance company will insist that you adhere to their terms and conditions so make sure that you get the right cover for your circumstances and ask the insurance company to explain their requirements clearly to you.

Because you are responsible for all employment related costs, we recommend that you consult one of the direct payment support services to make sure that you have all the insurance cover that you need. For example you will need to check your insurer's requirements if your personal assistant is going to drive your car.

#### Self-employed people

If HMRC has confirmed that your personal assistant is self employed, the self employed person must provide their own insurance cover. You should ask to see a copy of the policy before you agree they can provide you with the service. You do not pay for the insurance of someone who is self-employed.

#### Staff supplied by an agency

The agency must have the correct insurance cover before offering you their services. You should ask to see a copy of this before buying their service with your direct payment.

### 2.14. Keeping Records

There is information on the HMRC website about the records you must keep.

<https://www.gov.uk/payee-for-employers/keeping-records>

The direct payment support services agencies on our list can provide advice and support about record keeping. There is a charge if you wish them to keep records for you. This can be paid from your direct payments account.

We have to account for how direct payments are spent when we review your direct payment arrangements each year. We will want to see your records – for example bank statements for the direct payments account, timesheets, and so on. You can find more information about reviewing direct payment arrangements in our Adult Social Care Direct Payments Guide.

### **2.15 Other available direct payments information**

You can find more general information about direct payments in our:

- Adult Social Care Direct Payment guide
- Using an Agency fact sheet
- Authorised Person fact sheet

Please always ask us for help if you think you need it.