

Being a good employer

A toolkit for employing personal assistants





What if your personal assistant is self-employed?

If your employee is self-employed they will work for themselves and run their own business providing support as a personal assistant. In this case you will have different responsibilities and they also have different responsibilities.

He/she must:

- Send you an invoice for the support he/she provides.
- Complete his/her own tax and National Insurance deductions.
- Have his/her own public liability insurance which is in date, and cannot expire.
- Ensure that he/she has an up to date Disclosure and Barring Service (DBS) for his/her role as a personal assistant, and ask to see this.
- Provide any equipment that he/she needs for his/her job.
- Show you his/her terms and conditions of services and give you a contract to sign, which includes a complaints procedure.
- Provide someone to cover his/her role if he/she is away or is unable to work.
- Pay for any insurance and training which he/she needs for the role.

You must:

- Ensure that you receive an invoice for his/her work.
- Ensure that you keep records of all invoices that you are given.
- Ensure that you are shown his/her terms and conditions of services.
- Ensure that you sign a service contract, which includes a complaints procedure.

Remember:

- Make sure that you check his/her insurance and DBS. You need to check that all insurance is in date and has not expired. You must check that he/she has an in date DBS which covers this role.
- You do not have to contribute to sick pay or holiday pay.

Most importantly you must ensure that your personal assistant provides you with the information you require including details of their services, how they will support you and their pay. They must also provide evidence that they are self-employed, that they have the necessary insurance, and are responsible for their own tax and National Insurance contributions. This should all be provided in writing, in a document for you to keep a record of. These records are very important as they are evidence if you are challenged.

If your personal assistant is self-employed and does not complete his/her responsibilities or cannot provide proof of self-employment then you should contact your key worker for support.

Pay

To pay your employee you must complete these requirements:

- You must pay an employee at least the national minimum wage. This still applies even when he/she is on call or is working a sleepover, and this includes sleeping time.
 - » You should keep up to date with any changes to these rates which change annually
- You must give an employee a payslip. This must have a breakdown of his/her wages and must be given out every time your employee is paid. A payslip must:
 - » Show your employee's total earnings to date.
 - » Show the fixed deductions which get removed from every wage (payments that are the same at every pay).
 - » Show the variable deductions (payments that can change at every pay, e.g. National Insurance and tax.)
 - » Show the net pay which an employee will receive (this is the total pay for that period minus the deductions).

An example of a payslip can be viewed in appendix documents.

If you use brokerage services they will organise your employees' payslips for you.

- You must set up a procedure for paying your employee. They must be paid on the same day or date, weekly or monthly. Common examples are for employees to be paid every Friday or the 15th of every month.
- You have to pay your employee either by direct debit or by cheque.
- You have a legal responsibility to ensure that employees are paying National Insurance and Income Tax where eligible. HM Revenue and Customs (HMRC) can help you make arrangements for these deductions.
- You have to register as an employer with HMRC.

If you use brokerage services they will complete these tasks for you. You can contact your key worker for support.

Holidays

Your employee is entitled to annually paid holidays.

The legal requirement is that you provide at least 5.6 weeks' paid annual leave for each employee every year, and this is at the normal rate of pay.

There is no law on what must happen on bank holidays. So if you do not need your employee to work on a bank holiday you can ask his/her to take this time as a paid holiday.

As an employer you can influence when your employees holidays are taken. If you are aware that there are times when you will not need your employee to work you could ask them to take this time as paid holiday.

If employment is ending then your employee is entitled to the holiday pay of any holidays he/she is entitled to but has not taken.

Employees should request holidays using a holiday request form. Refer to the appendix documents for an example of this form.

After receiving the form you must approve the holidays and keep it as part of your records.

All employees must take their holidays within the year. Employees cannot be paid for working the time instead of taking their holidays.

You may want to consider hiring some casual employees, who will be able to fill in and cover holidays if your employee's holidays do not match your own needs.



Pensions

As an employer you have a legal obligation to provide pension schemes for all of your eligible employees. You have to automatically make payments into a pension for those employees.

Your employees have the option to opt out, and if they do then all payments are refunded. If you use brokerage services they will set up this pension for you.

When providing pensions you must follow these steps in this order:

1. You must be ready to put your employees into a scheme on your staging date. This date can be found on your letter about automatic enrolment from The Pensions Regulator or it can be found using The Pensions Regulator's online tools.
2. Find out whether your employees fit the criteria. Enrolment eligibility is based on age and pay. This criteria is available from the Pensions Regulator. You should keep up to date with this criteria as changes may result in you needing to enrol more employees.
3. You should calculate how much it will cost. When enrolling an employee into a pension scheme you will also have to pay into it. Contact your key worker for support with this and use The Pensions Regulator calculator to work this out.
4. You need to make sure that all your employee details are correct, for example, date of birth, contact details and National Insurance number. Pension schemes will require this information.
5. You will have to choose a pension scheme. One set up by the Government is the National Employment Savings Trust (NEST) and this is available to all employers. Other schemes are also available on The Pensions Regulator online search tool or ask your key worker for support.
6. When your staging date arrives you must automatically enrol your employee and begin to pay your contributions. Make sure that the information required is quickly given to the pension scheme organisation.
7. Following the staging date you must write to your personal assistant and inform them that he/she has been automatically enrolled or explain that he/she is not eligible.
8. Within five months of the staging date you must complete your online declaration of compliance. This confirms that you have enrolled your employee or explains why your employee is not eligible. Your Declaration of Compliance is completed on The Pensions Regulator.
9. Keep records of your enrolment and the details of your contributions.

If you require any support then contact your key worker. They will be able to signpost you to the tools available for support from The Pensions Regulator.

Sickness absence

You need to have a procedure in place which should be followed if an employee is sick.

This procedure should be explained to your employees in their induction and it should also be documented in the Contract of Employment.

If an employee is unwell and unable to work you should ask them to let you know as soon as possible so that you can try to make alternative arrangements. You must inform your key worker of your situation and he/she will be able to support you.

You may want to consider hiring a number of casual employees who will be able to fill in if the sickness is likely to be long term.

If an employee is off sick they may be entitled to Statutory Sick Pay (SSP). This is paid at the same time and using the same methods as a regular wage.

To be eligible for SSP your employee must meet certain criteria, and you can find out more at **www.gov.uk/employers-sick-pay**.

Following the fourth day of sickness and up to seven days of sickness an employee is required to self-certificate using an Employee's Statement of Sickness form which is available from HMRC.

The maximum amount of sick pay that can be given is 28 weeks.

You can ask your key worker to help you to calculate SSP. If you use brokerage services they will organise this for you.

You must keep your key worker updated throughout your employee's sickness and immediately update him/her of any changes.

You must also make sure that your employee communicates with you regularly.

Hospital admissions

Hospital admissions vary on a case by case basis.

If you require your personal assistant to continue their role and continue assisting you whilst you are in hospital you must inform your key worker and the person responsible for your care in hospital.

When you first go into hospital you and your key worker should assess the length of time you are expected to stay. For short or specific hospital stays, you or a representative should approach your personal assistant and ask him/her to take annual leave for this time period.

If this is not possible, or for longer hospital stays, then this will be reviewed by your key worker on behalf of the service you receive support from. Each instance is individual so a review is required to decide the next steps.

When going into hospital you must contact your key worker, and they will be able to assist you and help you throughout your stay in hospital.





Maternity, paternity and adoption pay and leave

If your employee requires any of these arrangements your key worker will be able to support you and you should inform them immediately.

Maternity

If you have an employee who is pregnant she has rights and you have a legal obligation to support these rights.

Pregnant employees are entitled to 52 weeks maternity leave.

- The first 26 weeks are ordinary maternity leave.
- The last 26 weeks are additional maternity leave.
- Leave can begin from 11 weeks before the expected birth.
- Leave must be taken for at least two weeks after the birth.
- If the baby is born early an employee's leave must begin the day after the birth.

You must be informed of the pregnancy at least 15 weeks before the expected due date. Employees will inform you of the due date or the date that they would like to begin their maternity leave.

Once you have been informed you must confirm the maternity leave's start and end date within 28 days.

If your employee would like to change their return to work date she should give eight weeks' notice.

Statutory Maternity Pay (SMP) can be paid for 39 weeks. For the first six weeks' pay is 90% of the average weekly wage. Following this it is paid at the rate of either £139.58 per week or 90 per cent of the weekly wage, whichever is lowest.

Paternity

Similar to maternity entitlements employees are entitled to paternity leave and pay if their partner is having a baby, if they are having a baby through surrogacy or if they are adopting a child.

The entitlement is either one or two weeks consecutive leave. It must begin the day of the birth or an agreed number of days following the day/week of expected birth.

Statutory Paternity Pay (SSP) is either £139.58 per week or 90 per cent of the weekly wage, whichever is lowest.

Unpaid leave can be granted for attending two ante-natal appointments, each up to six and a half hours.

Adoption

If your employee is adopting a child or having a child through a surrogacy arrangement he/she may be entitled to adoption leave and pay.

If your employee is eligible he/she is entitled to up to 52 weeks leave, the first 26 ordinary adoption leave and the last 26 additional adoption leave.

For surrogacy, leave is taken from the day of birth.

For adoption, leave can be taken up to 14 days before a child is placed with your employee. For overseas adoptions, leave can begin 28 days before the arrival of the child.

Statutory Adoption Pay (SAP) for employees can be paid for 39 weeks. It is at the rate of either £139.58 per week or 90 per cent of the weekly wage, whichever is lowest.

Parental

Your employee may be entitled to shared parental pay and leave if he/she has had a baby or adopted a child.

You must first determine whether your employee is eligible, and your key worker will signpost you towards the eligibility criteria.

If eligible your employee can end his/her maternity or adoption leave early and then decide how he/she would like to split their remaining pay and leave. If your employee is eligible and decides that he/she would like to take this option then the leave must be taken between the baby's birth and first birthday.

If your employees require any of these arrangements your key worker will be able to support you. They will be able to signpost you to tools and resources which can help with calculating pay and tell you of your legal requirements.

You must keep records for each of these types of pay and leave. You must have thorough records of the type of pay, the day it began, all payments, any weeks unpaid and the reasons why. For pregnant employees you must also keep a record of the proof of pregnancy. These records should be kept for three years from the end of the tax year they relate to.

As you are an employer you can usually reclaim back 92 per cent of any of these types of pay. Your key worker will be able to direct you to resources which can help you with this.

Redundancy

You may find that you have to make a member of your staff redundant. This may be because you no longer need to employ him/her or you need to reduce the number of staff you employ.

You must contact your key worker if you are thinking about making a member of staff redundant. Your key worker will need to assess that a redundancy is not impacting on the care and support you require. This must be reviewed and assessed in line with your Care and Support plan.

Details of what will happen in the event of redundancy should be included in your Contract of Employment.

When making staff redundant you must be considerate of your employee's rights. An employee may be entitled to redundancy pay, and this applies if they have worked for you for two years or more, but it is also dependent upon an employee's age. There are different criteria which apply to calculating this. Your key worker will be able to assist you with this.

In addition to redundancy pay you must also provide the following:

- **A notice period**

You legally have to provide a notice period and this should be outlined in the Contract of Employment.

Statutory redundancy notice periods are:

- » At least one weeks' notice if employed between one month and two years.
- » One weeks' notice for each year if employed between two and 12 years.
- » 12 weeks' notice if employed for 12 years or more.

You have to pay your employee for this notice period. If you choose for your employee to finish working for you before the end of their notice period they must still be paid, through payment in lieu of notice.

- **Consultation**

When making an employee redundant you should inform them in a formal meeting, and provide the reasons for the redundancy.

- **Time off to look for a new job**

If your employee has worked for you for over two years then he/she must be given time off to look for a new job. For this time off, regardless of its length, you are only required to pay 40 per cent of that week's wage. So if an employee takes two days off to look for work then they will be paid 40 per cent of the weekly wage, but equally if an employee takes four days off to look for work then they will be paid 40 per cent of the weekly wage.

If you have approval to make a member of staff redundant your key worker will be able to support you throughout the process. In addition they will be able to direct you to helpful resources and organisations which guide employers through redundancies.





Staff resignation

If a member of your staff wishes to resign then you must accept it and he/she must provide you with a letter of resignation.

You should ensure that your employee has given you the required notice period. They will find this in their Contract of Employment and it is dependent upon the length of time they have worked for you.

- Legally notice must be at least one week if they have worked between one month and two years.
- If an employee has been employed for over two years then notice has to be two weeks legally and there is an additional week added for every extra year worked.
- The maximum length of time a notice period can be is 12 weeks.
- Usually an employer will require one weeks' notice during the probationary period and following this it will rise to four weeks' notice. This notice will extend depending on the number of years your employee has worked for you, but there is a maximum of 12.

Following this you and your employee must both decide a last day of work. You should decide whether you want your employee to work all of their notice period or only part of it.

If an employee is retiring this is classed as a resignation.

If you have an employee who is resigning and is working their notice period you can look for another employee to replace them. You are able to use this toolkit to support you through the recruitment process again.

If an employee resigns then you will need to contact your key worker immediately to inform them.

Disclaimer

Oldham Cares brings together Oldham Council, NHS Oldham CCG and other health and social care providers in an alliance to share skills, experience, talent and resources to deliver a better care experience for all.

These organisations are not able to provide legal advice. Independent advice should be sought from a legal professional or the Citizens' Advice Bureau (CAB).

Oldham Cares accepts no responsibility for any loss that may arise from reliance on the information in this toolkit.

The toolkit was correct as of August 2018.