Getting personal

Rights at work for personal assistants
More and more workers are finding employment as personal assistants (PAs) providing support and care for people who have social care needs.

Many people are now directly recruiting and employing people to work for them when they get a ‘direct payment’ or ‘personal budget’ provided by their council or the NHS.

This unique employment relationship is different in many ways to when a worker is employed by an organisation. It can be very rewarding for both parties, but sometimes employee and employer can feel isolated and uncertain of where to get help when difficulties arise.

Individuals who become employers need to know the full range of their legal responsibilities and should have access to reliable support and advice. To get off to the best possible start in the job, and to know where to turn if problems come up, personal assistants need to have a good knowledge of their rights at work.

This leaflet is for personal assistants but will also be useful to people who are thinking about employing someone in this role.

Rights at work for personal assistants

1. Beware of bogus self-employment

Employees have a wide range of rights and their employers have a wide range of responsibilities. Therefore one of the first things you need to get straight is that you are an employee, and not self-employed. Genuinely self-employed people do not have as many rights at work as employees.

UNISON is aware that there are some organisations, which may be encouraging personal assistants to class themselves as ‘self-employed’, and for people to employ them on that basis. However, in most situations where you are being hired by someone to provide regular personal support and care – in the eyes of the law, and the tax office you are an employee. This is very important as cases of bogus self-employment have landed unwitting employers and workers with large bills for unpaid tax and national insurance.

You should be classed as an employee if:

■ You are usually required to work at set times each week, rather than do the work at times of your own choosing

■ You take instructions from your employer about how to do your work

■ You have to carry out the work in person, and cannot decide to send a substitute of your choice.

As an employee, you are entitled to the employment
rights set out in this leaflet. It also means that your employer is responsible for deducting income tax and national insurance before paying you your wages.

Many employers buy in payroll services from companies, which will calculate and deduct tax and NI – however these organisations are not your employer. More information from Revenue and Customs is available at: cfdp.co.uk/wp-content/uploads/2011/02/HMRC-leaflet-Workers-Employment-Status.pdf

2. Know your rights
Take a bit of time to familiarise yourself with your employment rights.

From day 1, you have the right to:
- An itemised pay statement
- At least the national minimum wage
- At least 5.6 weeks holiday a year (including public holidays)
- Work no more than 48 hours a week on average
- Protection from discrimination, harassment and victimisation
- Protection from dismissal because of pregnancy or whistleblowing
- Maternity leave (right to pay depends on service).

Subject to your length of service, you should also be entitled to:
- Written statement of terms of employment – after 2 months
- Statutory maternity, adoption or paternity pay – after 6 months
- Unpaid parental leave – after 1 year
- Right to claim unfair dismissal – after 2 years
- Redundancy payment – after 2 years.

To find out more about the full range of rights go to: worksmart.org.uk/rights.

3. Check out the basics with your employer before you start
Here are some other things you and your employer may want to check out together:
- Does your employer have employers’ liability insurance in place? This is a legal requirement and the insurance covers the employer if the employee gets ill or injured in the course of their work. Your employer also needs public liability insurance to cover any harm which they or you might cause to a member of the public in the course of your work.
- Does your employer have access to employment information and advice via the council, NHS or a user organisation?
- Does your employer have some contingency funding (or know how to get it) to cover for when you might be sick, on holiday or need to take maternity or other kinds of leave?
- Have health and safety risks in the home and other places you may go been assessed? This is also a legal requirement and means that steps can be taken to deal with any risk factors, which could make you ill or injured. It also helps protect your employer. If for example, there is a need for equipment, adaptations, or transport, the employer should be able to get help with this via their support organisation, the council or NHS.
- Does the employer have money in their budget to provide you
with training? If they don’t many councils and NHS bodies, or service-user organisations, do provide training opportunities for PAs. The cost of this should be met in addition to the employer’s support package.

4. Agree a written job description, pay rate, working hours, training needs and other conditions at the outset

Many disputes and misunderstandings arise because pay, terms and working conditions are not clearly agreed from the start. Agreeing the job description allows any issues about what is, and is not, part of the job to be ironed out. It can also be a good idea to review it after a few months of experience. You should also review together your training needs and agree a plan for how these can be met.

Many people who employ PAs may not be getting enough in their care and support budget to cover all their needs. As a result workers may want to, or feel pressured to do, unpaid overtime or additional tasks, such as cleaning, or working without proper equipment. However you and your employer should remember that councils and the NHS have a duty to meet assessed need. Where there are problems your employer should ask for a review of their needs and budget.

5. Get some support

Not being in a formal workplace and working largely on your own can leave PAs sometimes feeling isolated.

Joining a union will help you get the support and guidance you need. UNISON is the union for all staff in social care. By joining us, you become part of the UK’s largest public sector union. We have more than 1.4 million members, with 300,000 working in social care.

UNISON aims to help you deliver high quality support and care – we are here to offer advice and support when you have concerns about issues at work. Membership gives you access to excellent legal services including free help with work problems and other legal support for you and your family. Members can also get cash benefits for accidents and injuries at work, training advice and courses, and a range of other special benefits and deals.

UNISON wants to develop what we do to support PAs, and we are running a new project to explore just that. We want to establish a network so PAs can share experiences, mentor and support each other. We need you to join and give us your ideas about how to get it going!

The union is also calling for a national framework on pay, conditions and training for PAs. We want decent funding for social care, a fair employment package for all PAs, and proper support so employers can get and keep reliable skilled staff.

Join us today at unison.org.uk/join or call 0845 345 0845