

All PAE Handbook

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Disclaimer

Please note that the information contained in this Handbook is provided for guidance purposes only. Every reasonable effort is made to make the information accurate and up to date, but no responsibility for its accuracy and correctness, or for any consequences of relying on it, is assumed by Self Directed Support Scotland or any other contributing party.

The information does not, and is not intended to, amount to legal advice. You are strongly advised to obtain specific, personal and professional advice from a lawyer about employment law matters, or an accountant/ tax specialist about taxation matters, and from HMRC and your insurers. You should not rely solely on the information in this Handbook. Support organisations listed in this Handbook can help you find appropriate sources of advice.

All PAE Handbook

Advocacy Services



Independent advocacy is a way to help people have a stronger voice and to have as much control as possible over their own lives.

The Scottish Independent Advocacy Alliance (SIAA)

The SIAA is the national intermediary organisation supporting, promoting and defending independent advocacy across Scotland.

Independent advocacy supports people to navigate systems and acts as a catalyst for change in a situation. Independent advocacy can have a preventative role and stop situations from escalating, and it can help individuals and groups being supported to develop the skills, confidence and understanding to advocate for themselves.

Independent advocacy is especially important when individuals or groups are not heard, are vulnerable or are discriminated against. This can happen where support networks are limited or if there are barriers to communication. Independent advocacy also enables people to stay engaged with services that are struggling to meet their needs.

Next steps

You can search for an advocacy service in any area of Scotland by going to the Scottish Independent Advocacy Alliance website:

<https://www.siaa.org.uk/find-an-advocate/>

or contacting them on:

Tel: (0131) 510 9410

Email: enquiry@siaa.org.uk

Resources

Scottish Independent Advocacy Alliance (SIAA) website

<https://www.siaa.org.uk/>

An Employer's Responsibilities to their PAs During COVID-19

Employers have a legal duty to make the workplace safe for their Personal Assistants (PAs). It's the employer's responsibility to regularly carry out workplace risk assessments and take steps to protect employees from harm, which includes reducing the COVID-19 risk. Employees also have a responsibility to follow safe working practices.

It's a good idea to involve employees when carrying out a workplace risk assessment, as they may have suggestions/ideas.

There is a range of information and advice available for employers on COVID-19. These cover such areas as:

- Who can go into the workplace
- Self isolation and sick pay
- PAs protecting themselves, their employer and others
- Government Guidelines and employer requirements
- Getting the vaccine
- Access to PPE and testing
- Long COVID
- Other financial support
- Standard Infection Control Precautions (SICPs)

COVID-19 still remains a concern for public health and therefore employers are encouraged to

continue with all protective measures identified by their risk assessment, to make appropriate adaptations to workplace practises and to maintain a vigilant approach to managing COVID-19.

Employers are encouraged to continue following the advice in the COVID-19: Fair Work Statement. It states that **no worker should be financially penalised by their organisation for following medical advice**, and any absence from work relating to COVID-19 should not affect future sick pay entitlement, result in disciplinary action or count towards any future sickness absence related action.

Face coverings when in close contact with people

For close contact treatments provided to the face, mouth or nose area, people must follow any advice given. Individuals who have received two doses of the COVID-19 vaccination and a booster are still required to follow any current rules on face coverings.

Risk assessments

Staff are at the highest risk of exposure to COVID-19 when working in close proximity to the face, nose or mouth of another person. For this reason, risk assessments should be carried out to consider what measures need to be implemented to protect the health and safety of all staff and PA employers, including whether or not to carry out the support required.

Risk assessments and COVID-19

The requirement for every employer to explicitly consider COVID-19 in their risk assessment was removed on 1 April 2022.

The most important thing is **what is actually done to manage and control risk associated with COVID-19 in the workplace**.

Public Health Scotland has published guidance on how to carry out risk assessments that sets out further detail on managing workplace public health risks

The Scottish Government are encouraging employers to take the needs of those on the Highest Risk List into consideration when completing a risk assessment.

For those PAs returning to the workplace it is advised that employers carry out an **individual risk assessment** to look at your individual risk. This can help individuals and employers to discuss any additional changes that may be needed to make the workplace and duties safer.

Employers are encouraged to consult closely with employees on the Highest Risk List.

Managing risk in the workplace

Employers can manage risks to their PAs by:

- Encouraging staff to **wear face coverings** in enclosed, busy areas, or places which are less well ventilated
-

Maximising ventilation

and the use of outside space if possible

-

Reinforcing enhanced cleaning

, particularly of frequently touched surfaces, and hygiene measures such as providing alcohol based hand sanitiser

- Supporting the distance aware scheme
- Encouraging staff to

travel safely when going to and from the workplace

. PAs should not travel to work or car share if you have symptoms of coronavirus

- Vehicle sharing at work involving close contact with other individuals. PAs should wear face coverings, ensure vehicles are well ventilated by opening windows and clean after each journey
- Protecting those at highest risk via conducting an individual risk assessment
- Continue to support workers to follow self-isolation guidance. From the end of April 2022 anyone experiencing COVID-19 symptoms will be advised to stay at home
- Reducing the overall contacts between people
- Regularly communicating with employees
- Developing plans to adjust shift patterns to protect the workforce
- Reducing the need for travel at peak times and providing opportunities for flexible working
- Continuing to work with staff on health and safety matters such as providing training around any new processes and protocols introduced
- Considering available resources to support the welfare and mental health of staff
- Encouraging the uptake of vaccination

Vaccination

Employers can help encourage vaccine take up by:

- Supporting staff to get the COVID-19 vaccine once it is offered to them. This may require paid time off to attend the appointment
- Encouraging vaccine take up by sharing the benefits of being vaccinated with staff. It could help to display material from the NHS COVID-19 vaccination marketing toolkit which includes information leaflets in a number of languages

Standard Infection Control Precautions (SICPs)

SICPs are the basic infection prevention and control measures necessary to reduce the risk of transmission of infectious agent from both recognised and unrecognised sources of infection.

The Scottish Government has set out the SICPs that are to be used by all staff, in all health and care settings, at all times, for all service users, whether infection is known to be present or not to ensure the safety of those being cared for, staff and visitors in the care environment.

As PA employers have the responsibility for health and safety of their staff members, it will be the responsibility of PA employers to assess risk for COVID-19 and to put in place appropriate Infection Control Precautions.

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

ACAS COVID-19 employer responsibilities

ACAS has produced a range of information on COVID-19 for employers and employees, which you can find here

<https://www.acas.org.uk/coronavirus>

Scottish Government COVID-19 information and guidance

All the Scottish Government guidance issued can be found here

<https://www.gov.scot/collections/coronavirus-covid-19-guidance/>

An Introduction to Self-directed Support (for PA Employers)

The Social Care (Self-directed Support) (Scotland) Act 2013, ensures that everyone who is eligible for social care funding in Scotland will have the right to choose how their social care support is delivered.

Self-directed Support (SDS) is available to anyone who meets the eligibility criteria that their Local Authority (council) has set. This can be available to children, young people, adults and older people. A person can apply for support for themselves and a parent can apply for their child or young person. Someone with active Power of Attorney, Welfare Guardianship or Financial Guardianship can apply on behalf of the person they are Guardian for.

The 4 options for SDS

Option 1

Known as a Direct Payments, this is where the supported person receives the money they need to pay for their support, directly from their Local Authority (Council). This allows them to arrange their own support or purchase a service from a care agency. This is the only option under which Personal Assistants (PAs) can be employed.

Option 2

This option involves the individual deciding who they want to provide their care and support (e.g. a local care agency or the Council themselves). They ask the Local Authority to send the money they have agreed to pay for their support to that organisation who then works with them to arrange the support that they need.

Option 3

With the individual's agreement, the Local Authority finds a service that meets their needs and arranges their support.

Option 4

A mixture of any of the other 3 options can be used to arrange care and support.

Next steps

Further information on Independent Support Organisations and Local Authorities can be accessed through the SDS Scotland website: www.sdsscotland.org.uk

Take a look at the video resources below.

Resources

Video FAQ: What is an "Outcome"?

<https://vimeo.com/302851270>

Video of Your Support Your Choice Easy Read SDS Booklet

<https://www.youtube.com/watch?v=me0F9qurqY0>

SDSS Video FAQ: How to access SDS and where to start

<https://vimeo.com/302851048>

SDSS Video FAQ: What is Independent Support and how can it work for you?

<https://vimeo.com/302852325>

SDSS Video FAQ: What is an assessment?

<https://vimeo.com/302851101>

SDSS Video FAQ: What does SDS mean for individuals?

<https://vimeo.com/302850846>

SDSS Video FAQ: How does SDS work?

<https://vimeo.com/302850923>

Annually Upated Costs

Each year certain costs that relate to the employment of Personal Assistants (PAs) can change. HMRC will provide updated guidance on any costs that change. This might look very complicated but a PA Employer can use a Payroll Company to keep on top of these changes and make the necessary changes each year, or whenever a change happens during the year.

These costs could cover such areas as:

- Pay As You Earn (PAYE) Tax and National Insurance (NI) contributions
- Tax thresholds, rates and codes

- Class 1 National Insurance thresholds
- Class 1 National Insurance rates
- Class 1A National Insurance: expenses and benefits
- Class 1A National Insurance: termination awards and sporting testimonial payments
- Class 1B National Insurance: PAYE Settlement Agreements (PSAs)
- National Minimum Wage
- Statutory Maternity, Paternity, Adoption, Shared Parental and Parental Bereavement Pay
- Statutory Sick Pay (SSP)
- Student loan and postgraduate loan recovery
- Company cars: advisory fuel rates
- Employee vehicles: mileage allowance payments

Next steps

Take a look at the resource available below from the HMRC to guide you in more detail.

Resources

HMRC Website for rates and thresholds for employers

<https://www.gov.uk/guidance/rates-and-thresholds-for-employers-2020-to-2021>

Budget Considerations



The easiest way to stay on top of employee costs is to use a payroll service or accountant, but here is what potential employers should be aware of when budgeting. Independent SDS Information and Support Organisations can assist with this.

Considerations are broken up into **regular costs**, such as Personal Assistant's (PA) wages including their holidays and pension, insurance and a payroll service if using one, **and a contingency**: this covers emergencies and things that might or might not happen.

Personal Assistant Wages

The basic rate is currently:

£10.50 Scotland Rate for PAs of Adults only

This is the amount paid to a PA before taking out tax or other deductions. This is a **specific rate that is only applicable to PAs that support adults (people 18+)**. Please note, this rate **does not apply to PAs of children and young people**. This is the minimum amount a PA for an adult should be getting paid when the funding for the payment is being made from the Local Authority (council). You can find more details of this in the Guidance on SDS during the Pandemic below.

Wages usually increase with time, so this should be considered in the budget process. If there is no increase in the planned budget then the contingency would need to cover this

Pensions

Employers must currently contribute at least 3% of annual wage.

This is an additional amount that must be included if the PA is classed as an "eligible worker" (meaning there is no reason to exclude them) and the PA does not want to "opt out." The employer must pay a percentage of their employee's annual salary into a pension for them. Most accountants and payroll companies charge a set up fee for arranging pensions. The charge for this can be between £50 and £150. This money would have to come from the contingency budget too, because the employer might not know exactly how many employees might want this option.

Some Local Authorities provide the pension set up fees as part of the start up costs for recruiting PAs.

Payroll

Allow £5.75 to £15 per week.

This is dependent on what service provider is chosen and is also based on the number of payslips produced, for example if casual workers are used.

Insurance

Between £99 to £130 per year

Employers must be insured to protect them and others from issues that might arise, like an accident. The insurance required is Public and Employer's Liability Insurance and this is often sold with Indemnity Cover which will cover an employer for financial losses from a claim.

PA Holidays

The current statutory holiday entitlement for employees is 28 days (5.6 Weeks).

PAs must be paid while on holiday. The statutory holiday entitlement of 28 days is made up of a 'basic' element of 20 days and an 'additional' element of 8 days and any time off for bank and public holidays may be included in the additional element. The maximum statutory holiday entitlement (basic plus additional) is capped at 28 days, although employers may give more contractual holiday than that.

A replacement worker would need to be paid during the holiday, so calculating the additional contingency is based on the PA wages for the period of the holiday entitlement.

If the PA works five days a week for three hours per day their entitlement is 5.6 weeks, and you will need £798 holiday contingency:

5 days per week x 3 hours per day = 15 hours per week

15 hours per week x 5.6 weeks = 84 hours to cover

84 hours at £9.50 = £798

Contingencies

Scottish Living Wage increase

This increases annually but we might not be able to predict by how much.

If the basic rate for wages goes up 30p per hour, a person with 48 hours support per week would need about £750 per annum contingency.

£0.30 x 48 hours per week x 52 weeks = £748.80

Emergency and other contingencies

This is a budget that is set aside for things that may or may not happen. Below are examples of what this can be used for, but this is not everything you could face by way of an emergency.

Holiday pay should include guaranteed or normal overtime, and in some cases, bonus and commission payments.

Holidays may not be carried over from one leave year to the next, ie the general rule is: 'use it or lose it'. However, that is subject to certain exceptions in relation to those who have been absent due to long-term sickness, are prevented from taking holiday for other reasons beyond their control or are, or have been, on maternity leave, for example. Advice should always be taken on this, as it is a complex area.

Statutory sick pay

If the PA is eligible, they would currently be paid at £99.35 per week for a period of 28 weeks. Employers could claim back Statutory Sick Pay (SSP) from HMRC for employees that were on sick leave due to COVID-19 under the Coronavirus Statutory Sick Pay Rebate Scheme (CSSPRS). This was however closed on 1st April 2022. So this cost would be additional to the cost of the support you need.

Training

Some training is a statutory requirement, for example moving and assisting training for your PA under Health and Safety Legislation. The cost of this is approx. £100 per PA with an annual refresher of £100.

Additional hours

If the employer is unwell or has a family crisis such that requires additional hours of care.

Redundancy and long term sick leave

Statutory Sick Pay (SSP) and Redundancy payments (subject to eligibility criteria) are a legal requirement. Either of these may be more than a typical budget contingency may allow and it is likely that additional money would need to be paid into the package to meet these costs. How the Local Authority manages these costs varies and should be included in the package for clarity.

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

Sick Pay - UK Government Guidance
<https://www.gov.uk/employers-sick-pay>

The Scottish Living Wage
<https://scottishlivingwage.org/>

Guidance on Self-Directed Support (SDS) during the Pandemic (V4 March 2022)

Updated Scottish Government Guidance for Self-directed Support during the Pandemic

<https://handbook.scot/wp-content/uploads/2022/06/Guidance-on-SDS-during-the-Pandemic-V4-March-2022.pdf>

Case Study: How an Independent Support Organisation Assisted Paul to Recruit



Paul requires support from his Personal Assistants (PAs) to help maintain a family life as well as assisting him to contribute to, and access, society. With the assistance of an independent support organisation, Paul developed the job description which includes both personal and domestic duties within the household as well as providing support so he can access the community, to work etc. Paul was supported through the recruitment process and was signposted to organisations for specialist information, such as employment information and payroll organisations. He also inquired about training for his employees and the support organisation provided Paul with relevant training sources that would deliver the specific training he felt was important for his employees. With the support and advice he received, Paul has now been employing staff for many years; consequently Paul enjoys his citizenship rights and is respected as an equal player in society:

"Having control over when and how my support is delivered enabled me to fit more with my family

rather than them fit around me."

Next steps

Take a look at the article on case studies where you can find further case study examples.

Resources

Case Studies

This section contains real life examples of how people decided to become a PA Employer and how they were able to do this. It includes information on the support they received to set things up and how they managed different issues as a PA employer.

Next steps

Take a look at the article on case studies articles below.

Changing an Employment Contract

Before you make a change to an employee's conditions or contract, this section tells you what you need to be aware of. Change is best undertaken when all options have been considered with the employee's involvement and agreement.

Free advice is available from ACAS (see resources below) or your insurance indemnifier and should be taken, even if you are confident in this area, as employment law can change.

If an employer needs to make a change

An employer can make a change ('variation') to an employment contract if:

- There's something in the contract that allows the change (usually called a 'flexibility clause') but this must still be exercised reasonably
- The employee agrees to the change
- The employee's representatives agree to the change (for example, where there is an agreement with employee representatives (from trade unions or staff associations) that allows negotiations on terms and conditions)

An employer can force a new contract on employees, although this should be a last resort as it is not without risk and could lead to legal action.

If there has been a TUPE transfer

There are additional considerations when changing an employment contract after a TUPE transfer. TUPE stands for Transfer of Undertakings (Protection of Employment). The purpose of TUPE is to safeguard employee rights (which includes terms and conditions of employment) in certain circumstances where there is a change of employer. Find out more about changing an employment contract after a TUPE transfer in the resource links below

Consult employees to agree changes

Open discussion with employees about changes to their contract helps:

- Employers and employees work together to agree changes
- Prevent potential disagreements or legal disputes

Consulting employees

If an employer needs to change a contract, the first step is to talk with employees (or where relevant employee representatives like a trade union).

Before consultation

Before consulting employees, it's a good idea for employers to think about:

- Why they need to make a change
- What they need to achieve by making a change

During consultation

Consultation should be a two-way process where ideas are shared and worked on together.

The employer should:

- Explain the reason behind making the change
- Invite employees to talk about their concerns and suggest ideas for alternatives
- Listen to employees' concerns and consider their ideas
- Do everything they can to resolve any employee concerns

The employee should:

- Consider the proposed change and reason for the change
- Share their views, concerns and any ideas for alternatives with the employer
- Continue to talk to the employer about any concerns
- Make sure they have tried all options to reach an agreement

Consulting trade unions

Consulting with trade unions or employee representatives where relevant, openly and honestly can help to:

- Have meaningful discussions with employees
- Get a better understanding of employee concerns Sometimes there is also a legal obligation to consult trade unions (this is called collective consultation where there are more than 20 employees affected)

Consider all alternatives

Considering all options and asking employees for ideas can help agree a change. Employees might suggest something the employer had not thought of.

Depending on the proposed change, employers might consider:

- Asking for volunteers (if the change might suit some employees more than others)
- Offering incentives to employees
- Taking on some of the employees' ideas

Incentives do not have to be pay-related, for example, an incentive could be:

- Extra leave or time off
- help with travel costs for a time if employees will have to travel further to get to work

When a trade union can agree changes Trade unions can agree contract changes for employees when:

- It's written in the employee's contract that the trade union can agree changes ('incorporated' into the contract)
- It's not written in the employee's contract but the employer normally agrees contract changes with the trade union (an 'implied' term of the contract)

Check for existing trade union agreements

Sometimes there's an agreement between the employer and trade union ('collective agreement') that says the trade union can agree changes for employees. This could be for changes to specific contract terms like pay or holiday.

A collective agreement can only be enforced if it's included ('incorporated') in the employment contract.

An employee does not have to be a member for a trade union to agree changes for them.

When changes are agreed

Changes can be agreed verbally or in writing.

Agreed changes do not always have to be in writing, but it's a good idea to prevent any misunderstandings. It can also help to say when changes will take effect.

When changes must be in writing

If a change relates to anything that must legally be in the employee's written terms ('written statement of employment particulars'), the employer must notify the employee of the change in writing within a month of the change taking effect.

For example, the employer should do this if the change relates to:

- The job title
- The job description
- The job location
- Pay
- Working hours
- Holiday entitlement
- Changes to collective agreements with a trade union

Written terms provided before 6 April 2020

If the employee's written terms were provided before 6 April 2020 and need to change, the employer must give all the following in writing to the employee:

- Any changes to the existing written terms
- Extra information required for new written terms since 6 April 2020 (particulars of the days of the week the worker is required to work and whether or not such hours or days may be variable and, if they may be, how they vary or how that variation is to be determined; any terms and conditions relating to any paid leave (other than holiday or sick leave); any other benefits not covered elsewhere in the written statement; details of any probationary period; details of any training entitlement provided by the employer; any part of that training which is compulsory and particulars of any other compulsory training which the employer will not pay for.

When changes are not agreed

If an employer and employee cannot agree a change, it's often best for them to keep talking for as long as possible and make every effort to reach a compromise.

It can help both the employer and employee if they:

- Keep talking
- Consider all options
- Follow their workplace's policies, for example, employees should use the employer's grievance procedure if they are not happy with the proposed change

If there's no flexibility clause and changes cannot be agreed, the employer might still be able to make a change.

Forcing a change by dismissing and rehiring someone

If agreement cannot be reached, an employer might decide to dismiss and rehire ('re-engage') the same employee under a new contract. This should be a last resort, and only after consulting the employee.

If you're an employer considering this option, first think about:

- Whether you've done everything you can to reach agreement
- Whether the changes are absolutely necessary
- The risk to employee engagement and morale
- The risk of legal action

If deciding to dismiss and rehire, the employer should:

- Follow a fair dismissal procedure
- Give the employee enough notice (statutory notice or what's in the contract — whichever is longest)
- Offer the employee a right of appeal against their dismissal

Changes should not take place until the employee has been fairly dismissed and then rehired under the new contract.

The employee keeps continuous service if the new contract starts immediately after the old contract ends. Find out more about dismissing someone fairly.

Risks for employers who dismiss and rehire

If an employee feels they've been unfairly dismissed from the original contract, they might be able to make a claim to an employment tribunal. They would usually need to have worked for 2 years for the employer to make a claim.

If 20 or more employees are being dismissed and rehired, the employer can face legal action if they do not hold 'collective consultation' with any recognised trade unions or employee representatives.

Employers can be fined up to 90 days' pay per affected employee for failing to collectively consult.

If you are an employer considering dismissing and rehiring employees, it is best to get legal advice first to check you are making the right decision.

When forcing a change might break a contract

An employer might be breaking a contract's terms and conditions (in 'breach of contract') if they:

- Force a change without the employee's agreement or a flexibility clause in the contract
- Dismiss and rehire an employee without notice

Breach of contract could lead to legal action.

Forcing a change without discussion or agreement could also lead to:

- Disputes
- Lower levels of engagement and performance in the workplace
- Employees working under protest

If there has been a breach of contract, an employee could make a claim against the employer for:

- Damages at a civil court (an employment tribunal's jurisdiction to consider breach of contract claims is subject to certain restrictions)
- Unlawful deduction from wages at an employment tribunal, if the change affects pay
- Constructive dismissal at an employment tribunal, if they have at least 2 years' service and the breach is fundamental and significant. For example, an employee felt forced to leave a job because the employer made their pay a lot less

Making changes to employment contracts can be a complex legal matter. You can also speak to an Acas helpline adviser who will explain possible next steps and the risks and benefits of each. Acas advisers cannot tell you what to do or give legal advice.

Employees who do not agree to changes

Employees with concerns about contract changes proposed should start by speaking to you.

It can help if they:

- Check if their contract e.g. to look at any flexibility clauses
- Explain how the proposed changes will affect them
- Listen to their your reasons for proposing the change
- Take part in any consultation, if you offer it
- Think about any compromises they are willing to make
- Talk to their trade union or employee representative if they have one
- They may think about making a formal complaint ('raising a grievance')

Try to reach a compromise

If they do not agree with proposed changes, it's usually best to keep talking to see if you can find an arrangement that suits you both.

They should consider:

- Your reason for the proposed changes
- The effect of the changes on you both
- Any other options that you could look at
- What could happen if you cannot reach an agreement

The more you discuss the changes, the more likely you are to reach an agreement.

Formal complaint

An employee can make a formal complaint to you ('raise a grievance').

This can be a useful way to keep talking with the employer about the proposed changes.

A formal complaint can help to:

- Raise concerns about the changes
- See how the changes might affect the employee
- Share ideas for alternatives

- See what compromises might be made

Working under protest

If you impose a change the employee doesn't agree to, they can choose to stay and temporarily work to the new terms and conditions 'under protest'.

This should only be for a short time so they can formally raise concerns, or take legal action.

They should make it clear to you that they are working under protest (usually in writing on a routine basis, for example every time you get paid).

If they don't raise objections and start to work under the new terms and conditions, this could be seen as accepting the change.

Options for making a legal claim

If they feel you have broken the terms and conditions of their employment contract, or dismissed them unfairly, (including constructive dismissal) they might be able to make a legal claim.

If they have been with you for less than 2 years, there are fewer options for making a claim.

If employees want to change their contract

Employees can ask to have their contract updated if their job has changed.

They can ask you for changes to be put in writing. For example, if they have:

- Been doing work that is different to your original agreement
- Started a new job in the same organisation

You do not always have to put changes in writing, but it's a good idea to.

Even if employees do not have anything in writing, they still have certain employment rights and protections by law, from when they started working for you.

When changes must be in writing

If changes affect your employees written terms ('written statement of employment particulars') they can ask you to provide an updated copy. You must provide this within a month of the changes being made.

Next steps

Take a look at the ACAS resource below on changing an employment contract.

Resources

ACAS Information on changing an employment contracts for Employees

Find out more about what should happen if your employer proposes changes to your employment contract here

<https://www.acas.org.uk/changing-an-employment-contract/advice-for-employees/if-your-employer-proposes-employment-contract-changes>

Example Contract of Employment for PAs

This is an example of a written Contract of Employment that a PA Employer could use when employing a new PA. This comes from Disability Rights UK.

<https://handbook.scot/wp-content/uploads/2022/09/Example-of-a-written-contract-when-hiring-a-Personal-Assistant-Disability-Rights-UK.docx>

An example of a Contract for a PA

<https://handbook.scot/wp-content/uploads/2022/04/Personal-Assistant-Example-Contract.pdf>

Changing Your SDS Option

The 4 Options of Self Directed Support (SDS)

There are 4 Options under Self Directed Support. These are about how a person's care and support can be arranged and how the money that is needed to pay for this is managed. They are:

- Option 1: the person receives the money from their local authority (council), known as a Direct Payment, and can use this to employ their own Personal Assistants (PAs).
- Option 2: the person asks the Council to pay the money for their support to someone they trust and would like to look after the money, such as a care agency. The agency will then work with the person to work out how to use the money to pay for their support.
- Option 3: The Council finds a service that will meet the person's needs and with the agreement of the person, pays the money for this support.
- Option 4: This is a mixture of any of the above three options, where for example, a person could take some of their money as a Direct Payment (under Option 1) and some of the money will be paid by the Council under Option 3. This is a 'mix and match' option.

A PA employer could change their SDS Option at any time. However, each Option might change the way in which support is arranged for them so it would be important to understand how each Option relates to their own personal circumstances. It might be helpful for the PA employer to speak to their Social Worker and Independent Support Organisation before making a decision.

One thing to be aware of, is that each SDS Option might cost different amounts of money. So for example, it might cost more for an agency to provide a care worker to support someone, as they have other additional costs to pay for, such as for management and premises. The important thing is that the amount of money allocated by the Council for each SDS Option should enable a person's

needs to be met in full.

Next steps

Take a look at the at the article on Independent SDS Information and Support Service for additional support.

Resources

Independent SDS Information and Support Services

There are a number of organisations that provide a range of information, advice and support to Personal Assistants (PAs) across Scotland. Some of these are specifically focussed on PAs needs whilst other are more generic for any worker.

Independent SDS information and support across Scotland

The Scottish Government funds local Independent Self-directed Support (SDS) Information and Support organisations in all 32 Local Authority areas in Scotland. Their role is to provide free information and guidance at any stage of the SDS process, often supporting people who have become PA employers for the first time. They will also provide a certain amount of support to PAs as well. So if you have a question about something, they might be able to give you an answer or signpost you to someone who knows this.

To find your local SDS Information and Support service, you can do a search on the SDS Scotland website here: <https://www.sdsscotland.org.uk/>

Just use the [Find Help](#) button in the top right corner to do a search for the area you're looking for.

PA Network Scotland

There is one specialist PA organisation working across Scotland, dedicated to supporting the PA workforce. They are:

The PA Network Scotland

The WEA

118 — 128 Hill Street

Kilmarnock

KA3 1JL

Tel: (01563) 522551

Email: info@panetworkscotland.org.uk

Website: <https://www.panetworkscotland.org.uk/>

What the PA Network Scotland can do:

- Networking events — for PAs from all over Scotland to meet each other
- Online training based on learning needs identified by the PAs
- Space, both online and offline, for PAs to discuss their needs and share their experiences
- Personal Assistant Network Scotland is a place where PAs can talk about their concerns, get the

- answers they need and have their voices heard.
- ID badges for essential workers

Online SDS forum

SDS Scotland host an online forum dedicated to discussions around Self Directed Support. It's free to join and you can use the forum to ask questions, share information or start a conversation on something of interest to you. You can access the Forum here: <https://forum.sdsscotland.org.uk/>

PA Employer Handbook

There is also an online PA Employer Handbook linked to this handbook, that contains information for anyone who is thinking of becoming a PA employer, as well as for more experienced employers. This covers areas, such as the recruitment of PAs, managing staff, training and contracts. You can access the PA Employer Handbook here: [The PA Employer Handbook – The PA & PA Employer Handbook](#)

Next steps

You can find further information at the resources found below.

Covering the cost of PVG checks for Social Care Workers

The Protection of Vulnerable Groups (PVG) Scheme Costs

As a Personal Assistant (PA) Employer, you might want to undertake a criminal records check through the PVG Scheme run by Disclosure Scotland, before offering employment to any prospective PA. There would normally be a cost associated with undertaking a check.

Update on the costs of applying for a PVG check

The Scottish Government has agreed to cover the cost of PVG checks for Social Care Workers (and comparable roles in Justice and Children's Services) from **1 October 2022 — 31 March 2023**, as part of actions to support winter resilience across the health and care system.

Eligibility

To qualify for PVG fees to be waived, the person applying for the role must:

- have started a new job or taken up a new position with their existing employer in an **eligible role**
- AND
- have **applied for a PVG check between 1 October 2022 and no later than 31 March 2023**
— any applications outside these dates will not be eligible

Eligible roles for PAs

Any PA directly paid by their employer who receives their funding via Self-directed Support Option 1 and/or Independent Living Fund Scotland

PAs paid directly by an individual

If you are a PA paid directly by an individual, you should apply via the Disclosure Scotland website and send your application form in by email.. You can also request a paper form from Disclosure Scotland if you need to. [You can find more information here.](#)

You can see a copy of the Scottish Government information below in the resources.

Resources

Eligibility for social care workforce PVG check costs paid until the 31 March 2023

The Scottish Government has extended a scheme where it will cover the cost of PVG checks for Social Care Workers (and comparable roles in Justice and Children's Services) from 1 October 2022 — 31 March 2023. This includes Personal Assistants employed by an individual to support them. <https://www.gov.scot/publications/social-care-staff-entry-costs/>

Employing Family Members



It is possible to employ a family member to provide care and support but the law states that this is still seen as an 'exceptional circumstance', which means it wouldn't normally happen unless there are specific reasons.

The legislation highlights the circumstances where it would be possible to employ a family member, provided the local authority (council) also agrees to this. These circumstances are:

- The family member, direct payment user and the Council all agree to the family member providing the support;
- The family member is capable of providing the support; and
- There are specific reasons why a family member is best placed to provide the support.

COVID19 and SDS Guidance (March 2022)

This Guidance further supports the option of employing a family member on a temporary basis where this is helpful, possible and in agreement by all parties. The Guidance states:

'Family members may also be employed as a temporary PA. The individual in receipt of this support should ensure that there is a clear procedure for the original, or a new, PA to resume or start their role when possible. The family member employed to provide replacement care should understand this arrangement may be temporary' (5.1) (see Guidance below)

When you might think about employing a family member

- There is a limited choice of service providers who could provide the support
- The person needing care and support has specific communication needs which mean it will be difficult for another person to provide the support
- The support is required at times at which the family member will be available to provide it and where other people would not reasonably be able to
- The intimate nature of the support required makes it preferable for a family member to provide this
- The person needing support has religious or cultural beliefs which it preferable for support to be provided by a family member
- The person needing support requires palliative care
- The person needing support has an emergency or short-term need for care
- There are other factors in place which make it appropriate, in the opinion of the Council, for that family member to provide the support

Questions to think about before employing a family member

- Is the family member willing and able to provide the support the PA Employer needs?
- Would employing the family member change the PA Employers relationship with them?
- What if something went wrong, would the PA Employer be able to raise any issues with their family member?
- If the family member was not able to provide the support to the PA Employer that they needed, will the PA Employer be able to end their employment if they want to do this?

Steps you can take

- Check with your council and ensure they would agree to employment of family members
- Speak to your local Independent Support organisation for guidance

- Ensure a contingency plan, a plan to manage unexpected changes, and budget is in place

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

SDS Direct Payments Legislation

https://www.legislation.gov.uk/ssi/2014/25/pdfs/ssi_20140025_en.pdf

Part 3 of Direct Payment Legislation on Employing Family Members

<https://www.legislation.gov.uk/ssi/2014/25/part/3/made>

Scottish Government COVID-19 and SDS

The COVID-19 guidance on self-directed support can be found here

<https://www.gov.scot/publications/self-directed-support-guidance-pandemic-published-11-march-2022/>

Ending a PA's Employment

There are certain things an employer must do to comply with employment legislation if they decide that they would like to bring someone's employment to an end, including giving notice and dismissal.

Notice periods

Both the employee and employer are normally entitled to give and receive a minimum period of notice on termination of employment. This will be the amount stated in the contract or the statutory minimum notice period, whichever is longer.

The notice period is the amount of time between the decision to terminate an employment contract and the date that the contract actually ends. This is regardless of who actually makes the decision to terminate, whether it's the employee because they want to leave or whether it's because you want the employee to leave.

If a Personal Assistant (PA) Employer does not wish their PA to work their notice period, they could give them a payment in lieu of notice. This represents pay they would've received during the notice period.

A PA Employer may not be obliged to give their PA a notice period or payment in lieu of notice if they decide to dismiss them straight away, such as in cases of gross misconduct.

Dismissal

Occasionally, a PA Employer will need to ask their PA to leave their role. This means they will need to sack or dismiss them. In law there are different conditions that need to be met before you can safely sack or dismiss an employee. For example, when dismissing staff, you must do it fairly.

Dismissal is normally fair if an employer can show that it is for one of the following reasons:

- A reason related to an employee's conduct
- A reason related to an employee's capability or qualifications for the job
- Because of a redundancy
- Because a statutory duty or restriction that prevents the employment being continued
- Some other substantial reason of a kind which justifies the dismissal

Even if the PA Employer has a fair reason, the dismissal is only fair if you also act reasonably during the dismissal and disciplinary process.

Even if they have acted reasonably, some reasons for dismissal are classed automatically unfair, such as those relating to:

- Pregnancy: including all reasons relating to maternity
- Family reasons: including parental leave, paternity leave (birth and adoption), adoption leave or time off for dependants
- Representation: including acting as an employee representative
- Trade union membership grounds and union recognition
- Part-time and fixed-term employees
- Pay and working hours: including the Working Time Regulations, annual leave and the National Minimum Wage.

An employee can complain to an Employment Tribunal if they think they have been dismissed unfairly. In most circumstances employees need to have completed a minimum period of service before they can make a complaint to an employment tribunal about an unfair dismissal, which is:

- Two years for employees starting employment on or after 6th April 2012.

However, there is no length of service requirement in relation to automatically unfair grounds (see above).

It is important to get professional advice if a PA Employer is thinking about dismissing their PA.

Next steps

Take a look at the resource available below on 'SOSR Dismissal Breakdown in Relationship — PA' guidance notes.

Resources

SOSR Dismissal Breakdown In Relationship - PA

<https://handbook.scot/wp-content/uploads/2022/04/FISH-SOSR01-Guidance-breakdown-in-relations-hip.pdf>

Equality and Diversity Considerations

Personal Assistant (PA) employers need to treat their PAs fairly, without discrimination on the basis of a personal or 'Protected Characteristic', such as their gender, age, sexuality, ethnicity or marital status. Service providers are obliged to provide goods, services and facilities to their customers in a non-discriminatory way under the Equality Act 2010 and employers have an obligation not to discriminate before, during and after employment under the Equality Act 2010.

The Equality Act

The Equality Act 2010 came into effect to protect people from harassment, discrimination and victimisation. There are nine protected characteristics covered within the Equality Act 2010 which protects people from being discriminated against. The protected characteristics are:

- Age
- Disability
- Gender reassignment
- Pregnancy and maternity
- Race
- Religion or belief
- Marriage and civil partnership
- Sex
- Sexual orientation

This means that discrimination under any of these characteristics could result in a claim being made against the PA Employer. There is no minimum length of service required for workers to be able to bring a claim for unlawful discrimination. For the employer, a claim for discrimination can be made in respect of a job advert, during employment, or post employment, in terms of job references for ex-employees.

Therefore, as an employer, it is important to understand the importance of equality in the workplace before employing someone.

In some circumstances, it will be lawful to require that a person possesses a particular protected characteristic in order to do a particular kind of work — but certain conditions have to be satisfied first. Advice should always be taken.

When interviewing potential candidates, it is important to ensure the candidate is not asked any questions which could be seen as discrimination or which relate to their protected characteristics.

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

Equality & Diversity Handout

<https://handbook.scot/wp-content/uploads/2022/04/Equality-and-Diversity-Handout.pdf>

Handbook: The Recruitment Process

<https://handbook.scot/article/the-recruitment-process/>

'See Me' E-learning: tackling stigma in work

See Me have produced a range of on-line resources to help people learn about how mental health stigma and discrimination affects people at work. Using dramas and real life experiences, people can learn more about rights and good practice at every stage of their working life — from recruitment, when in work and when returning to work following a period of ill-health.

<https://www.seemescotland.org/workplace/resources-and-e-learning/e-learning/>

Finishing with Being an Employer

There might be a number of reasons why someone no longer wants to be a Personal Assistant (PA) employer. This could be because the employer's circumstances have changed and they would prefer not to be an employer anymore, or their needs have changed and they require a different type of support. Whatever the reason might be, there are a number of things the PA Employer needs to be aware of and manage when bringing the PA's employment to an end.

Changes to a PA Employer's circumstances

It might be that a PA Employer's circumstances have changed and they no longer wish to continue to be an employer. If this is the case, there are a number of things the PA employer needs to think about and plan for.

If the PA employer still needs care and support of some kind, but it would not be possible for their PA(s) to provide this support, then the PA employer may have to consider making their PA(s) redundant. This might happen if the PA employer has to go into residential care or a nursing home, or if they are moving away to another Local Authority (Council) area. There are specific rules about redundancy and the PA employer would need to check these first before making any decision.

The PA Employer changes Self-directed Support (SDS) Option

If the PA employer decided that they did not want to continue to be an employer and would prefer to change to another Option under SDS, for whatever reason, then there are other rules around employment that would have to be checked. For example, if the PA employer decided to choose an agency to provide their support, they may need to check if TUPE regulations apply. TUPE refers to the Transfer of Undertakings (Protection of Employment) Regulations 2006. This is where an employee may have the right to continue their employment, but for this to be transferred to another employer. This protects the employee's rights and employment status. So for example in this case,

where a PA employer has chosen an agency to provide their support instead, there will need to be a discussion to see if their PA employees have to be transferred to the employment of the agency and to continue to provide support to the PA employer.

Where a PA Employer becomes ill or passes away

There may be a situation where the PA employer becomes ill and is unable to continue to manage their PAs effectively, even with the support of other people. If this was the case, it might be possible to find someone else to take on the role of the PA employer, such as another family member or friend. The PA employer will need to have a discussion with their Local Authority (council) about this, as the Local Authority can only pay a direct payment to someone who is able to manage this effectively, even with appropriate support. If there was another person who was interested and able to become the PA employer, they may need the appropriate legal status to do this, such as being granted a Power of Attorney or Welfare and Financial Guardianship.

If the PA employer passes away, then their PA(s) employment comes to an end. In this situation, the rules around redundancy might apply and whoever is managing the PA employers estate will need to consider this question.

Next steps

Take a look at the articles on 'Redundancy' and 'What Happens if there's a change in my Employer's Status' to guide you in more detail.

Resources

Redundancy

If you're making an employee redundant, you must:

- Consult with you about this,Â tell you why and discuss matters with you if you have more than 2 years serviceÂ
- Tell the employee why the redundancy has arisen and discuss the situation (this is called consultation)
- Tell the employee how long their notice period is — whether it's statutory or contractual
- Keep paying the employee you until the end of the notice period
- You'll usually carry on working until the end of your notice period. How much notice depends on how long the employee has worked for the employer
- Sometimes the employer may want to pay you instead of having you working out your notice period. This is called paying you in lieu of notice

It's a good idea to talk with your employee if there's any part of the redundancy notice you're not sure about. It is good practise to put in writing:Â

- The length of the notice period
- The date the notice period starts
- If they can leave before the end of your notice period
- If they need to take any unused holiday before you leave
- If they still get contractual benefits, for example a fuel card or mobile phone, during your notice

period

Eligibility for redundancy pay

Only employees have the right to redundancy pay if they have worked for the employer for more than 2 years.

If you're not sure if your PA is classed as an employee, it's a good idea to take advice and check employment status.

How much redundancy pay will a PA get?

How much redundancy pay a PA can get depends on:

- Age
- Length of time working for the employer

They might get more than the minimum amount the law says you should get ('statutory'), if it's in their contract.

Up to £30,000 of redundancy pay is tax free.

Employees may not be eligible for statutory redundancy pay if the employer offers a suitable alternative job and the employee you turns it down.

Redundancy pay is based on

- Weekly pay before tax (gross pay)
- The years worked for your employer ('continuous employment')
- Age

Weekly pay should also include

- Regular overtime, if your contract says you must get paid for it
- Any bonuses or commission

If the employee is aged 17 to 21

The employer must give them half a week's pay for each full year that has been worked.

If You're Aged 22 to 40

Your employer must give you:

- 1 week's pay for each full year you worked from age 22
- half a week's pay for each full year you worked before that

If the employee is aged 41 or Over

The employer must give them:

- 1.5 weeks' pay for each full year worked from age 41
- 1 week's pay for each full year worked between age 22 and 40
- half a week's pay for each year worked between 17 and 21

As an employer you must tell your employee in writing how their redundancy pay has been worked out.

Limits on redundancy pay

There are limits to how much redundancy pay an employee can get. They can only get it for up to 20 years of work. This means, for example, that if the employee has worked for you for 22 years they only get redundancy pay for 20 of those years.

The maximum weekly amount used to calculate redundancy pay is £571 from 6 April 2022 — even if the employee's wage is more per week.

The maximum statutory redundancy pay they can get in total is £17,130 from 6 April 2022.

When the employee will get paid

As an employer you should tell your employee when they'll get their redundancy pay — this should be on or before the final pay date. You and your employee can agree to a different date, which should be put in writing. You should also tell the employee how they'll get paid, for example in their monthly pay or in separate payments.

If the employer does not make the redundancy payment

If the employee does not get the redundancy pay they should:

- Write to their employer as soon as they can. The date they should get their redundancy pay should be no later than their final pay date, unless they and their employer agree another date in writing.
- Tell the employer what they're entitled to and include any evidence to back this up. For example, they could include a letter that states their first day at work or an email confirming a recent pay increase.

The employee has to claim for any unpaid redundancy within 6 months of their job ending.

If the Employer becomes insolvent

If the employer is insolvent, the employee can apply for redundancy pay from the government's Redundancy Payments Service (RPS).

Next steps

The employee can check with their employer for their policy on redundancy and take a look at the

resources below for further guidance.

What Happens if There's a Change in my Employer's Personal Circumstances?

There may be a change in your employers life that could affect your employment in some way. These could include:

- A change in the person's health and well-being. This could be a deterioration in their health or an improvement
- A change in family circumstances, such as moving home to another area
- A change in a carers circumstances, where they might not be able to continue to provide the support they have previously
- The person needing to move into residential or nursing care
- The person being admitted to hospital with the result that they cannot return home
- The person no longer having capacity to manage the employment relationship
- An adult protection concern being raised
- The person not wishing to be an employer anymore and wanting to receive support under a different SDS option

The result could be:

- The person no longer requires assistance or support to live at home
- The person is no longer eligible for SDS funded support
- The level of assistance or support they might need decreases
- The type of assistance or support the person needs changes

The effect on a PA of such a change could be:

- Reduction in the number of hours employed
- Redundancy — as assistance or support is no longer required
- A change in the type of assistance or support that is required, such as use of specific medical equipment

These potential changes could result in the employer looking to change the terms and conditions in a PAs contract. There are specific rules about changing employment contract changes and employers must inform:

- You and other employees and workers who might be affected
- Any relevant employee representatives, for example trade union or other elected employee representatives

Reduction in the number of hours employed

If the employer was looking to reduce the number of hours you work, this may mean a change in the terms and conditions of your employment. The employer would need to follow the requirements of employment legislation in relation to changing an employment contract.

The person you assist or support goes into residential care

If someone needed to move into a residential or nursing home, your PA role might no longer be needed. If this was the case, you might be made redundant from your PA role and the employer would be expected to follow the requirements of employment legislation.

The PA employer is no longer eligible for SDS funding

If a PA employers eligibility for assistance or support reduces to the point they are no longer eligible for SDS funding, they may be unable to pay for the assistance or support that the PA provides. Therefore, this might be a redundancy situation, unless the employer was able to continue to pay the PAs wages, but for a reduced level of support. This might result in a discussion about changes to the contract of employment.

If a PA employer chooses a different SDS Option

If the PA employer decides that they do not want to continue to be an employer and would prefer to change to another Option under SDS, for whatever reason, then there are other rules around employment that would have to be checked.

If the PA employer decided to choose an agency to provide their support instead, they may need to check if TUPE regulations apply. TUPE refers to the Transfer of Undertakings (Protection of Employment) Regulations 2006. This is where an employee may have the right to continue their employment, but for this to be transferred to another employer. This protects the employee's rights and employment status. So for example in this case, where a PA employer has chosen an agency to provide their support instead, there will need to be a discussion to see if their PA employees can be transferred to the employment of the agency and to continue to provide support to the PA employer.

The employer moves to a different area

If an employer decides to move home, whether that be in the same Local Authority area or not, this might affect the PAs ability to continue to provide the assistance or support they do. Therefore, there might need to be discussions about possible changes to the contract of employment, or the PA being made redundant due to a change in the location of the work place.

Where an employer becomes ill and is unable to continue as an employer

There may be a situation where the PA employer becomes ill and is unable to continue to manage their PAs effectively, even with the support of other people. If this was the case, it might be possible to find someone else to take on the role of the PA employer, such as another family member or friend. In the case of an employers capacity diminishing, it may require another person to have the legal authority to manage that person's financial and welfare needs. They might therefore need to apply for Financial and/or Welfare Guardianship. This person may then become the PAs employer, which would require a change to the contract of employment.

Where a PA Employer Passes Away

If an employer passes away, then their PA(s) employment comes to an end. In this situation, the rules around redundancy might apply and whoever is managing the employers estate will need to consider this issue.

Next steps

Take a look at the resources available below to guide you in more detail.

GDPR

Personal Assistant (PA) employers must comply with GDPR — The General Data Protection Regulation. The GDPR came into force on 25 May 2018. The regulation replaced the Data Protection Act 1998 and we now have a new Data Protection Act 2018 (DPA) 1998 and we now have a new Data Protection Act 2018 (DPA) which supplements the GDPR.

What is GDPR?

The General Data Protection Regulation (GDPR) and DPA are concerned with respecting the rights of individuals when processing their personal information. This can be achieved by being open and honest with employees about the use of information about them and by following good data handling procedures. All organisations and employers that hold or process personal data must comply.

The regulation contains 7 principles

- Personal data should be processed fairly, lawfully and in a transparent manner.
- Data should be obtained for specified and lawful purposes and not further processed in a manner that is incompatible with those purposes.
- The data should be adequate, relevant and not excessive.
- The data should be accurate and where necessary kept up to date.
- Data should not be kept for longer than necessary.
- Data should be kept secure. This includes keeping employees' personal data safe, secure and up to date.
- You must be able to demonstrate compliance with all of the above ('accountability').

Data an employer can keep about their employee include

- Name
- Address
- Date of birth
- Sex (special category data*)
- Education and qualifications
- Work experience
- National Insurance number
- Tax code
- Details of any known disability (special category data*)
- Emergency contact details
- Employment history with the organisation
- Employment terms and conditions (e.g. pay, hours of work, holidays, benefits and absence)
- Any accidents connected with work
- Any training taken

- Any disciplinary action

Personal data may also include special categories * of personal data. These are considered to be more sensitive and you may only process them in more limited circumstances.

What an employer should tell their employees

- What records are kept and how they are used
- The confidentiality of the records and how you will store them
- How these records can help with their training and development at work

this can be done in the form of Privacy Notice.

Next steps

You can find further information on GDPR at the ACAS website found below.

Resources

ACAS Website, for free employment advice

<https://archive.acas.org.uk/>

General Employment Issues

When becoming a Personal Assistant (PA) employer there are a number of things to be aware of:

- Role and responsibilities as a PA Employer
- The recruitment of PAs
- The training to be provided to PAs
- Legal requirements as an employer
- The on-going support and supervision to be provided to PAs
- Managing the money
- How to deal with any problems that come up
- How to bring an end to a PAs employment
- Where to go for further support
- How to stop being a PA Employer

Next steps

You can find further information at the Citizens Advice in Scotland and ACAS websites found below.

Resources

ACAS Website, for free employment advice

<https://archive.acas.org.uk/>

Citizens Advice in Scotland website

The Citizens Advice website to access information on employment issues.

<https://www.citizensadvice.org.uk/scotland/>

Independent Living Fund (ILF) Scotland Information

Following the closure of the UK Independent Living Fund (ILF) on 30th June 2015, the Scottish Government established a new organisation, Independent Living Fund (ILF) Scotland, to administer ILF for existing recipients of the fund in Scotland.

ILF Scotland is a public body, governed by a Board of Directors, appointed by and accountable to Scottish Ministers.

ILF Scotland operates as a discretionary fund providing financial awards to over 3,000 disabled people in Scotland and Northern Ireland to help them live independently.

Their funding enables individuals to pay for care so that they can be supported in their homes and within their local communities.

ILF Scotland funding maximises SDS for disabled adults. There is a positive incentive to retain ILF additional funding, which can be up to £9m in one partnership area to complete SDS assessments, which promote independent living. ILF Scotland's policy suite flexes across all the differences between the 32 versions of

SDS in Scotland and the 5 versions in Northern Ireland. It makes payments of different amounts for different services on an individual basis after a bi-annual assessment, which is person centred and outcomes focused.

ILF Scotland involves disabled people at the heart of the organisation in every facet of its operations and it is this which keeps us innovating and removing barriers.

ILF funding increases the portability of care packages; it reduces inconsistency and inequality of provision for disabled people and creates a dialogue for all disabled people to challenge for their best SDS outcomes.

Next steps

ILF Scotland provide a range of information and support to enable people receiving ILF funding to recruit and employ their own Personal Assistants (PAs). Further information on the support provided

can be found in the resources below.

Resources

ILF Scotland - A Brief History and Current Context

<https://handbook.scot/wp-content/uploads/2022/04/A-Brief-History-and-Current-Context-ILF-Scotland.pdf>

Policy 17 Financial Management Support (ILF Scotland)

<https://handbook.scot/wp-content/uploads/2022/04/Policy-17-Financial-Management-Support-July-2015ILFS-1.pdf>

Policy 20 ILF Payments (ILF Scotland)

<https://handbook.scot/wp-content/uploads/2022/04/Policy-20-ILF-Payments-Jan-2019ILFS.pdf>

Michaela's Story ILF Scotland

<https://ilf.scot/case-study/michaelas-story/>

Introduction to Employer Responsibilities

There is a lot of information about becoming a Personal Assistant (PA) employer but there is also a lot of support.

Below is a breakdown of each of the roles and responsibilities. A social worker will be responsible for assessing need and works closely with the individual to ensure their needs are met. A Managed Payroll Service makes managing employees much easier by doing a lot of the regular employer paperwork efficiently. An Independent Support Organisation can really help with understanding all the relevant processes, and provide support with them, from the perspective of people who have lived experience of being PA employers. Indemnifiers are companies that manage insurance to protect the employer.

Social Worker

The social worker has most important responsibility because, as soon as someone has been assessed as having an eligible need, the social worker has a duty of care to that person. The social worker will always be an integral part of whichever option a person chooses. They provide support with the care package including budgeting and reviewing needs. If the individual has a health condition which is deteriorating or improving, the social worker would review this on a regular basis and amend the package of care accordingly.

Managed Payroll Service

A payroll service will not only register the employer and their employees with HMRC, but they will also process payslips, and arrange bank transfers of the PAs wages, arrange P60s and provide financial returns for the local authority (council). They may hold an account in the employer's name,

so they may not need to open a bank account.

An Independent Support Organisation

Connecting with a local Independent Support Organisation can be an important way to access daily support. They provide information associated with becoming an employer, the associated paperwork and systems. This support can range from advertising for PAs to terminating employment.

Indemnifier

The indemnifier is the organisation that manages the required insurance. As well as the Independent Support Organisation, they will advise on constructing contracts. They will ensure PA holiday entitlement, disciplinary procedures, and other processes are all administered legally and offer a 24/7 employment law advice service.

The PA Employer

The PA Employer has the remaining responsibility. This involves the daily management of and the relationship with staff. Help is available for everything else.

Next steps

Take a look at the article on 'Is Being a PA Employer for me?'

Resources

Is being a PA Employer for me?



Being a PA Employer allows people to choose who delivers their support. People can decide when they want support, what they need people to do and how flexible they need people to be. Whilst this gives a great deal of choice, control and flexibility over support, this comes with certain responsibilities.

Doing it for the right reasons

Choosing to become a PA employer can be a really positive choice. However, it's best to be sure that this will be right for you by taking time to think about it without any pressure.

Areas you need to be careful with

There are areas where care should be taken, like if you are wanting to employ family members or use a self employed personal assistant. Please see 'Employing Family Members' and have a discussion with an independent support organisation or your local authority (council).

Allowing time to organise and recruit

It may take time and effort to get set up and recruit the right PA. Sometimes this can happen reasonably quickly, but it might be helpful to take the time you need to find the right person or people to be your PA. If urgent support is required, your local authority (council) can provide support until the right PA is recruited.

A new relationship with your PA(s)

As an employer, your relationship with your PA employee might be different to support workers you've had in the past.

To help ensure that becoming a PA employer is a choice open to most people, there are Independent Self-directed Support (SDS) Information and Support Organisations covering almost every area of Scotland. They provide support with becoming a PA employer, what this involves and they also provide ongoing support.

Next steps

Take a look at the articles below on 'The Recruitment Process'. Also take a look at the case studies. They will help provide perspective because they are the stories of people who have experienced the process and they share what life is like for them now.

Introduction to Health and Safety

Health and safety is an important aspect of employment. The moment a person becomes an employee the Personal Assistant (PA) Employer is responsible for their health, safety and welfare at work. It also applies to those people who work on their premises such as self-employed, agency staff or contractors. Whilst employees are also expected to work in a safe manner, you still have responsibilities.

What do PA Employers need to do?

- Firstly, they will need to undertake a risk assessment as employers have a legal duty to protect their employees from harm. A risk assessment should identify what could cause injury or illness (hazards), decide how likely it is that someone could be harmed and how seriously (the risk) and take action to eliminate the hazard, or if this isn't possible, control the risk.
- Secondly, they must make their employee(s) aware of the risk assessment through the induction process.
- Thirdly they will have to ensure that their employee(s) are trained to use equipment to ensure they are working in a safe manner.

Normally the Employer's Liability Insurance will require that they undertake a risk assessment to minimise and hopefully eliminate claims against the PA Employer.

Risk Assessments

We recommend that you view the Health and Safety Executive's (HSE) leaflet called 'Five Steps to Risk Assessment — INDG163' found in the resources below.

The five steps are:

- Identify the hazards
- Decide who may be harmed and how

- Evaluate the risks and decide on precautions
- Record your findings and implement them
- Review your risk assessment and update if necessary.

In identifying the hazards you should consider the following:

- In what areas of your home will the PA work?
- Will the PA need to assist you to move around your home?
- Are there hazards outside the home?
- Will the PA work outside the home?
- Will the PA be using your car or their car to transport you?
- Will the PA be assisting you with mobility inside or outside the home?
- What weights will the PA be expected to lift?
- What type of equipment will the PA use — is this mechanical or electrical?
- Will the PA be cooking for you?
- Don't forget to include smoking as a hazard if you are a smoker.

In deciding who may be harmed, the PA Employer should identify the PA, themselves and any other members of their family and friends who may be affected by what work the PA does. They may also include official visitors (Social Services, Care services etc).

Once the risks can be identified these can be put onto a risk assessment form so the PA Employer can show what action is in place to prevent any harm from the hazard and also what precautions need to be taken to minimise the risk.

The PA Employer will have to show how the risks can be reduced and by whom. Normally the aim is to eliminate the risk by removing it from the premises but where this is not possible they will have to ensure that the people affected by the hazard are trained in how to avoid the risk of injury or harm. Training records will have to be kept to provide evidence that training has taken place and the PA is aware of their responsibility to work in a safe manner.

Health and Safety Training

This is an important responsibility for PA Employers.

The PA Employer must show that they have trained their PA(s) in Health and Safety matters on their first day of employment. It is not a job which can be done later because if that person has an accident on their first day and training has not been carried out, the PA Employer could be liable for prosecution depending on the seriousness and likelihood of the accident.

In addition to general training on Health and Safety you will need to have some simple documents listing all the equipment the PA will be required to use to demonstrate that training has been given and that the PA is competent to use the equipment.

Next steps

You can also contact the Health and Safety Executive on their website below. Additionally, Workplace Health Connect is a free service to provide practical advice for small employers. You can contact them on 0845 609 6006 or see their website here:

www.workplacehealthconnect.co.uk

Resources

Further reading: Health and Safety Executive detailed guidance

<https://www.hse.gov.uk/>

What Employers need to know about Health and Safety Law

<https://handbook.scot/wp-content/uploads/2022/04/lawleaflet.pdf>

Is being a PA Employer for me?



Being a PA Employer allows people to choose who delivers their support. People can decide when they want support, what they need people to do and how flexible they need people to be. Whilst this gives a great deal of choice, control and flexibility over support, this comes with certain responsibilities.

Doing it for the right reasons

Choosing to become a PA employer can be a really positive choice. However, it's best to be sure

that this will be right for you by taking time to think about it without any pressure.

Areas you need to be careful with

There are areas where care should be taken, like if you are wanting to employ family members or use a self employed personal assistant. Please see 'Employing Family Members' and have a discussion with an independent support organisation or your local authority (council).

Allowing time to organise and recruit

It may take time and effort to get set up and recruit the right PA. Sometimes this can happen reasonably quickly, but it might be helpful to take the time you need to find the right person or people to be your PA. If urgent support is required, your local authority (council) can provide support until the right PA is recruited.

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Next steps

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Resources

The Recruitment Process

Recruiting the right people is very important. How you recruit is also very important as although most employment legislation starts from the first day of employment, even before any offer of work, job applicants can raise a complaint, for example a claim of discrimination, at an Employment Tribunal.

Advertising

When advertising for a position consideration should be given to what skills and experience would be required.

A job description and person specification will help you find applicants who meet the skill set and experience you require. The criteria for the person specification must be job related, set at a realistic level.

The most common options for advertising include:

- Newspapers, Specialist Publications
- Job Centres, Government Training Centres
- Online job sites e.g. Indeed

Interviewing

The interview is an opportunity to build upon information already obtained from the applicant. The person conducting the interview should be well prepared and familiar with the requirements of the role.

The interview process should be structured to gain consistent information on all the candidates. A written interview record should be completed to ensure selection of the most suitable candidate.

The interview is a two-way process and allows the applicant to find out more about you and the job vacancy.

Prior to the interview

- Review the job description, person specification and agree questions to be asked.
- Review the CV/application forms and identify any gaps which need to be addressed e.g. in employment or education.
- Ensure all necessary paperwork is ready.
- Ensure there are no interruptions and a private room has been arranged — switch off mobile phones.

During the interview

- Greet the candidate, providing names and positions. Help the candidate 'relax'; safe topics include travel to the interview and the weather.
- Explain that the purpose of the interview is to learn more about the candidate and for them to learn more about the role.
- Advise the candidate of the structure of the interview.
- Advise the candidate that notes will be taken .
- Ask the candidate if they have any questions at this stage.
- At the end of the formal questions, ask the candidate if they have anything else that they would like to add to their interview that they have not already told you.
- Advise the candidate what will happen next — when can they expect to hear back?
- Thank the candidate for their time and close the interview.

Remember to ask each candidate the same questions.

Another useful point to remember is that the candidate should do most of the talking.

Refrain from asking questions relating to protected characteristics. The below is not an exhaustive list, you can not ask about protected characteristics. For example:

- Do not ask questions relating to childcare
- Do not ask about marital status
- Do not ask if they plan on having children
- Do not ask about sexual orientation

- Do not ask about religion

Post-interview

- Communicate the outcome to the applicant. This will normally be carried out verbally, but if this is not possible ensure letters are prepared and issued in a timely manner
- Retain interview notes for a minimum of six months. This is to ensure evidence is available in the event that a candidate submits a claim to an Employment Tribunal

Pre-Employment Checks

References are a very common pre-employment check. References can be written or verbal, with one normally being from the applicant's most recent job. It is important to obtain the applicant's permission prior to doing this (permission can normally be indicated on the job application form).

It may also be appropriate to verify relevant qualifications and copies of original certificates can be kept on file.

PVG information — is there a local difference?

Offer

The successful applicant should receive written notification of their offer of employment as soon as reasonably practicable. The offer of employment should contain the following information:

- Conditions (pre or post) that apply to the offer (for example the offer may be subject to satisfactory references, eligibility to work in the UK and PVG checks)
- Terms of the offer. For example, salary, hours, benefits, pension arrangements, holiday entitlement & place of employment
- The start date and details of probationary period
- What action the candidate needs to take. For example, returning a signed acceptance of the offer
- Conditional upon receipt of satisfactory references and right to work and PBGA checks

Ideally, a check on the employee's right to work in the UK should be made at the interview stage. It is an obligation upon the employer to ensure the employee they employ has the Right to Work in the UK, and necessary documentation has been obtained, checked and copied. An individual cannot start work until Right to Work Checks have been undertaken.

All new employees should receive a copy of their main statement of written terms and conditions. From April 2020, the statement must be issued no later than the day a worker starts their employment.

Discrimination

It is important to be aware that applicants can place a claim in an Employment Tribunal; they do not have to be an employee. The grounds on which applicants can claim discrimination are outlined in the Equality Act 2010. These are:

- Age

- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or philosophical belief
- Gender
- Sexual orientation

Throughout the recruitment process, care should be taken to avoid any risk of an applicant feeling that they are being treated differently because of a protected characteristic.

Summary of the Recruitment Process

Draft job description and person specification. To fill the job quickly and with the right person you need to:

- Provide as much information as possible about your needs
- Ensure that you offer at least the national minimum wage and that the job is in-line with UK employment law
- Advertise the job — make sure the wording is non-discriminatory
- Choose who you want to interview
- Arrange and carry out the interview
- Choose who to employ
- Offer the job subject to background checks
- Do the checks
- Compulsory PVG checks under the Disclosure (Scotland) Act 2020
- Check last employer and other relevant references
- Check if your PA is allowed to work in the UK
- Start an employee record, including the application form, job offer letter, contract, add a record of holidays and sick leave

Next steps

Take a look at the resources available below from CIPD to guide you in more detail.

-

Case Study: How an Independent Support Organisation Assisted Paul to Recruit 4 PAs



Paul requires support from his Personal Assistants (PAs) to help maintain a family life as well as assisting him to contribute to, and access, society. With the assistance of an independent support organisation, Paul developed the job description which includes both personal and domestic duties within the household as well as providing support so he can access the community, to work etc. Paul was supported through the recruitment process and was signposted to organisations for specialist information, such as employment information and payroll organisations. He also inquired about training for his employees and the support organisation provided Paul with relevant training sources that would deliver the specific training he felt was important for his employees. With the support and advice he received, Paul has now been employing staff for many years; consequently Paul enjoys his citizenship rights and is respected as an equal player in society:

"Having control over when and how my support is delivered enabled me to fit more with my family rather than them fit around me."

Next steps

Take a look at the article on case studies where you can find further case study examples.

Case Study: Mary Takes on a PA for her Father with Dementia



Mary's dad has Dementia and after the loss of her Mum, and then unexpectedly her brother, she was determined to keep Dad at home. Her Social Worker suggested Option 1 of Self-directed Support. Mary was worried about all the paperwork and regulations this would involve. However, after receiving free information and advice from an Independent Support Organisation (ISO), she decided to try it. With the support of the ISO, she devised a care plan using PAs.

Since hiring Personal Assistants (PAs) Mary's Dad has regained both his confidence and his independence. He attends Country and Western nights on a Saturday, attends day centres during the week and has such a strong relationship with his PA that he goes with her when she does voluntary work and helps out too! Mary says, "SDS has meant I can return to my normal work hours. This is improving my family's quality of life and I'm completely confident that Dad is happy, socialising and being cared for properly".

Next steps

Take a look at the article on case studies where you can find further case study examples.

Local Authority Agreements

When you choose Option 1 of SDS and would like to receive a Direct Payment from the Local Authority (Council), the Local Authority will issue a Contractual Agreement for you to sign. This is sometimes called a Direct Payment Agreement. It will be important to check that you understand the agreement and are happy to sign it. If there is anything you are not sure about, you can speak to your Local Authority further, or take other independent advice. The agreement is a legal contract between you and the Local Authority, so it is important that you understand and agree with the content. Once you have signed the agreement, the Local Authority will give you a copy signed by all parties.

Next steps

Take a look at the example below of a Local Authority Direct Payment to guide you in more detail.

Resources

An example of a local authority direct payment contract

<https://handbook.scot/wp-content/uploads/2022/04/Direct-Payment-Agreement-form-effective-1st-March-2018-update-Highland.pdf>

Moving and Assisting Support

Many Personal Assistant (PA) employers will need support at various times during their day, to move from one place to another. This will be particularly important for employers who cannot bear their own weight and will need to use an aid to help them move safely. Part of a PA's role might be to support their employer to move safely. To do this, PAs need relevant and appropriate training and support.

There are certain legal requirements when it comes to supporting someone to physically move from one place to another. This is often referred to as 'manual handling'. However, PA employers might prefer people to use the term moving and assisting, which is more respectful of the person.

The types of activity that PA Employers might need support with include:

- Moving from a wheelchair onto a bed or shower chair using a ceiling or freestanding hoist
- Moving from a chair to a wheelchair using a Turning Stand

Any activity that requires an individual to lift, move or support a person is classified as a manual handling task. The Manual Handling Operations Regulations 1992 are the main piece of legislation dealing with manual handling. It sets out the main duties for employers and employees.

The regulations explain that first of all you need to avoid manual handling where possible. When this is not possible you need to assess and reduce the risk. There isn't a weight limit for manual handling within the regulations. Instead an assessment of the tasks required should be carried out to ensure the safety and health of both employees and the employer.

Employers are required to

- Avoid manual handling, wherever possible
- Assess the risks of any handling tasks that can't be avoided
- Reduce the risk of injury as far as possible

Employees also have responsibilities

- To follow safe working guidance provided
- To use equipment correctly
- To inform the employer of any handling risks they identify
- To take care not to put others at risk through their activities
- To cooperate with their employer on health and safety

It is important that PA Employers identify appropriate training for their PAs to undertake and to give them time to complete this training. It might also be necessary to undertake refresher training at a later date.

Next steps

Talk to your employer about training or updates to your training that you may need. Also take a look at the resources below.

Resources

Getting to Grips with Hoisting People

<https://ilf.scot/wp-content/uploads/2020/08/ILF-Scotland-and-Northern-Ireland-A-Brief-History-and-Current-Context-002-Web-Document.pdf>

SDSS Video FAQ: Aidacare Training Video - Manual Handling - Sit To Stand

<https://www.youtube.com/watch?v=L914lkoub6E>

Moving from a chair to a wheelchair using a Standing Turner

<https://www.youtube.com/watch?v=OyhLbt99jts>

PA Employer Forms and Templates

Certain records must be kept when managing employees and good record keeping is part of being a good employer. Some examples you can print or download are listed and if you are using an Independent Support Organisation or a payroll service they will also have templates, or documents you can make your own, for the purpose of good record keeping. You will find a copy of the following documents:

- Starting Out with a Direct Payment Check List

- Model Contract for PAs (Scottish Government)
- Direct Payments Advice Sheet
- Interview Checklist and Example Interview Questions
- Sample Job Advert
- Sample PA Application Form
- PA Employee Job Description

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

A range of templates and forms for PA Employers to use

<https://handbook.scot/wp-content/uploads/2022/04/Person-Centred-Plan-Traffic-Lights-to-be-used-as-part-of-job-description.pdf>

Guidance on Completing a Statement of Employment Particulars and Contract of Employment for a PA

<https://handbook.scot/wp-content/uploads/2022/04/Guidance-on-completing-a-Contract-of-Employment.pdf>

Example Contract of Employment for PAs

This is an example of a written Contract of Employment that a PA Employer could use when employing a new PA. This comes from Disability Rights UK.

<https://handbook.scot/wp-content/uploads/2022/09/Example-of-a-written-contract-when-hiring-a-Personal-Assistant-Disability-Rights-UK.docx>

PA Employers Employment Responsibilities

Personal Assistant (PA) employers have a number of responsibilities relating to their employees, from recruitment and on-going support of PAs, to keeping their information safe.

Responsibilities as an employer include

- To recruit people fairly and do not discriminate against anyone. This includes taking up of references and applying for a PVG check
- Having a contingency plan in place to cover for staff annual leave and sickness
- To have a Job Description in place that details the role and tasks that a Personal Assistants will undertake
- To have employers Liability Insurance in place before staff start their employment and to update this every year
- To undertake the payroll administration of wages, or to ask a Payroll Service to run your staff

payroll, including registering with the Pensions Regulator & HMRC. An employer will need to provide the Payroll service with any information they need, such as copies of timesheets and any changes to staff details

- To have a dedicated bank account, solely for the purpose of Self Directed Support funding received. The employer will need to provide bank statements for this account to the Local Authority Finance Team for monitoring purposes. If there is a pre-payment card in use, there is no requirement to have a bank account
- If the PA Employer makes any contribution towards the support costs, arrangements such as Standing Orders may need to be established.
- To meet any Health & Safety requirements in the workplace and do not put the individual or employee at risk
- To provide any relevant training to staff to make sure they can do their job well. This includes equipment specific training, such as operating a hoist.
- To make sure that staff have an induction into the workplace
- To make sure that staff are aware of their rights regarding their Contract of Employment on the day they start their employment. This will need to include their hours of work, pay, annual Leave and sickness entitlement, as well as information on any Grievance and Disciplinary Procedure, training, other paid leave and their job title and description
- To ensure compliance with the General Data Protection Regulation and Data Protection Act 2018 (GDPR) regarding staff's personal details during and after their employment

Next steps

You can find further information on the ACAS website found below.

Resources

ACAS Website, for free employment advice

<https://archive.acas.org.uk/>

Talking Toolkit (Health and Safety Executive)

How to support disabled workers and workers with long-term health conditions in work

https://www.hse.gov.uk/user-research-testing/health/assets/docs/talking-toolkit-support-workers-with-disabilities-and-long-term-health-conditions.pdf?utm_source=govdelivery&utm_medium=email&utm_campaign=disabled-workers-survey&utm_term=toolkit&utm_content=vulnerable-24-aug-22

PA Employment Status

When considering becoming an employer it is important to understand the meaning of employment status as this determines the basis of the relationship with the paid worker.

To help with this understanding, you'll find some basic definitions of whether a Personal Assistant (PA) is an employee or a casual worker, below.

Employee

A PA who has entered into or works under a contract of employment is an employee. This means:

- The employer is obliged to offer them work and they are obliged to accept it.
- They must perform the work personally and cannot send a substitute.
- They will be working under the employer's control and direction.
- They will be provided with any equipment they require in the delivery of their role.
- They will be paid through PAYE and national insurance payments will be made on their behalf.
- They will receive statutory benefits, such as statutory sick pay etc.
- They will be entitled to holiday pay.
- They will be subject to disciplinary procedures.

It may be that the intended relationship with the worker is better described under a casual work agreement.

Casual worker

The term casual worker applies to PAs who work with a supported person on a temporary basis. Temporary work being:

- work which occurs only once, and for a short period of time or
- which occurs more often but on an unpredictable or irregular way or
- where there is no obligation on the supported person to offer the work nor for the casual worker to accept the offer of work.

In cases like this there is no contract of employment as the obligation to provide work and a corresponding obligation on the PA to accept the work does not exist.

However both employees and workers have the right to be provided with a written statement of their terms. Workers have the right to receive holiday pay, the NMW and to be auto enrolled into a pension scheme (if eligible).

If, however the casual workers working pattern becomes, through time, set and regular then this arrangement would have to be reconsidered as they may be regarded as a permanent employee. Casual worker's working arrangement periods should be short, irregular and with gaps in between in order that a continuity of employment is not established.

Having casual workers available can really help manage gaps in the employee(s) capacity like sick leave or holidays, however it is important to understand when casual work becomes employment and the employer's obligations if that happens. It is advisable therefore, to have several casual workers available so there is a group of people to approach to cover holidays and unscheduled emergencies.

Having people available to cover some support hours in the absence of permanently employed PAs for example holidays and sickness, fulfils the employer's obligation to the funding council to have arrangements in place for emergencies.

Next steps

Existing PA employers who are unsure about the status of their PA(s) should contact Her Majesty's Revenue and Customs (HMRC).

Resources

Further reading: Register as an employer with HMRC

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

HMRC Check Employment Status for Tax

Use the Check Employment Status for Tax (CEST) tool

<https://www.gov.uk/guidance/check-employment-status-for-tax>

Paperwork: Contract of Employment for a PA

It is a legal requirement that as an employer, you must give your employees a document stating the main conditions of employment when they start work. This is often known as a 'written statement of employment particulars.' This must include the 'principle statement' and a 'wider statement.' More details on the requirements can be found via the Gov.uk resource link.

Your local independent support project may be able to assist you to develop a person-centred job description to go with the contract of employment (containing the legally required information) and we recommend you have your insurance indemnifier check your employment paperwork as you may not be covered by your insurer if you don't.

What should be included in employee paperwork?

- Application form
- Interview paperwork
- Job offer letter
- References
- Contract/ statement of terms
- Record of holidays
- Record of sickness
- PA next of kin details
- PA bank details for making payment
- Records of any staff supervision
- Privacy Notice in relation to how your personal information will be processed

Next steps

Take a look at the resources below, including a sample contract of employment which contains all of the mandatory elements required in a statement of particulars and a wider statement.

Resources

An example of a Contract for a PA

<https://handbook.scot/wp-content/uploads/2022/04/Personal-Assistant-Example-Contract.pdf>

Disability Rights UK Employment Contract Information

Local Authority Areas Applicable:

Aberdeen City; Aberdeenshire; Angus; Argyll and Bute; City of Edinburgh; Clackmannanshire; Dumfries and Galloway; Dundee City; East Ayrshire; East Dunbartonshire; East Lothian; East Renfrewshire; Falkirk; Fife; Glasgow City; Highland; Inverclyde; Midlothian; Moray; Na h-Eileanan Siar; North Ayrshire; North Lanarkshire; Orkney Islands; Perth and Kinross; Renfrewshire; Scottish Borders; Shetland Islands; South Ayrshire; South Lanarkshire; Stirling; West Dunbartonshire; West Lothian

<https://www.disabilityrightsuk.org/employment-contracts>

Scottish Government Model Contract for PAs (with guidance)

<https://handbook.scot/wp-content/uploads/2022/04/Contract-of-Employment-Scot-Gov-Model-for-PAs.pdf>

Guidance on Completing a Statement of Employment Particulars and Contract of Employment for a PA

<https://handbook.scot/wp-content/uploads/2022/04/Guidance-on-completing-a-Contract-of-Employment.pdf>

Gov.uk Employment Contracts: Written Statement of employment particulars

<https://www.gov.uk/employment-contracts-and-conditions/written-statement-of-employment-particulars>

PAs Role in Helping to Administer Medication



This guidance is based on that given by Care Inspectorate, Royal Pharmaceutical Society of Scotland and Social Work Scotland in 'Prompting, assisting and administration of medication in a care setting: guidance for professionals.' The full document can be accessed below in resources.

Should a Personal Assistant (PA) be required to help with medication, this should be clearly documented and agreed in the support plan with the HSCP.

Decisions on the support required around medication should be made, wherever possible, by the person who needs to take the medication. Sometimes, they will require the assistance of others to help with the decisions and these people may include: their carer, their guardian or a health professional.

Prompting, assisting and administration of medicine

There are different levels of support a person may require from their PA to help them with their medication:

- Prompting
- Assistance
- Administering

Prompting

This is when the PA reminds the person about their medication. It may be to alert them to the time so that the person can choose whether or not to take their medication. The person is in full of control about the choice they make about taking their medication. The PA offers no further advice or intervention.

Assistance

The person remains in control of their medication but requires the help of their PA with mechanical tasks, for example:

- Ordering and collecting repeat prescriptions
- Making packs of medication available to the person e.g. passing the pack to the person
- Opening bottles or packets of medication including multi-compartmental compliance aids (MCAs)
- Reading the label on the medication to the person
- Making a drink available to the person to take with their medication

Administration

When a person cannot take responsibility for managing their medication, the PA may be responsible for ensuring that the person gets offered or is given:

- The correct medication
- At the correct time
- In the correct way

Administration of medication by the PA is one or a combination of the PA doing the following:

- Deciding which medicine(s) have to be taken or applied and when this should be done
- Being responsible for selecting the medicines
- Giving a person medicines to swallow, apply or inhale, where the person receiving them does not have the capacity to know what the medicine is for or identify it
- Giving medicines (even at the request of the person receiving care) where a degree of skill is required to be exercised by the care worker to ensure it is given in the correct way
- PAs must follow the instructions on the container when administering medication

Medicines not routinely given by PAs

This includes giving medicines via an 'invasive' technique, for example:

- Via the rectum e.g. suppositories
- Insulin via injection
- Via Percutaneous Endoscopic Gastrostomy (PEG) tubes.

PAs can be trained by an appropriate health professional to administer medication via invasive routes.

When something goes wrong

The PA must follow appropriate action in the event of the person reacting badly to their medication.

This might include seeking medical advice (and emergency attention via 999 should the reaction be life threatening). The PA must record such incidences and advise their employer of them at the earliest opportunity.

Should the PA make an error with assisting or administering medication, the above steps must also be taken.

Training and good practice

PAs must be trained to prompt, assist or administer medication. Local independent support services and HSCPs should be able to advise on appropriate training.

PAs must liaise with their employer and health and social work professionals to ensure good practice is adhered to.

Employers should ensure their insurance provider is aware of the requirement for the Personal Assistant to assist or administer medication.

Employers should work with their HSCP to ensure appropriate paperwork is in place to record the administration of medication.

Next steps

Take a look at the additional resource below on prompting, assisting and administration of medicines.

Resources

Prompting, assisting and administration of medication in a care setting: guidance for professionals
<https://hub.careinspectorate.com/media/1595/prompt-assist-administer-medication-in-a-care-setting-guidance.pdf>

Pensions and Auto-Enrolment (Workplace Pensions)

Every employer with at least one member of staff now has a responsibility for putting those who meet certain criteria into a workplace pension scheme and of contributing towards it. This includes those who employ Personal Assistants (PAs).

This process is called automatic enrolment. This is because it is automatic for staff — they do not have to do anything to be enrolled into the pension scheme. They can choose to opt-out. However, it is not automatic for a PA Employer and there are several things that the employer has to do.

A PA employer will need to tell their PA about auto-enrolment, check whether they're eligible and if they are, set up a pension, enrol them and make the correct contributions. The PA employer will also need to complete an online form to declare their compliance with the rules.

What criteria must a PA meet to be auto-enrolled?

The rules say that a PA Employer must automatically enrol all staff who, on your duties start date are:

- aged 22 to state pension age, and
- are working in the UK — under a contract of employment and
- have 'qualifying earnings' (QE) of over £10,000 a year (the limit will be frozen at £10,000 for the foreseeable future).

Are all employers affected by auto-enrolment?

Auto-enrolment affects all employers with staff in the UK. There are no exceptions. This may be daunting but the Pensions Regulator (which is in charge of auto-enrolment) has lots of help available for PA employers to guide and support them through the process.

When someone first becomes a PA Employer, it is important that they confirm with The Pensions Regulator who they should contact at the earliest available opportunity. The PA Employer should also advise them that they are PA employer so that they can deal with them in the most appropriate way.

What does a PA Employer do first?

On the first day a person starts working for the PA Employer (known as their duties start date), the PA Employer should formally assess them to see if they meet the criteria to be put into a pension scheme.

Can a PA Employer postpone auto-enrolment?

It is possible for an employer to legitimately postpone assessing an employee for auto-enrolment purposes for up to three months. If the PA Employer wishes to postpone their staff, they must write to their PAs individually (within six weeks) to explain this.

How much will a PA Employer have to contribute?

There is a minimum total amount that has to be contributed by the PA Employer, the PA and the government in the form of tax relief.

For auto enrolment in 2021/22 and 2022/23 if a worker is automatically enrolled Employer contributions must be at least 3% of qualifying earnings (QE).

Employer plus employee contributions with tax relief must total at least 8% of qualifying earnings (QE).

The minimum contribution applies to anything a PA earns over £6,240 up to a limit of £50,270 (in the tax year 2022-23). This slice of the PA's earnings is known as "qualifying earnings" (QE).

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

The Pensions Regulator: Work out who you need to put into a pension scheme

<https://www.thepensionsregulator.gov.uk/en/employers/new-employers/im-an-employer-who-has-to-provide-a-pension/work-out-who-to-put-into-a-pension>

Automatic enrolment into a workplace pension: Key facts

<https://handbook.scot/wp-content/uploads/2022/04/Auto-Enrolment-into-Workplace-Pension-Key-FactsDWP.pdf>

Disability and Tax: Auto-enrolment

<https://disabilitytaxguide.org.uk/pensions-auto-enrolment>

Workplace pensions — unpaid pension contributions

The Pensions Regulator: What to do if you have unpaid pension contributions

<https://www.pensions-ombudsman.org.uk/sites/default/files/publication/files/MaPS%20TPR%20and%20TPO%20website%20factsheet%20final.pdf>

Personal Outcomes and PA Employers

The term 'outcome' is now in common usage in health and social care, reflecting a commitment to ensure systems support people using services and unpaid carers in ways that are person centred and effective. Despite the prevalence of the term, confusion exists about what is meant by an outcome and in particular by 'personal outcomes'.

Talking Points (Joint Improvement Team)

A Personal Outcomes Approach is an evidence based organisational approach that puts people using services and unpaid carers at the centre of the support they receive:

- Outcomes are defined as what matter to people using services, as well as the end result or impact of activities, and can be used to both determine and evaluate activity
- Personal outcomes are identified through good conversations with people using services during assessment and support planning
- It is critical that the outcomes are reviewed, to ensure the continued relevance of support and services, and to support service planning, commissioning and improvement

Other definitions of Personal Outcomes

Equality and Human Rights Commission (EHRC)

'Users should be supported to identify what matters to them and what they want to achieve with this

support — also known as their personal outcomes.'

IRISS

'Personal outcomes data refers to information gathered from people supported by health and social services and their unpaid carers about what's important to them in their lives and the ways in which they would like to be supported.'

The Social Policy Research Unit

The Social Policy Research Unit identified three main categories of outcome, which their research found to be important to people using social care services:

- Quality of Life outcomes (or maintenance outcomes) are the aspects of a person's whole life that they are working to achieve or maintain
- Process outcomes relate to the experience that individuals have seeking, obtaining and using services and supports
- Change outcomes relate to the improvements in physical, mental or emotional functioning that individuals are seeking from any particular service intervention or support (Qureshi et al 2001)

Personal Outcomes for PA Employers

PA Employers are likely to identify their Personal Outcomes in their Personal Outcomes Plan (or Support Plan). These will focus on what's important to the Employer and what they would like to achieve. You can see some examples in the picture below:

What are personal outcomes?



When we talk about personal outcomes we mean the things that are important to people in their lives.

"I want help with getting my confidence back in the kitchen. Home cooking makes a house into a home and the smell of soup on the stove makes me feel I am making a home for my husband and me."

Iris, 82

Home from hospital after breaking her leg in a fall

Personal outcomes often relate to maintaining or improving wellbeing.



What PA Employers might need to do

PA Employer may need to enable their PAs to understand the Personal Outcomes they are trying to achieve. This will help PAs understand how the support they provide makes a difference to their Employer quality of life.

PA Employers can do this by

- Looking for training opportunities to learn more about Personal Outcomes for themselves
- Including information on their Personal Outcomes in their PA's Job Description
- Asking prospective PAs about Personal Outcomes at the interview stage
- Providing further information to their PAs on Personal Outcomes, including the sharing of their Personal Outcomes Plan
- Provide opportunities for their PAs to undertake further training or development on Personal Outcomes
- Where Employers contract with self-employed PAs, to ask that information on meeting their Personal Outcomes is included in that contract

Next Steps

If you're looking for further information or resources, you can find these at the bottom of this Article below.

Resources

Talking Points: Personal Outcomes Approach (Joint Improvement Team)

A Practical Guide to understanding what Personal Outcomes are

<https://personaloutcomes.files.wordpress.com/2014/03/talking-points-practical-guide-21-june-2012-1.pdf>

Resources on Personal Outcomes Planning (Scottish Social Services Council)

An online Personal Outcomes Planning Workbook from SSSC

<https://lms.learn.sssc.uk.com/course/view.php?id=24#section-0>

Understanding Personal Outcomes Presentation (SSSC)

A Powerpoint Presentation to learn about Personal Outcomes from the Scottish Social Services Council.

<https://lms.learn.sssc.uk.com/course/view.php?id=24#section-3>

An Introduction to Self-directed Support (for PA Employers)

The Social Care (Self-directed Support) (Scotland) Act 2013, ensures that everyone who is eligible for social care funding in Scotland will have the right to choose how their social care support is delivered.

Self-directed Support (SDS) is available to anyone who meets the eligibility criteria that their Local Authority (council) has set. This can be available to children, young people, adults and older people. A person can apply for support for themselves and a parent can apply for their child or young person. Someone with active Power of Attorney, Welfare Guardianship or Financial Guardianship can apply on behalf of the person they are Guardian for.

The 4 options for SDS

Option 1

Known as a Direct Payments, this is where the supported person receives the money they need to pay for their support, directly from their Local Authority (Council). This allows them to arrange their own support or purchase a service from a care agency. This is the only option under which Personal Assistants (PAs) can be employed.

Option 2

This option involves the individual deciding who they want to provide their care and support (e.g. a local care agency or the Council themselves). They ask the Local Authority to send the money they have agreed to pay for their support to that organisation who then works with them to arrange the support that they need.

Option 3

With the individual's agreement, the Local Authority finds a service that meets their needs and arranges their support.

Option 4

A mixture of any of the other 3 options can be used to arrange care and support.

Next steps

Further information on Independent Support Organisations and Local Authorities can be accessed through the SDS Scotland website: www.sdsscotland.org.uk

Take a look at the video resources below.

Self-leadership — taking more decisions and helping make things happen (SSSC)

Information and resources for people in a leadership role where they are taking decisions by themselves to make things happen

https://stepintoleadership.info/service_selfleadership.html

Outcomes and Co: Conversation Openers (Iriss)

Outcomes & CO are conversation openers that were created to support practitioners and managers across social care to reflect on their views, values and experiences of a personal outcomes approach.

<https://www.iriss.org.uk/resources/tools/outcomes-co>

Self-leadership — taking more decisions and helping make things happen (SSSC)

Information and resources for people in a leadership role where they are taking decisions by themselves to make things happen

https://stepintoleadership.info/service_selfleadership.html

Understanding Personal Outcomes Booklet (SSSC)

Helping people to understand what Personal Outcomes are and how to use them in practise from the Scottish Social Services Council

https://lms.learn.sssc.uk.com/pluginfile.php/519/mod_resource/content/1/Personal_Outcomes_booklet_edit.pdf

An Open Badge on Understanding Personal Outcomes

An Open Badge that explains what Personal Outcomes are

<https://www.badges.sssc.uk.com/badges/understanding-personal-outcomes/>

Protecting Vulnerable Groups (PVG): For PA Employers

The Protecting Vulnerable Groups (PVG) membership scheme is managed and delivered by Disclosure Scotland. Anyone who wants to work with children or vulnerable adults, will need to have a PVG check and become members of the scheme. This helps ensure that people whose behaviour makes them unsuitable to work with children and protected adults cannot do 'regulated work' with these vulnerable groups. PVG is a membership scheme which makes sure its members are allowed to work with children or protected adults.

Employing Personal Assistants (PAs)

At the moment, a PA Employer can request new PAs to share information held by Disclosure Scotland, by asking for a copy of that information through a PVG check. A PA does not have to agree to this at the moment, but the PA Employer might take this into consideration when they are deciding whether to employ that person.

How the scheme works

When someone applies to join the PVG Scheme, Disclosure Scotland carries out criminal record checks and shares the results with individuals and organisations. The application process involves gathering criminal record and other relevant information. This can be shared with the employer who is providing regulated work, unless the person applies to have a conviction removed from their PVG Scheme record.

If the information shows the applicant might be unsuitable for regulated work, they'll be referred for further investigation as part of the 'consideration process'.

The Disclosure (Scotland) Act 2020

A new law was passed in 2020 which came into force in 2021. The new legislation focuses on safeguarding children and vulnerable adults, while balancing the need for people with convictions to move on from past convictions and contribute to society. Some of the main changes introduced by the Act are:

- It will be a legal requirement for those carrying out 'regulated roles' with children and protected adults to be a member of the Protecting Vulnerable Groups (PVG) Scheme
- The lifetime PVG scheme membership will end and be replaced with a five year membership period
- The Act will reduce the number of disclosure levels
- Disclosure Scotland will have new powers to impose conditions on individuals while they are being considered for listing
- Applicants will be able to request a review of certain disclosure content from an independent reviewer
- Those with childhood convictions eligible for review will be able to explain the context of their

previous behaviour before any disclosure to a third party is made

- The Act provides new referral powers for Scotland's councils and integration joint boards

The Act will reduce the number of disclosures from four main levels (basic, standard, enhanced and PVG) to two (Level 1 and Level 2).

[You can find more details on the content of each disclosure level here.](#)

What PA Employers need to do

PA Employers will need to ask any potential new PAs to undergo a PVG check at either level 1 or 2. If a new PA is not a member of the PVG scheme they will need to join. The information that is shared by Disclosure Scotland can only be shared with a 'regulated body'. This means that the prospective PA will receive a copy of their disclosure as well as an organisation acting on behalf of the PA Employer. This 'regulated body' will then have to decide what information in the disclosure received by them is relevant to the PAs employment. They will only be able to share relevant information with the PA employer.

Next steps

Take a look at the resources available to guide you in more detail.

Resources

Guidance for Self Disclosure under 1974 Act

<https://www.gov.scot/binaries/content/documents/govscot/publications/advice-and-guidance/2020/08/guidance-self-disclosure-previous-convictions-alternatives-prosecution-scotland-under-rehabilitation-offenders-act-1974/documents/guidance-self-disclosure-pre>

Disclosure (Scotland) Act 2020 Handy Guide for enrolled bodies

<https://handbook.scot/wp-content/uploads/2022/04/Disclosure-Scotland-Act-2020-Handy-Guide-for-enrolled-bodiesSep-2020.pdf>

Redundancy

If you're making an employee redundant, you must:

- Consult with you about this,Â tell you why and discuss matters with you if you have more than 2 years serviceÂ
- Tell the employee why the redundancy has arisen and discuss the situation (this is called consultation)
- Tell the employee how long their notice period is — whether it's statutory or contractual
- Keep paying the employee you until the end of the notice period
- You'll usually carry on working until the end of your notice period. How much notice depends on how long the employee has worked for the employer

- Sometimes the employer may want to pay you instead of having you working out your notice period. This is called paying you in lieu of notice

It's a good idea to talk with your employee if there's any part of the redundancy notice you're not sure about. It is good practise to put in writing:Â

- The length of the notice period
- The date the notice period starts
- If they can leave before the end of your notice period
- If they need to take any unused holiday before you leave
- If they still get contractual benefits, for example a fuel card or mobile phone, during your notice period

Eligibility for redundancy pay

Only employees have the right to redundancy pay if they have worked for the employer for more than 2 years.Â

If you're not sure if your PA is classed as an employee, it's a good idea to take advice and check employment status.Â

How much redundancy pay will a PA get?Â

How much redundancy pay a PA can get depends on:

- AgeÂ
- Length of time working for the employer

They might get more than the minimum amount the law says you should get ('statutory'), if it's in their contract.

Up to £30,000 of redundancy pay is tax free.

Employees may not be eligible for statutory redundancy pay if the employer offers a suitable alternative job and the employee you turns it down.

Redundancy pay is based onÂ

- Weekly pay before tax (gross pay)Â
- The years worked for your employer ('continuous employment')Â
- AgeÂ

Weekly pay should also include

- Regular overtime, if your contract says you must get paid for itÂ
- Any bonuses or commission

If the employee is aged 17 to 21

The employer must give them half a week's pay for each full year that has been worked.

If You're Aged 22 to 40

Your employer must give you:

- 1 week's pay for each full year you worked from age 22
- half a week's pay for each full year you worked before that

If the employee is aged 41 or Over

The employer must give them:

- 1.5 weeks' pay for each full year worked from age 41
- 1 week's pay for each full year worked between age 22 and 40
- half a week's pay for each year worked between 17 and 21

As an employer you must tell your employee in writing how their redundancy pay has been worked out.

Limits on redundancy pay

There are limits to how much redundancy pay an employee can get. They can only get it for up to 20 years of work. This means, for example, that if the employee has worked for you for 22 years they only get redundancy pay for 20 of those years.

The maximum weekly amount used to calculate redundancy pay is £571 from 6 April 2022 — even if the employee's wage is more per week.

The maximum statutory redundancy pay they can get in total is £17,130 from 6 April 2022.

When the employee will get paid

As an employer you should tell your employee when they'll get their redundancy pay — this should be on or before the final pay date. You and your employee can agree to a different date, which should be put in writing. You should also tell the employee how they'll get paid, for example in their monthly pay or in separate payments.

If the employer does not make the redundancy payment

If the employee does not get the redundancy pay they should:

- Write to their employer as soon as they can. The date they should get their redundancy pay should be no later than their final pay date, unless they and their employer agree another date in writing.
- Tell the employer what they're entitled to and include any evidence to back this up. For example, they could include a letter that states their first day at work or an email confirming a recent pay increase.

The employee has to claim for any unpaid redundancy within 6 months of their job ending.

If the Employer becomes insolvent

If the employer is insolvent, the employee can apply for redundancy pay from the government's Redundancy Payments Service (RPS).Â

Next steps

The employee can check with their employer for their policy on redundancy and take a look at the resources below for further guidance.

Resources

GOV.UK - Applying to Redundancy Payments Service (RPS)

Guidance for customers who need to apply to the Redundancy Payments Service (RPS)

<https://www.gov.uk/government/publications/redundancy-payments-links-to-further-information-and-guidance/redundancy-payments-links-to-further-information-and-guidance>

Redundancy Payment Helplines

The helpline numbers for ACAS and UK Government

<https://www.gov.uk/redundancy-payments-helpline>

SDS Legislation and Statutory Guidance

The Social Care (Self-directed Support) (Scotland) Act 2013 became law in 2014. This is the legislation that set up self directed support. To understand what this law means in practise, the Scottish Government published guidance that came along with the legislation. This is Statutory Guidance, which means this needs to be taken into account by Local Authorities (Councils) when they are implementing Self-directed Support (SDS) in their area.

Following this, the Scottish Government also passed another law called the Self-directed Support (Direct Payments) (Scotland) Regulations 2014. This set out the rules around:

- The calculation and payment of Direct Payments under Option 1
- When it's possible for a Local Authority to stop a Direct Payment
- The employment of family members
- When someone is not eligible for Direct Payment
- When the Local Authority don't have to offer the choice of a Direct Payment to someone

Further Guidance has been published by the Scottish Government during the COVID-19 pandemic and lockdown, to support the need for increased flexibility and to ensure that people can respond as quickly and as easily as possible in very difficult circumstances.

The two pieces of Guidance issued were:

- Covid-19: Guidance on Self-directed Support Option 1 and Option 2
- Guidance for Commissioners during Covid-19 Response

Next steps

Take a look at the resources available to guide you in more detail.

Resources

Social Care (Self Directed Support)(Scotland) Act 2013

<https://www.legislation.gov.uk/asp/2013/1/contents/enacted>

Statutory Guidance for the Social Care (Self-directed Support) (Scotland) Act 2013

<https://handbook.scot/wp-content/uploads/2022/04/Social-Care-Self-directed-Support-Scotland-Act-2013-Statutory-Guidance.pdf>

An Easy Read guide to the Social Care (Self-directed Support) (Scotland) Act 2013

<https://handbook.scot/wp-content/uploads/2022/04/An-Easy-Read-Guide-to-the-Social-Care-Self-directed-SupportScotland-Act-2013.pdf>

Prompting, assisting and administration of medication in a care setting: guidance for professionals

<https://hub.careinspectorate.com/media/1595/prompt-assist-administer-medication-in-a-care-setting-guidance.pdf>

Further reading: Health and Safety Executive detailed guidance

<https://www.hse.gov.uk/>

The Scottish Living Wage

<https://scottishlivingwage.org/>

SDS Direct Payments Legislation

https://www.legislation.gov.uk/ssi/2014/25/pdfs/ssi_20140025_en.pdf

Gov.uk Employment Contracts: Written Statement of employment particulars

<https://www.gov.uk/employment-contracts-and-conditions/written-statement-of-employment-particulars>

Sick Pay - UK Government Guidance

<https://www.gov.uk/employers-sick-pay>

Self-Employed PAs

When someone is considering becoming a Personal Assistant (PA) employer it is important to understand the difference between an employee, a worker and someone who is self-employed. A person's employment status can affect the legal relationship and financial responsibilities between the PA Employer and that person. So for example, a PA Employer would be responsible for paying the tax and National Insurance for the PA(s) they employed, whilst a self-employed person would be responsible for paying this themselves.

This is something that all PA Employers need to be aware of. To help understand this, there are some basic definitions of different employment statuses that a PA could have. These include:

When a PA is an employee

- A PA who has a Contract of Employment is an employee
- The PA employer is required to offer the PA work under the terms of the contract
- The PA is required to accept the work offered under the terms of the contract
- The PA must perform their work personally and cannot send someone else to do this instead of them
- The PA will be working under the control and direction of the PA Employer
- The PA will be provided (by the PA Employer) with any equipment they need to enable them to fulfil their role as a PA
- The PA is paid through Pay As You Earn (PAYE) and National Insurance payments will be made on their behalf by the PA Employer
- The PA will receive statutory benefits, such as statutory sick pay
- The PA will be entitled to holiday pay
- The PA will be subject to the disciplinary procedures set up by the PA Employer

It may be that the relationship the PA Employer intends having with the person is better described under a casual work agreement.

Casual worker

The term casual worker applies to PAs who work with a supported person on a temporary basis or ad hoc basis. Temporary work or ad hoc work is defined as being:

- Work which occurs only once, and for a short period of time or
- Work which occurs more often but in an unpredictable or irregular way or
- Work where there is no obligation on the part of the PA Employer to offer the work (e.g. there is no employment contract between the two people) and
- Work where there is no obligation on the part of the PA to accept the offer of work (e.g. there is no employment contract between the two people)
- Workers are entitled to be provided with a statement of the terms that cover their engagement

Where there is no written contract of employment

In situations where you're asking a PA to work now and again at different times on a casual basis, there may be no requirement for the PA Employer to offer work and no requirement for the PA to accept any work.

Both employees and workers have the right to be provided with a written statement of their terms. Workers have the right to receive holiday pay, the NMW and to be auto enrolled into a pension scheme (if eligible).

If however, a casual worker's working pattern becomes, over time, set and regular, then this arrangement would have to be reconsidered as they may be regarded as a permanent employee. A casual worker's working periods should consist of short, irregular work with gaps in between so that a continuity of employment is not established.

Having casual workers available can really help a PA Employer manage gaps in their PAs capacity, such at times of sick leave or holidays. However, it is important to understand when casual work becomes an employment relationship and what a PA Employers responsibilities are if this happens. It is helpful for some PA Employers to have several casual workers available for them to approach to cover holidays and unscheduled emergencies.

Working out if a PA is self-employed or not

There are two areas to consider when trying to work out whether a PA is a self-employed worker or not. These relate to:

- Employment status for Tax purposes and
- Employment status for work purposes

HMRC have outlined certain questions to help decide if a worker is self-employed for tax purposes. If the worker can answer yes to one or more of these questions, they are likely to be self-employed:

- Can the PA hire someone to do the work for them, or take on helpers at your their expense?
- Can the PA decide where to provide the support needed, when to work, how to work and what to do?
- Can the PA make a loss as well as a profit?
- Does the PA agree to do a job for a fixed price regardless of how long the job may take?

If the PA cannot answer yes to any of the questions above, they are still likely to be self-employed if most of their answers to the following questions are yes:

- Does the PA risk their own money?
- Does the PA provide the main items of equipment (not the tools that many employees provide for themselves) needed to do the job?
- Does the PA regularly work for a number of different people and require business set up in order to do so?
- Does the PA have to correct unsatisfactory work in their own time and at their own expense?

Next steps

You can find out more information, including on the HMRC website, using the links below.

Resources

Low Income Tax Reform Group: Is your PA employed or self-employed?

How to work out if a PA is employed or self-employed

<https://www.litrq.org.uk/sites/default/files/files/LITRG-factsheet-PA-employed-self-employed.pdf>

HMRC Factsheet Employed or Self-Employed for tax and National Insurance contributions

Working out your employment status

<https://handbook.scot/wp-content/uploads/2022/04/Employed-or-self-employed-for-tax-NI-Cont.pdf>

PVG Scheme Membership Statement for self-employed PAs

How to apply for a Statement of Scheme Membership as a self-employed PA

<https://www.mygov.scot/apply-for-pvg/self-employed-or-work-for-a-personal-employer>

A Guide to National Insurance Rates for self-employed workers

A Guide to what is National Insurance is and the rates for self-employed workers, provided by Simply Business.

https://www.simplybusiness.co.uk/knowledge/articles/2022/08/self-employed-national-insurance/?utm_source=email&utm_medium=kcnurt&utm_campaign=day_160_sme

Thank you

You've reached the end of the sections in your chosen stage. Choose another stage from the chapters page when you are ready to open up different content.

With thanks to the organisations involved in the development of this resource:

Scottish Government

Ayrshire Independent Living Network (AILN)

Community Contacts

Cornerstone SDS

Dundee Carers Centre

Lothian Centre for Inclusive Living (LCIL)

PA Network Scotland

SDS Forth Valley

Workers Educational Association (WEA)

To all the PA Employers who gave their time and expertise as part of the PA Employer Reference Group.

To all Local Authority, ILF Scotland and Disclosure Scotland colleagues who gave their time and expertise as part of the Local Authority Reference Group.

The Law: Things You Must Do

You will have received a lot of information regarding the role and responsibilities of becoming a PA employer (see resources at the bottom of this page). This can feel overwhelming at times and you may feel it is too much to take on, especially if you have many other commitments in your life. However, there is support available from both an Independent Support organisation and your local authority (council).

When someone becomes a PA employer they will also have the support of their Employment Liability Insurer. It is important to follow their advice whenever this is provided. This will help to make sure that the employer follows the law as required.

There are certain things that a PA employer has to do, which cover such areas as:

- Health and Safety

- Recruitment and employment
- Wages, Pensions, Tax and National Insurance
- Training for PAs
- Record keeping and GDPR
- Using your SDS budget for the things you have agreed with your Council

Here is a list of a few things that a PA Employer has to do by law:

- Register as an employer with HMRC
- Purchase Employers Liability Insurance
- Pay the wages, Tax, National Insurance and pension of each PA employee. (You can ask a payroll company to do this on your behalf)
- Provide appropriate training for each PA(s) from an appropriate training provider. This is especially important if a PA is required to use equipment, such as a hoist, or give a PA employer medication
- Keep all relevant information and correspondence relating to the employment of any PA(s) confidential and secure
- Undertake appropriate risk assessments on your property if the PA(s) supports you at home, as well as any risk assessments on any relevant activity that the PA will undertake in the home
- Letting the Council know how you have spent your SDS budget and how this is meeting your needs
- Issue a statement of particulars of employment on day 1

This is not a full list and it might be helpful to talk through relevant areas of the law for PA employers with an Independent Support Organisation or your Council.

The other things to be aware of as a PA employer is how you communicate and develop the relationship you have with your PA(s). The day-to-day relationship you have will make a big difference to how successful the support works for you.

Next steps

Take a look at the resources below on information regarding the role and responsibilities of becoming a PA employer.

Resources

Handbook: PA Employer Responsibilities

<https://handbook.scot/article/pa-employer-responsibilities/>

An Employer's Responsibilities to their PAs During COVID-19

Employers have a legal duty to make the workplace safe for their Personal Assistants (PAs). It's the employer's responsibility to regularly carry out workplace risk assessments and take steps to protect employees from harm, which includes reducing the COVID-19 risk. Employees also have a responsibility to follow safe working practices.

It's a good idea to involve employees when carrying out a workplace risk assessment, as they may have suggestions/ideas.

There is a range of information and advice available for employers on COVID-19. These cover such areas as:

- Who can go into the workplace
- Self isolation and sick pay
- PAs protecting themselves, their employer and others
- Government Guidelines and employer requirements
- Getting the vaccine
- Access to PPE and testing
- Long COVID
- Other financial support
- Standard Infection Control Precautions (SICPs)

COVID-19 still remains a concern for public health and therefore employers are encouraged to continue with all protective measures identified by their risk assessment, to make appropriate adaptations to workplace practises and to maintain a vigilant approach to managing COVID-19.

Employers are encouraged to continue following the advice in the COVID-19: Fair Work Statement. It states that **no worker should be financially penalised by their organisation for following medical advice**, and any absence from work relating to COVID-19 should not affect future sick pay entitlement, result in disciplinary action or count towards any future sickness absence related action.

Face coverings when in close contact with people

For close contact treatments provided to the face, mouth or nose area, people must follow any advice given. Individuals who have received two doses of the COVID-19 vaccination and a booster are still required to follow any current rules on face coverings.

Risk assessments

Staff are at the highest risk of exposure to COVID-19 when working in close proximity to the face, nose or mouth of another person. For this reason, risk assessments should be carried out to consider what measures need to be implemented to protect the health and safety of all staff and PA employers, including whether or not to carry out the support required.

Risk assessments and COVID-19

The requirement for every employer to explicitly consider COVID-19 in their risk assessment was removed on 1 April 2022.

The most important thing is **what is actually done to manage and control risk associated with COVID-19 in the workplace**.

Public Health Scotland has published guidance on how to carry out risk assessments that sets out further detail on managing workplace public health risks

The Scottish Government are encouraging employers to take the needs of those on the Highest Risk List into consideration when completing a risk assessment.

For those PAs returning to the workplace it is advised that employers carry out an **individual risk**

assessment to look at your individual risk. This can help individuals and employers to discuss any additional changes that may be needed to make the workplace and duties safer.

Employers are encouraged to consult closely with employees on the Highest Risk List.

Managing risk in the workplace

Employers can manage risks to their PAs by:

- Encouraging staff to **wear face coverings** in enclosed, busy areas, or places which are less well ventilated
- **Maximising ventilation** and the use of outside space if possible
- **Reinforcing enhanced cleaning**, particularly of frequently touched surfaces, and hygiene measures such as providing alcohol based hand sanitiser
- Supporting the distance aware scheme
- Encouraging staff to **travel safely when going to and from the workplace**
- PAs should not travel to work or car share if you have symptoms of coronavirus
- Vehicle sharing at work involving close contact with other individuals. PAs should wear face coverings, ensure vehicles are well ventilated by opening windows and clean after each journey
- Protecting those at highest risk via conducting an individual risk assessment
- Continue to support workers to follow self-isolation guidance. From the end of April 2022 anyone experiencing COVID-19 symptoms will be advised to stay at home
- Reducing the overall contacts between people
- Regularly communicating with employees
- Developing plans to adjust shift patterns to protect the workforce
- Reducing the need for travel at peak times and providing opportunities for flexible working
- Continuing to work with staff on health and safety matters such as providing training around any new processes and protocols introduced
- Considering available resources to support the welfare and mental health of staff
- Encouraging the uptake of vaccination

Vaccination

Employers can help encourage vaccine take up by:

- Supporting staff to get the COVID-19 vaccine once it is offered to them. This may require paid time off to attend the appointment
- Encouraging vaccine take up by sharing the benefits of being vaccinated with staff. It could help to display material from the NHS COVID-19 vaccination marketing toolkit which includes information leaflets in a number of languages

Standard Infection Control Precautions (SICPs)

SICPs are the basic infection prevention and control measures necessary to reduce the risk of transmission of infectious agent from both recognised and unrecognised sources of infection.

The Scottish Government has set out the SICPs that are to be used by all staff, in all health and care settings, at all times, for all service users, whether infection is known to be present or not to ensure the safety of those being cared for, staff and visitors in the care environment.

As PA employers have the responsibility for health and safety of their staff members, it will be the responsibility of PA employers to assess risk for COVID-19 and to put in place appropriate Infection Control Precautions.

Next steps

Take a look at the resources available below to guide you in more detail.

The PA Employer Pathway

There are seven steps to becoming a Personal Assistant (PA) employer.

Step 1: Contact a local Independent Support Organisation

Before applying for support you can speak to someone from a local organisation who understands how to access social care in the area. There are Independent Self-directed Support (SDS) Information and Support organisations in all areas of Scotland. They will be able to talk about what it means to become a PA Employer and how this happens locally. You can use the [Find Help](#) service on this site at any time to find them.

Step 2: Ask for a Social Work assessment

To access Self Directed Support, a Social Work Assessment is required to assess eligibility for funding from the Local Authority (Council). Following an assessment, if eligible for support, the Council and the supported person will discuss the four options of Self Directed Support to find the best option for the supported person. Option 1 (a Direct Payment) would possibly involve becoming a PA Employer. The Local Authority will explain the SDS budget prior to support planning.

Step 3: Create a support plan

Think about how you want to live your life and what support you need to do this. This can include support to help you maintain your independence at home, as well as being able to access opportunities in your local community. This is where you decide on the Personal Outcomes you want to achieve and put these ideas into a Support Plan. You can get help from a local Independent Support Organisation to do this. Once you have completed your Support Plan you need to agree this with your Social Worker.

Step 4: Request an Option 1 SDS budget

Talk through your support plan with your Social Worker. If you would like to employ your own staff (Personal Assistants) to help meet your needs, talk through what this involves in detail. If this looks of interest to you, ask for an Option 1 SDS budget to be worked out by your Local Authority.

Step 5: Planning to be an employer

Before employing a PA, decide what you want your PA(s) to help you with and when. Look for training and information sessions to help you as a new Employer(which may be available online). There is likely to be a local Independent Support Organisation that can help you with this.

Step 6: Recruitment

Get help to put together the information you need to advertise for your PA(s), such as a Job Description and list of qualities and experience that you are looking for in a PA. Start to recruit your PA(s).

Step 7: Review

Once you have recruited your PA(s), review how things are working. Check to see that your Support Plan continues to meet your Personal Outcomes in the future. Know where to go if you need further information, advice or support with managing your PA(s) or meeting your needs. If anything changes and you need more support in the future, you can ask your Social Worker or the Council to review your support with you.

Next steps

Take a look at the resources available below to guide you in more detail.

Resources

Further reading: Register as an employer with HMRC

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

Contingency Plan Example

<https://handbook.scot/wp-content/uploads/2022/04/Contingency-Plan-Blank.pdf>

Handbook: Understanding employment status

<https://handbook.scot/article/pa-employment-status/>

The Recruitment Process

Recruiting the right people is very important. How you recruit is also very important as although most employment legislation starts from the first day of employment, even before any offer of work, job applicants can raise a complaint, for example a claim of discrimination, at an Employment Tribunal.

Advertising

When advertising for a position consideration should be given to what skills and experience would be required.

A job description and person specification will help you find applicants who meet the skill set and experience you require. The criteria for the person specification must be job related, set at a realistic level.

The most common options for advertising include:

- Newspapers, Specialist Publications
- Job Centres, Government Training Centres
- Online job sites e.g. Indeed

Interviewing

The interview is an opportunity to build upon information already obtained from the applicant. The person conducting the interview should be well prepared and familiar with the requirements of the role.

The interview process should be structured to gain consistent information on all the candidates. A written interview record should be completed to ensure selection of the most suitable candidate.

The interview is a two-way process and allows the applicant to find out more about you and the job vacancy.

Prior to the interview

- Review the job description, person specification and agree questions to be asked.
- Review the CV/application forms and identify any gaps which need to be addressed e.g. in employment or education.
- Ensure all necessary paperwork is ready.
- Ensure there are no interruptions and a private room has been arranged — switch off mobile phones.

During the interview

- Greet the candidate, providing names and positions. Help the candidate 'relax'; safe topics include travel to the interview and the weather.
- Explain that the purpose of the interview is to learn more about the candidate and for them to learn more about the role.
- Advise the candidate of the structure of the interview.
- Advise the candidate that notes will be taken .
- Ask the candidate if they have any questions at this stage.
- At the end of the formal questions, ask the candidate if they have anything else that they would like to add to their interview that they have not already told you.
- Advise the candidate what will happen next — when can they expect to hear back?
- Thank the candidate for their time and close the interview.

Remember to ask each candidate the same questions.

Another useful point to remember is that the candidate should do most of the talking.

Refrain from asking questions relating to protected characteristics. The below is not an exhaustive list, you can not ask about protected characteristics. For example:

- Do not ask questions relating to childcare
- Do not ask about marital status
- Do not ask if they plan on having children
- Do not ask about sexual orientation
- Do not ask about religion

Post-interview

- Communicate the outcome to the applicant. This will normally be carried out verbally, but if this is not possible ensure letters are prepared and issued in a timely manner
- Retain interview notes for a minimum of six months. This is to ensure evidence is available in the event that a candidate submits a claim to an Employment Tribunal

Pre-Employment Checks

References are a very common pre-employment check. References can be written or verbal, with one normally being from the applicant's most recent job. It is important to obtain the applicant's permission prior to doing this (permission can normally be indicated on the job application form).

It may also be appropriate to verify relevant qualifications and copies of original certificates can be kept on file.

PVG information — is there a local difference?

Offer

The successful applicant should receive written notification of their offer of employment as soon as reasonably practicable. The offer of employment should contain the following information:

- Conditions (pre or post) that apply to the offer (for example the offer may be subject to satisfactory references, eligibility to work in the UK and PVG checks)
- Terms of the offer. For example, salary, hours, benefits, pension arrangements, holiday entitlement & place of employment
- The start date and details of probationary period
- What action the candidate needs to take. For example, returning a signed acceptance of the offer
- Conditional upon receipt of satisfactory references and right to work and PBGA checks

Ideally, a check on the employee's right to work in the UK should be made at the interview stage. It is an obligation upon the employer to ensure the employee they employ has the Right to Work in the UK, and necessary documentation has been obtained, checked and copied. An individual cannot start work until Right to Work Checks have been undertaken.

All new employees should receive a copy of their main statement of written terms and conditions. From April 2020, the statement must be issued no later than the day a worker starts their employment.

Discrimination

It is important to be aware that applicants can place a claim in an Employment Tribunal; they do not have to be an employee. The grounds on which applicants can claim discrimination are outlined in the Equality Act 2010. These are:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or philosophical belief
- Gender
- Sexual orientation

Throughout the recruitment process, care should be taken to avoid any risk of an applicant feeling that they are being treated differently because of a protected characteristic.

Summary of the Recruitment Process

Draft job description and person specification. To fill the job quickly and with the right person you need to:

- Provide as much information as possible about your needs
- Ensure that you offer at least the national minimum wage and that the job is in-line with UK employment law
- Advertise the job — make sure the wording is non-discriminatory
- Choose who you want to interview
- Arrange and carry out the interview
- Choose who to employ
- Offer the job subject to background checks
- Do the checks
- Compulsory PVG checks under the Disclosure (Scotland) Act 2020
- Check last employer and other relevant references
- Check if your PA is allowed to work in the UK
- Start an employee record, including the application form, job offer letter, contract, add a record of holidays and sick leave

Next steps

Take a look at the resources available below from CIPD to guide you in more detail.

-

Resources

Recruitment: An Introduction (CIPD Factsheet)

<https://handbook.scot/wp-content/uploads/2022/04/Recruitment-an-Introduction-CIPD-Factsheet.pdf>

The Role and Responsibilities of a PA (for PA Employers)



One of the main reasons people choose to employ their own staff is the flexibility it offers in terms of how and when their support is given, to best meet their outcomes.

The Personal Assistant (PA) role involves much more than personal care. There are many potential roles and responsibilities for a PA; supporting an employer at work, at college, or in social activities. Some PAs may be only asked to provide a low level of personal care. There may be a team of PAs with different roles based on their skills, with each team member having a different role. The tasks required of each role should be decided before the PA is recruited.

The tasks carried out by the PA will generally be set by their employer and should be set out in the job description.

PAs have the same responsibilities as other employees in relation to attendance and performance at work. As with other members of the social care workforce, PAs should meet the following requirements of the Scottish Social Services Council (SSSC) Code of Practice:

- Protect the rights and promote the interests of supported individuals and carers
- Work to establish and maintain the trust and confidence of supported individuals and carers
- Promote the independence of supported individuals while protecting them as far as possible from danger or harm
- Respect the rights of supported individuals while making sure that their behaviour does not harm themselves or other people

Regular Conversations

Good communication between PA Employer and PA is essential. It is good practice to have regular meetings to discuss work issues and to give both parties the opportunity to raise any issues around work. Both parties should be confident that they are able to raise any issues and will be listened to by the other.

PA Training

It is a PA Employer's responsibility to ensure that their PAs receive all mandatory training so that they can carry out their job safely. It is the PAs responsibility to work as trained. More information about training can be found in the resource section below.

Absence Procedure

PA Employers should let their PAs know what is expected of them if they are unwell and unable to come to work. This should include information around letting them know they are unwell and what documentation has to be produced during an extended absence period.

Care Plan or Work Notebook

It is good practice for a PA to note down anything significant that has occurred during their shift, especially if their employer has other PAs who should know what has been done before they start their shift. This helps with continuity of care and keeps everyone informed.

Emergency Plan

It is good practice for PA Employers to have a plan in place in the event of an emergency. It is important that their PA knows where this plan is and what is expected of them in an emergency.

Next steps

Independent support and guidance is available to PAs from the Personal Assistants Network Scotland who can be contacted via resource link below.

Resources

Health and Social Care Standards Scotland

<https://handbook.scot/wp-content/uploads/2022/04/Health-and-Social-Care-Standards-My-Support-My-LifeJune-2017.pdf>

Personal Assistants Network Scotland

<http://www.panetworkscotland.org.uk/>

The Role of Information and Support Organisations

Independent Support Organisations are organisations which can help people who are considering becoming a Personal Assistant (PA) employer. They also support existing PA employers throughout their role as employer. They can give information about direct payments and how to access them, as well as offer practical support about being a PA employer at a localised level.

Independent Support Organisations work alongside Local Authorities to support people accessing Social Care. Their purpose is to help people plan independent lives through what is sometimes a complicated process.

Using a local organisations like this can help employers understand the process and access services that make being a PA employer easier. We recommend that potential employers make contact as soon as possible using the support links included in this resource.

These are some examples of the support that might be available:

- Information about the responsibilities of a PA employer
- Help to understand and use local processes
- Support with engaging an agency/provider
- Payroll services
- Financial management
- Training on becoming a PA employer

These organisations use the experience of people who are PA employers to give information and support to people who are thinking about becoming a PA employer, to make sure they have all the information they need. Their staff and volunteers may have personal experience of care and support services. It is this experience which helps to inform the design and delivery of the support the organisation offers, leading to high quality, relevant and appropriate information and support.

Next steps

Further information about local Independent Support Organisations is available in the resources below.

Resources

Emile - a case study of support to be an employer

<https://handbook.scot/wp-content/uploads/2022/04/Case-Study-Emile-1.pdf>

Case Study: How an Independent Support Organisation Assisted Paul to Recruit 4 PAs

<https://handbook.scot/article/case-for-support-paul/>

Personal Assistants Network Scotland

<http://www.panetworkscotland.org.uk/>

The Role of Local Authorities (Councils)

Local Authorities have the responsibility to implement Self-directed Support in their area. To support them in doing this, there is specific legislation that has been passed that outlines their legal duties, responsibilities and powers. When meeting their legal duties, Local Authorities also have to take into consideration the underlying statutory principles contained within the legislation. These principles are:

- Participation and dignity
- Involvement
- Informed choice
- Collaboration

These principles form the basis of an equal partnership between someone looking for support or their carer and the Local Authority.

Making sure that Self-directed Support works well

It is Local Authorities responsibility to make sure that SDS works well in their area. This means making sure that the systems and procedures they have in place enable people to get the support they need, when they need it. These systems support key activities that Local Authorities undertake, such as:

- Responding to people's requests for support
- Signposting people to other sources of information and support that is available to them
- Referring people to other organisations for support
- Assessing people's need for support
- Applying eligibility criteria to see if someone is entitled to support
- Once eligible, allocating resources to meet people's needs
- Supporting people to develop Support Plans
- Supporting carers to develop Adult Carers Support Plans or Young Carers Statements

When you are allocated a Social Work Practitioner they will work with you to make sure the following happens:

- All relevant parties are included in discussions and decisions as much as they wish to be
- They will complete the assessment of care needs and establish if the needs meet the current

eligibility criteria in their area

- They will complete a Support / Care plan of how these needs will be met and agree the plan with the person this is for
- They will make sure that the person knows about the services of a local SDS Information and Support organisation, who can provide further information about support available in the person's local area
- They will calculate and allocate a budget that will meet the cost of the support needed
- They will make sure that people know about the 4 Options of SDS and how they relate to a person's own circumstances
- They will complete any necessary paperwork
- Review your care packages with you to make sure that everything is working well and a person's needs are still being met

The role of the Local Authority with PA Employers

Local Authorities have to make sure that people receiving social care and carers understand their rights and choices under SDS, as well as the responsibilities that come with this. These responsibilities include:

- Accounting for how a person spends their SDS budget, so that it is meeting their identified needs as agreed with the Local Authority
- That if anyone is employing their own PAs, that they meet all legal requirements related to this (eg. having Employer Liability Insurance in place)

The Local Authority also has to be sure that anyone becoming a PA employer is clear about their responsibilities and is 'willing and able' to take these on, even with any support that is available to the person.

Next steps

Take a look at the article on 'The Role of the Local Authority and ILF Scotland as Funders of Self-directed Support'

Resources

The Role of the Local Authority and ILF Scotland as Funders of Self-directed Support

There are 32 Local Authorities in Scotland and they are responsible for providing a range of public services.

The Local Authority and Self-directed Support

The Local Authority is the organisation responsible for delivering Self Directed Support in their area. They have the responsibility to assess a person's need for social care support. If a person meets local eligibility criteria, this may result in the Council offering the person further support, either by allocating money to give the person to pay for their support, or by identifying a service that the person can use. The Council has certain legal duties and responsibilities to enable them to do this.

The Local Authorities responsibilities for delivering Self Directed support are outlined in the Social Care (Self-directed Support) (Scotland) Act 2013.

The Local Authority has a duty to consider certain general principles under the Act:

- Collaboration
- Informed choice
- Involvement
- Participation
- Dignity

The Local Authority has a duty to offer the 4 options of SDS when someone has been assessed as being eligible for Self-directed Support. The 4 options outline the different ways that the money made available by the Local Authority, can be paid for the support that people need. The 4 options are:

•

Option 1:

A Direct Payment, where the person receiving support get sent the money directly to their bank account or onto a pre-payment card

•

Option 2:

An Individualised Service Fund, where the money goes to an organisation or an individual of the person's choosing, who will look after the money and work with them to arrange their support

•

Option 3:

A more traditional approach where the Local Authority pays the money to a service provider or agency for the service they are offering person who

•

Option 4:

A mix and match of any 2 or more of the above options

The 4 options are intended to support the flexibility and creativity that people need to enable them to meet their personal outcomes and the needs identified by their Local Authority.

The Independent Living Fund Scotland

Following the closure of the UK Independent Living Fund (ILF) on 30th June 2015, the Scottish Government established a new organisation, Independent Living Fund (ILF) Scotland, to administer ILF for existing recipients of the fund in Scotland.

ILF Scotland is a public body, governed by a Board of Directors, appointed by and accountable to Scottish Ministers.

ILF Scotland operates as a discretionary fund providing financial awards to over 3,000 disabled people in Scotland and Northern Ireland to help them live independently.

Their funding enables individuals to pay for care so that they can be supported in their homes and within their local communities.

ILF Scotland funding maximises SDS for disabled adults. There is a positive incentive to retain ILF

additional funding, which can be up to £9m in one partnership area to complete SDS assessments, which promote independent living. ILF Scotland's policy suite flexes across all the differences between the 32 variations of SDS in Scotland and the 5 variations in Northern Ireland. It makes payments of different amounts for different services on an individual basis after a bi-annual assessment, which is person centred and outcomes focused.

ILF Scotland involves disabled people at the heart of the organisation in every facet of its operations and it is this which maintains their innovation and ability to remove barriers.

ILF funding increases the portability of care packages; it reduces inconsistency and inequality of provision for disabled people and creates a dialogue for all disabled people to challenge for their best SDS outcomes.

Self funders or people who pay for their own care

Some people pay for the care and support they need without receiving any money from their Local Authority or ILF Scotland. They might do this because the cost of receiving support, in the form of a charge (Care Charge) that is levied by the Local Authority, is the same as the cost of purchasing the support yourself, directly from a care agency for example.

Some people might also not wish to go through the assessment process that the Local Authority uses to decide if people have eligible needs that they need to fund.

However, it is helpful for self-funders to know that everyone in Scotland who is assessed as needing support for Personal Care and Personal Support, can receive this type of service free of charge, regardless of the person's age, income or financial position.

It might be possible that as a PA, you are employed by someone who is not funded by their Local Authority, which gives the employer greater flexibility over what support they might ask you to provide. However, the employer is still covered by the expectations of employment legislation in the UK.

Next steps

You can find further information on ILF at the websites found below.

The Social Model of Disability

Traditional Models of Disability

The Social Model of Disability was developed by Disabled people to identify and take action against Disabled people's oppression and exclusion. It was developed as a direct challenge to the prevailing

models of disability that viewed disability as an individual, medical problem that needed to be prevented, cured or contained; and/or as a charitable issue that viewed Disabled people as unfortunates who needed to be pitied and catered for by segregated, charitable services.

The Social Model of Disability

The Social Model of Disability



The Social Model of Disability states that the oppression and exclusion people with impairments face is caused by the way society is run and organised.

The Social Model of Disability, developed over the last 40 years by Disabled people, is a radically different Model to the Medical and Charitable approach to disability described above. It states that people have impairments but that the oppression, exclusion and discrimination people with impairments face is not an inevitable consequence of having an impairment, but is caused instead by the way society is run and organised.

The Social Model of Disability holds that people with impairments are 'disabled' by the barriers operating in society that exclude and discriminate against them.

The Social Model not only identifies society as the cause of disability but, equally importantly, it

provides a way of explaining how society goes about disabling people with impairments. Sometimes referred to as a "barriers-approach", the Social Model provides a "route map" that identifies both the barriers that disable people with impairments and how these barriers can be removed, minimised or countered by other forms of support.

Next steps

Take a look at the resources available below for additional reading about the Social Model of Disability.

Resources

Social Model of Disability Factsheet

Inclusion Scotland's Factsheet on the Social Model of Disability

<https://handbook.scot/wp-content/uploads/2022/06/Inclusion-Scotland-Factsheet-Social-Model-of-Disability.doc>

Social Model of Disability (Easy Read)

Inclusion London's Factsheet: Social Model of Disability Easy Read

<https://handbook.scot/wp-content/uploads/2022/06/Social-Model-of-Disability-Easy-ReadInclusion-London.pdf>

Sticks and Stones: The Language of Disability

Spectrum's Guide to empowering language when talking about Disability and Disabled People

<https://spectrumcil.co.uk/wp-content/uploads/2018/02/ULO19-The-Language-of-Disability.pdf>

Training for PA Employers and PAs

Centres for Inclusive Living, Disabled Peoples' Organisations (DPOs), and other local Independent Support Organisations may offer basic training to both Personal Assistants (PAs) employers and PAs. You can learn more about Independent Support Organisations and find the one nearest you using this resource.

Information and training for employers should include

- Safe recruitment
- Staff induction
- Health & safety
- Being a good employer

- Employer administration responsibilities
- Understanding basic employment rights
- Payroll and related topics

Training for PAs may include the following and may be led by disabled trainers with experience of employing PA(s)

- Disability Equality training
- Role, responsibilities and rights of a PA
- Health and Safety, risk assessment, moving and assisting, assisting other PAs, long-term conditions etc.

For insurance and accreditation purposes, some PA training must be delivered by a qualified trainer.

PA employers have a responsibility to ensure that their PA(s) receive any relevant training related to their role. It is important that a PA adheres to the guidance given within training as this is often a legal requirement.

PAs must adhere to trained procedures and should avoid 'taking shortcuts' even if/when it might be seen as being convenient. This is important for the health and safety of both the employer and the employee. Untrained PAs can impact on employer's insurance and could have legal consequences.

PA training can often be seen as expensive. If a PA employer is legally required to provide certain training, they must ensure that the associated cost is built into their care package.

Next steps

You can find further information on training at the PA Network Scotland website found below

Resources

PA Network Scotland Website

Further information on ID Badges for PAs can be found at the PA Network Scotland website <https://www.panetworkscotland.org.uk/>

Using this handbook

Welcome to the PA Employer Handbook

For someone learning about becoming a Personal Assistant (PA) employer this guide is structured to provide the information you need at each stage of the journey.

By choosing your stage, the content will change. The articles you see will be an introduction to what you need to know before progressing, but you can start and finish where you choose. Sections of the book, or the whole book, can be downloaded or printed but care should be taken with a printed copy where information can become out of date, like the Scottish Living Wage or employment law for example.

The PA Employer Handbook is a live resource, meaning people are contributing to its content all the time, and you can contribute too by telling us if you found sections useful or if you think they need improvement.

You can also find support with this guide or any aspect of being an employer. There are organisations who can provide information or support relevant to where you live in Scotland or your stage of exploring being a PA employer, just click the find help page to start.

Your Agreement with Your Local Authority (Council)

Agreement with the Council to receive a Self-directed Support (SDS) Budget under Option 1

Once a Personal Assistant (PA) Employer has decided to employ their own PA(s) and receive a direct payment under Option 1 of SDS, the Council will provide a Direct Payments Agreement, a contract for the employer to agree terms for issuing the payment. This will explain in detail the responsibilities that both the PA Employer and Council have. The agreement is likely to cover areas such as:

- Using the direct payment to pay for things that only meet the persons identified needs as they have been written in their Support Plan
- How the PA Employer will report their use of the direct payment and how much they have spent on employing their PA(s)
- That PAs will be enrolled in the PVG scheme and an updated check undertaken before they are employed
- How often payments are made by the Council
- Whether there is an option to use a pre-paid Card to receive the direct payment, which is like a credit card with money loaded on to it
- If the Council can reclaim any money that is not spent
- How often reviews might take place
- Whether the PA Employer can employ a family member and what permission might be needed
- That all tax and financial requirements will be met by the PA Employer, or by a Payroll Service on their behalf
- That the PA Employer has Employer Liability Insurance before employing any PAs
- If there is a Contingency Budget available to use and when a PA Employer can make use of this
- What you can't use the direct payment for
- The period of notice that can be given by the PA Employer and Council to end the agreement

Next steps

- If issued with an agreement, before signing you should check information is accurate. It may be a

general agreement but it could have detail that you have not yet covered with your social work professional.

- Take further guidance from your Independent Support Organisation and ask questions if you don't understand something.

Resources

An example of a local authority direct payment contract

<https://handbook.scot/wp-content/uploads/2022/04/Direct-Payment-Agreement-form-effective-1st-March-2018-update-Highland.pdf>

Video FAQ: What is an "Outcome"?

<https://vimeo.com/302851270>