

LEGAL OBLIGATIONS OF BEING AN EMPLOYER

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1 Introduction

In order for you to become an effective and responsible employer, it is important that you think carefully about the responsibilities you are taking on when you begin employing PAs.

As an employer you have two kinds of responsibility:

a) **Statutory Responsibilities**

A statutory responsibility is something that the law says you must do because your employee has a right to it e.g. paying Statutory Sick Pay to any of your employees who qualify. You cannot avoid your statutory responsibilities in any way. Even if your employee has signed a contract agreeing to something less than they are entitled to, their rights are protected by the law and they can enforce them at any time.

b) **Contractual Responsibilities**

Contractual responsibilities are things that you have agreed to in the contact of employment that you have with your PA. If you do not meet these responsibilities, you are breaking the contract and your employee can take legal action.

The responsibilities you agree to in the contract of employment can be greater than the minimum responsibilities laid down in law but cannot be less.

c) Good Practice

Being a responsible employer involves more than just simply meeting the minimum requirements of the law. Good Practice means dealing with your employees in a way that will keep them well-motivated and committed to working for you. For example, you may not be required by law to provide training for your staff for any particular part of their job, but to do so is good practice because it allows them to develop their skills and understanding.

2 Employment Contracts

A Contract of Employment is what makes your relationship with your PA an employer/employee relationship and it comes into effect when a job is offered and accepted. The offer and acceptance do not have to be in writing but may be made verbally or implied from an existing arrangement even if this has never been offered as a job. Writing down what has been agreed between you and your PA may be useful if there is a disagreement in the future.

The Employment Contract or Written Statement of Employment Particulars should be provided not more than two months after employment started and should include the following:

- name and address of employer and employee
- job title
- place of work
- rate of pay and intervals at which employees are paid e.g. weekly, monthly etc.
- hours of work
- holiday entitlement
- sick pay and sick leave
- notice period
- pension entitlement – if any
- disciplinary and grievance procedures
- probationary period – if any

3 Termination of Employment

Ending the employment of one of your PAs may have legal implications. The most important question is whether you acted 'reasonably' in dismissing an employee. What rights employees have to claim compensation for the end of their employment depends on how long they have worked for you.

There are several situations where you might want to end the employment of one of your PAs. These may include:

- a) **poor work performance** – when your PA is not working to the standards you expect
- b) **misconduct** – when your PA does not behave in the way you expect them to
- c) **redundancy** – when you no longer have any work for your PA to do
- d) **ill health** – when your PA has been off sick for a long time and, depending on the length of time they have worked for you, how long you should reasonably be expected to wait for them to return

a) **Poor work performance**

In this case, you must be sure to look at your PA's work objectively so that you have a clear idea of what they are failing to do. You must be careful to explain fully what they are doing wrong, give them fair warning and give them a chance to improve.

b) **Misconduct**

This could involve continual lateness, dishonesty etc. You would have to judge the seriousness of the misconduct, but you should always allow your PA to state their case. Stealing would be considered Gross Misconduct and could result in instant dismissal.

c) **Redundancy**

It could come to this if your needs have changed and you need less assistance. The law on redundancy needs to be considered as a separate issue.

d) Ill-health

Always try to consult with your PA. Try to find out the true medical situation and when they are likely to return to work. Dismissing a PA on these grounds also depends on whether they are pregnant and/or receiving Statutory Sick Pay.

Anyone who has worked for you for one year continuously has a right to a Written Statement of Reasons for Dismissal if they ask for one. This has to be provided within 14 days.

The best advice is to inform anyone of the reasons for dismissal, in writing, regardless of the length of time they have worked for you.

4 Unfair Dismissal

If your PA has worked for you continuously for two years, they can take a claim for unfair dismissal to the Industrial Tribunal for compensation. The Industrial Tribunal must decide whether you, as the employer, acted reasonably or unreasonably, in dismissing your employee. Each case is dealt with individually and grievances on both sides would be taken into account.

5 Employment Rights

Statutory rights of employees are rights that are protected by law. They can be divided into two groups:

- rights which apply to all employees
- rights which have qualifying conditions

It is not possible to deal with all employment rights in detail here, but a summary follows which will give you an overview.

a) Rights which apply to all employees:

- itemised pay statement
- time off for public duties
- not to be victimized fro trade union membership

- not to be discriminated against on grounds of age, sex, race or disability
- basic maternity leave (for women)

b) Rights which have qualifying conditions:

- redundancy pay
- unfair dismissal
- statutory sick pay
- statutory maternity pay
- additional maternity pay (for women)

6 Insurance

You have a responsibility, as an employer, to insure against:

- injury to your PA
- injury to other people and damage to their property caused by your PA whilst they are working for you

The two main types of insurance cover you would need to take up are:

- a) Employers Liability Insurance** – protects you against any claim for accident, injury or illness, due to your negligence, that your PA might bring against you whilst they are working for you
- b) Public Liability Insurance** – covers you for any claim someone (third party) might bring against you for injury to themselves, or damage to their property, by either yourself or your PA, caused through negligence

Some other insurance cover you may need to check:

- **household contents** – make sure that this policy extends to your PA and other members of the public
- **motor insurance** – this should cover your PA when driving your vehicle and your PA should have suitable cover when using their own vehicle for your use

7 Tax and National Insurance

When you employ your own PA you are legally responsible for working out how much Tax and National Insurance Contributions they owe, deducting it from their wages and paying it to the Tax Office. As an employer you may also be liable to pay Employer's National Insurance Contributions if your PA earns more than a set amount each week.

The Direct Payments Support Service can introduce you to a selection of Payroll Services that can deal with all your staff payments and associated administration, and liaise with the Inland Revenue on your behalf.

If you want advice and information, you may request a copy of our Factsheet listing Payroll Services.

If your PAs are self-employed, they will be responsible for paying their own tax and national insurance contributions.

8 Keeping Records

Each week your PA will need to fill in a Time Sheet which should be signed by both yourself and the PA. It is a record of the number of hours your PA has worked each week and an indication as to how much they will be paid. In addition to the Time Sheet, it would also be useful for you to keep a record of:

- dates when your PA takes holidays
- dates and times when they are sick
- occasions when they take leave for any other reason
- when you have employed someone as additional or emergency cover

There are resources available to help you learn more about managing your personal assistants. Please ask the DPSS for these.

Being in touch with other Direct Payments users is another good way of learning about managing PA's. If you would like to know more about this, please contact the DPSS for details.