



Independent
Living Fund

Employer support

What is this booklet for?

This booklet has been written to help you if you currently employ your own personal assistants (PAs) or if you may want to do so in the future.

It has information about the law, how to deal with difficult situations and a section covering some of the problems you might find as an employer. There is also a section with useful contact details and a checklist for you to use to help you in your role as an employer.

After the ILF closes on 30 June 2015 you might want to continue to employ your own PA or you may begin to do this for the first time. The information in this booklet will help you with that.

If you need more information or advice you can contact Acas, their details are on page 24.

This booklet had been produced in partnership with Acas. We have also consulted with a number of people who receive ILF funding to gain their advice and support.

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What the law says

A unique relationship

Hiring a personal assistant (PA) can be very empowering, but it often sets up a unique and sometimes challenging employment relationship.

You may find yourself taking on the role of employer for the first time, and be uncertain of many of the responsibilities and legal obligations that this role brings. Sometimes your PA may also be uncertain about their rights.

Getting your recruitment right is really important and you need to make sure you know your legal responsibilities when recruiting and managing staff.

Both you and your PA should feel able to deal with any issues, as they arise, together.

The employment relationship between you and your PA may be more complex than other employment relationships because of the combination of intimacy and informality of the tasks they do, alongside the formalities of a legal employment relationship.

It's always useful to discuss things when your PA starts work to set out what you want them to do as well as telling them how you want things to be done and introducing them to the environment in which they will work. You could try adding in regular reviews to help to build a good working relationship.

Contracts of employment

A contract of employment is an agreement between you and your PA which sets out their employment rights, responsibilities and duties. These are called the 'terms' of the contract.

Employment contracts do not need to be in writing to be legally valid. However it is always better if the contract is in writing to prevent misunderstandings.

A contract 'starts' as soon as an offer of employment is accepted. Once your PA starts work this can indicate that they have accepted the terms and conditions offered by you, the employer.

Your PA is legally entitled to a written statement of the main terms and conditions of employment within two calendar months of starting work. This should include details of things like pay, holidays and working hours.

A template is available to download from the Acas website on www.acas.org.uk

Making changes to a contract

You should discuss and agree any changes to the contract of employment with your PA, recording these changes in writing rather than verbally is always best.

If the PA doesn't agree to a change you make they may be able to make a complaint for breach of contract or unfair dismissal. You should contact the Acas helpline on **0300 123 1100** if you feel this might happen.

Ending an employment contract

The contract of employment could be ended by mutual agreement between you and your PA or by either of you submitting the required notice for the termination of employment.

By law, if your PA has worked for you for longer than one month, you will need to give them notice before letting them go. You must give them statutory notice (see below) or the notice defined in their contract, whichever is the longer.

The statutory notice is:

- one week if the PA has been employed between one month and two years; or
- one week for each complete year of employment (up to a maximum of 12 weeks) for example, for two years of employment the notice period will be two weeks, for six years of employment the notice will be six weeks.

Rules and performance standards

Clear rules will benefit your PA and set standards of conduct for your relationship. Rules can also help you to act fairly and consistently.

Rules often cover things like:

- timekeeping;
- absence issues;
- health and safety;
- use of your facilities;
- discrimination, bullying and harassment;
- personal appearance; and
- disciplinary and grievance procedures.

Be sure that the rules do not discriminate on the grounds of sex, transgender, marital or civil partnership status, pregnancy and maternity, race, sexual orientation, religion or belief, disability or age.

You should tell your PA what is expected of them and let them know what they will be doing and how you want things done. Having regular chats about progress and ensuring that they are clear on expectations can be useful.

Writing down the rules helps both you and your PA to know what is expected of them. The rules should be clear. Ideally your PA should be given their own printed copy of the rules or written information about where they can be found.

When things go wrong - handling difficult situations

There may be times when you want your PA to improve their behaviour or work performance. In best practice terms, where possible, it's better to take informal steps to try to deal with a situation. A quiet word may be all that is needed to resolve an issue.

Sometimes it's not easy in a close personal working relationship to be able to raise an issue with your PA. However it is good practice to have clear steps for both of you to be able to raise issues or problems with each other. Having job descriptions and other written documents can help to set some ground rules.

It may also be helpful to get someone in to take the lead, possibly a family member or friend to help the process. It may also be useful to consider mediation if the situation warrants it. For more information on mediation visit the Acas website on www.acas.org.uk

Be careful that any informal action does not turn into formal disciplinary action, as in a formal situation your PA has certain rights (such as the right to have somebody with them at meetings). If, during the discussion, it becomes clear that the matter may be more serious, the meeting should be suspended. You should tell your PA that the matter will be dealt with under the formal disciplinary procedure.

The disciplinary stages

In the event that a problem cannot be dealt with informally try to follow the Acas Code of Practice on disciplinary and grievance procedures found at www.acas.org.uk. This means you should let your PA know in writing what the issue is and:

- hold a meeting to discuss the issue. You should make sure you let your PA know that the meeting will happen and what things will be discussed;
- tell your PA that they have the right to have somebody at the meeting with them if they wish;
- with the evidence you have, make a decision; and
- always allow your PA to appeal against your decision.

If after talking to your PA, it becomes clear that there isn't a problem let your PA know this.

Where things need to improve make sure your PA understands what needs to be done, how their performance or behaviour will be reviewed, and over what period. It is always useful to write down what has been decided.

Keep notes of any agreed informal action so these can be referred to and arrange to hold reviews of progress at agreed times.

If you need to take action against your PA, you should normally do this in stages, firstly by giving a formal warning, then if matters don't improve a final written warning and finally dismissal.

For gross misconduct (such as theft, violence or fraud) an employer can dismiss an employee without notice - this is called a summary dismissal. You should however still investigate the circumstances before making a summary dismissal and follow a fair process even in these cases.

Having disciplinary procedures in place will help you if your PA has not met the required standards of behaviour or performance and you have tried the informal approach.

Acas can provide you with help and advice if you face this type of situation. You can contact them on **0300 123 1100**.

The right behaviours and avoiding discrimination

Equality

The equality act became law in October 2010. It provides a legal framework to protect the rights of individuals and it applies in the workplace. If you employ your own PA you need to make sure you meet your responsibilities as set out in the equality act. In England, Scotland and Wales the Equality and Human Rights commission has lots of information on its website about how the equality act affects you if you are an employer. Visit www.equalityhumanrights.com

The Equality Commission for Northern Ireland provides information about meeting your equality duties as an employer in the workplace in Northern Ireland. Visit www.equalityni.org

In England, Scotland and Wales you can also contact the Equality Advisory and Support Service (EASS) for advice on matters relating to equality. Their details are:

Website: www.equalityadvisoryservice.com

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Avoiding discrimination

Under the Equality Act it is unlawful to discriminate against people who have 'protected characteristics'. You cannot treat someone less favourably because of their particular characteristics. This is known as direct discrimination.

The protected characteristics include age, disability, gender reassignment, sexual orientation, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sex.

Examples of direct discrimination include not hiring someone because they are female or dismissing someone because they are pregnant.

Indirect discrimination occurs if you do not have a good enough reason for a rule, practice or policy that is in place that disadvantages your PA who has a protected characteristic.

For example, saying you need an assistant to be over six foot tall so they can reach high shelves in the house could be indirect sex discrimination as this is more likely to be met by a man than a woman. This part of the job could be met by providing a step ladder and so does not require a person of a certain height.

If you have any worries about discrimination, advice is available through the Acas helpline on **0300 123 1100**.

Exemptions - occupational requirement

In a limited number of circumstances you may be able to show that a particular protected characteristic is

central to a particular job. You may then be able to insist that only someone who has that particular protected characteristic is suitable for the job. This would be called a ‘genuine occupational requirement’.

For example -

A women’s refuge may want to say that it should be able to employ only women as counsellors. Its client base is only women who are experiencing domestic violence committed by men. This might be a genuine occupational requirement.

Harassment and bullying

The Equality Act 2010 uses a single definition of harassment to cover the relevant protected characteristics. The definition of harassment is -

“unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual”

The relevant protected characteristics are age, disability, gender reassignment, race, religion or belief, sex, and sexual orientation.

A PA can complain of behaviour that they find offensive even if it is not directed at them.

If you are unsure about the requirements of the Equality Act 2010 you can call the Acas helpline on **0300 123 1100** for free and impartial advice.

Other employment information

Working hours

The working time regulations govern the hours most staff can work, although there are some exemptions - more details can be found on the Acas website www.acas.org.uk

The 48 hour working week

Normally most workers do not have to work on average more than 48 hours per week unless they agree to. Even if they do agree they have the right to opt out at any time by giving notice.

If you need to change patterns of working it is best to discuss this with your PA first. For more information call Acas helpline on **0300 123 1100**.

Providing a pension

Between 2012 and 2018 employers will have a new legal duty to help their employees save for retirement.

As an employer, you'll have duties to anyone working for you who earns above a certain amount and:

- who is aged between 16 and 74;
- who works in the UK; and
- for whom you deduct income tax and National Insurance contributions from their wages.

In some cases you may need to automatically enrol your staff into a qualifying workplace pension scheme and make contributions towards it in. In other cases you

may need to simply offer a scheme to your employees. The action you need to take will depend on how much your PA earns.

The Pensions Regulator has a beginners guide to auto enrolment. More information can be found at www.thepensionsregulator.gov.uk

Maternity, paternity and adoption rights

Your PA is allowed to have maternity, paternity or adoption leave and may also be entitled to pay while they take this leave depending on how much they earn.

If a PA is not entitled to statutory maternity pay they may be able to claim maternity allowance.

Pregnant PAs are entitled to paid time off for ante-natal care and 52 weeks' maternity leave – made up of 26 weeks' ordinary maternity leave and 26 weeks' additional maternity leave.

Fathers and partners (including same-sex and civil partners) may be entitled to two weeks' paternity leave.

The position is similar where a child is adopted.

For more information visit www.gov.uk/maternity-pay-leave

From April 2015 a mother may want to share up to 50 weeks of her maternity leave with the father. This is called "Shared Parental Leave". More information can be found at www.acas.org.uk

Redundancy

Redundancies can happen when employees are dismissed because their job no longer exists.

Notice periods

You will need to give your PA notice if they have worked for you for over a month. The statutory notice periods are:

- at least one week's notice if your PA has been employed between one month and two years;
- one weeks notice for each year of employment between two years and 12 years; and
- 12 weeks notice for someone who has been employed for 12 or more years.

Redundancy pay

If you have to make a PA redundant you may need to give them some redundancy pay. The amount you need to pay will depend on how long they have worked for you, how old they are and how much pay they receive. The GOV.UK website has an online calculator to help with this or you can get advice from Acas or the Citizens Advice Bureau (CAB).

Employer Liability Insurance (ELI)

If you need some legal advice or face a redundancy situation, you should talk to your ELI provider before taking any action.

Health and safety

You have a legal responsibility to make sure that your PA remains safe and healthy whilst doing their job.

You must:

- carry out some risk assessments on your home, including pets or any animals you keep;
- think about any training your PA needs if you find risks;
- tell your PA about health and safety, including fire safety;
- record (and possibly report) any accidents that take place in your home; and
- take out employers' liability insurance.

If you employ more than five people you will need a health and safety policy. The Health and Safety Executive website has lots of support and free leaflets, including a model policy.

For more information visit the Health and Safety Executive website at www.hse.gov.uk

Handy tips

There are so many things to think about when you employ your own staff.

This section might give you a flavour of the kind of issues that may arise from employing your own PA. We can't cover every situation or every answer, as often it will depend on your own situation, but the information may give you a few handy tips. You will also find some useful contacts at the back of this booklet.

Q: Louise is having some problems with her PA arriving late and not doing her job properly. The PA has got young children and so often arrives late which means Louise gets up later and is sometimes late for work herself. Also the PA is not cleaning the house properly so Louise often asks her Mum to do some of the jobs again. The PA has worked for Louise for years and they are good friends. Louise does not know what she can do in this situation.

A: As an employer Louise must look after her employee's rights but she also needs to make sure work is being done properly. Louise may need some help with looking at performance management which can be tricky. Acas are experts in employer/employee relationship management and have a helpline to offer advice about issues like this.

- Q:** Lisa's PA has accused her of treating her unfairly. She said she has been rude to her and that she makes her do all the hard work while her other PA gets the easy jobs. Lisa doesn't know what to do about this.
- A:** Lisa's PA may feel she is receiving unfair treatment and it is important they talk about this concern rather than ignoring it. Left alone the issue may build into a bigger problem that could result in some type of formal grievance being raised. It would be wise to get some advice now and nip this problem in the bud. Acas are able to offer advice and support regarding disputes and problems of this type.
- Q:** Anita's PA is pregnant and is struggling to do some of the tasks she normally does. Anita needs to know what to do about this.
- A:** Anita will need to do a risk assessment for her PA. If risks are found that cannot be avoided by making changes Anita must take action to remove, reduce or control the risks. The Health and Safety Executive (HSE) offer information on their website about risk assessments and health and safety. If risks cannot be removed Anita will need to either:
- temporarily adjust working conditions and/or hours of work; or

- offer suitable alternative work (at the same rate of pay) if available. Or if that cannot be done suspend her from work on paid leave for as long as is necessary, to protect her health and safety and that of her child.

Acas can offer Anita advice and support about this.

Q: Paul's partner has moved in with him and is now providing some of his support. This means that he needs less paid support and will need to let his PA go. His PA is saying he needs to pay him redundancy money but Paul doesn't think he does because it's not his fault he doesn't need the support anymore. Is this right?

A: Redundancy is a complicated area and Paul should get advice about this. Redundancy pay must normally be paid if a person has been employed for over two years by the same employer and where the need for their services has gone (for example when a shop goes bankrupt). In Paul's case the need for his PA has gone because his partner is now supporting him. The PA may be due some redundancy pay depending on the circumstances. Paul should consider contacting Acas for advice.

- Q:** Caroline's PA stays at her house three nights a week in case Caroline needs any help. It doesn't happen very often but there have been a few occasions where she has got up to support her. Her PA is now saying that her pay should go up so she gets the national minimum wage (NMW) at night. Is she right?
- A:** Maybe. It depends on lots of things. The rules around NMW at night have changed recently so it would be a good idea to get some advice. Acas or HM Revenue and Customs (HMRC) may be able to help Caroline with this. Their contact details are on page 26.
- Q:** Freya has taken on a new PA who says she is self-employed. She wants to know if this can be the case.
- A:** This can be difficult to work out as it depends on different things such as whether the PA works for other people as well as her, whether the PA can decide when or how the work is done and whether someone else can be sent to do the work for her. There are other signs that may show if a PA is employed or self-employed and these can be found by contacting HMRC who specialise in these matters. Acas can also advise on this area.

Employer checklist

- This checklist might help you in your role as an employer. It contains a list of key tasks you may need to do or things to think about before you become or while you are an employer.

Advertise for and recruit staff	
If you live in England, Wales or Northern Ireland do a Disclosure and Barring Service (DBS) check If you live in Scotland look into whether the applicant is registered on the protecting vulnerable group's (PVG) scheme. If not, ask them if they would volunteer to do so	
Discuss terms and conditions and draw up a contract	
Register your PA with HMRC	
Make payroll arrangements (are you going to do it yourself or arrange for someone else to do it for you? There are computer packages available that can make payroll easier to do yourself)	
Do a risk assessment and make changes or arrange training resulting from this	
Ensure working time regulations and national minimum wage rules are followed	

Put money aside to pay for national insurance costs and for replacement support while your PA is taking paid annual leave	
Get an Employers Liability Insurance (ELI) policy	
Find out information about employer rights such as statutory sick pay, statutory maternity pay and annual leave	
Make arrangements for a workplace pension and put money aside for this where necessary	
Find out information about discipline and grievance issues	
Find out information about health and safety, what do you need to do and what equipment you need to have available	

Helpful links and contacts

Acas

Acas offer free advice to employers and employees on a wide range of employment matters. They have a website and telephone helpline.

Acas helpline: 0300 123 1100

Website: www.acas.org.uk

Centres for Independent living (CIL)

CIL are based locally and offer a range of support and services including, in many cases, a payroll support service that could help you in your role as an employer.

By searching on the internet you should be able to find the services that are located near to you.

Citizens Advice Bureau (CAB)

CAB provides free, independent, confidential and impartial advice and information on a wide range of issues including matters relating to employment.

For England and Wales the website address is:

www.citizensadvice.org.uk

For Scotland it is: www.cas.org.uk

For Northern Ireland it is: www.citizensadvice.co.uk

A telephone advice service is being developed and is already available in Wales and parts of England. Further details are available on the website.

If you need to see somebody face to face you can find out where your local CAB is using the on-line search tool and contact them directly.

Equality and Human Rights Commission (England, Wales and Scotland)

The Equality and Human Rights Commission have a website with a wide range of information about the equality act, discrimination and human rights and how this affects you as an employer.

There are leaflets that can be downloaded on a range of topics from ‘What equality law means for you as an employer: when you recruit someone to work for you’ to ‘What equality law means for you as an employer: dismissal, redundancy, retirement and after a worker has left’.

Website link for guidance: www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people

Main website: www.equalityhumanrights.com

Equality Advice and Support Service (EASS)

EASS can offer advice and support in England, Scotland and Wales on matters relating to equality.

Website: www.equalityadvisoryservice.com

Telephone: 0808 800 0082

Textphone: 0808 800 0084

Equality Commission for Northern Ireland

The Equality Commission Northern Ireland has information about meeting your equality responsibilities as an employer in Northern Ireland.

Website: www.equalityni.org

GOV.UK

The website GOV.UK has a wide range of information ranging from benefits to passport renewals. The website also has a section about employing people.

Website: www.gov.uk

HMRC (HM Revenue and Customs)

The HMRC website provides a wide range of information ranging from National insurance queries through to information about workplace pensions. You will find forms on the website you may need to use (for example about maternity pay) and also tools to help you work out if your PA is entitled to things like sick pay and how much money they can have. There is also a tool to allow you to send e-mails straight through to HMRC about things like statutory sick pay.

Website: www.gov.uk

HMRC can also offer advice and support through their helplines:

Employer helpline-general enquiries: 0300 200 3200

Employer helpline-textphone: 0300 200 3212

New employers helpline: 0300 200 3211

HSE (Health and Safety Executive)

HSE are responsible for making sure employers look after the health and safety of their staff.

They have a website with information and also an on-line advice tool.

Website: www.hse.gov.uk

Skills for care

Skills for care has a toolkit to support you if you employ your own PA. The interactive tool enables you to search and immediately access the information you are most interested in.

It contains links to different sections within the toolkit and the useful templates. It also contains a sample of a contract of employment.

You can view the online interactive toolkit by visiting:
www.employingpersonalassistants.co.uk

Main website: www.skillsforcare.org.uk

Your local authority

You can also get advice and support from your local authority.

This booklet does not constitute legal or other professional advice. The information contained in this booklet is provided as guidance only and should not be regarded as an authoritative statement of the law, which can only be provided by reference to particular circumstances. You should consult your professional adviser for legal or other advice. Information referenced throughout this booklet may be subject to change at any time.



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