



Personal Assistants

Introduction

A Personal Assistant (PA) is someone who provides regular support to another person. This could include support with things like:

- personal care
- domestic support
- accessing the community
- transport
- help with meals

If you are planning to have a PA, you need to understand whether they will be employed by you or self-employed.

In most circumstances, Nottinghamshire County Council will expect you to employ your PA because a PA cannot choose to be employed or self-employed. This depends upon the terms and conditions of their engagement with you and depends on the tasks you want them to carry out.

Her Majesty's Revenue and Customs (HMRC) regard most PA work as employment and, therefore, very few PAs are genuinely self-employed.

HMRC are able to review the working relationship and conditions of work and may decide that you are the employer even if the PA is already paying their own tax.

If HMRC decide that you are the employer, then you could be made to pay back any tax and employer's national insurance contributions to your PAs and to HMRC.

HMRC have an online Employment Status Indicator which can help in the decision making as to whether your PA is employed or self-employed. Visit:

<http://www.hmrc.gov.uk/calcs/esi.htm>

Ultimately the final decision rests with HMRC.

How do you decide if a PA should be employed or self employed?

The following questions should be used to help you and your PA determine whether the PA should be employed or self employed. Please note these questions apply even if the PA is a casual or part time worker and even if they have more than one job.

A person can have more than one job and their employment status can be different for each one. This is because their employment status depends on the agreement and tasks they are doing for you.

Employed – if you answer yes to most of the questions below, the PA is likely to be classed as employed:

- Do they have to do the work themselves?
- Can you tell them where to work, when to work, how to work or what to do?
- Can you move them from task to task?
- Do they have to work a set number of hours?
- Are they paid a regular wage or salary?
- Do they get overtime pay or bonus payments
- Are they responsible for managing anyone else on behalf of you i.e. another PA?

Self Employed – if you answer yes to one or more of the questions below, the PA is likely to be classed as self employed:

- Can they hire someone to do the work or take on helpers at their own expense?
- Can they decide where to provide the services of the job, where to work, how to work and what to do?

- Can they make a loss as well as a profit?
- Do they agree to a job for a fixed price regardless of how long the job may take?

If you cannot answer yes to any of the above questions, the PA could still be self employed if you can answer yes to most of the following questions:

- Do they risk their own money?
- Do they provide the main items of equipment to do the job? E.g. a hoist?
- Do they regularly work for a number of different people and require business set up in order to do so?
- Do they have to correct unsatisfactory work in their own time and at their own expense?

Using the criteria above it is easy to understand how most PAs will be classed as employed. Please note that each case is individual and just because a PA has a tax reference number this does not necessarily mean that they are lawfully self employed. If they are providing services for more than one service user the answers for the questions above may differ from one service user to another.

If you are not sure, contact the HMRC (details at end of factsheet).

If you are the employer

If you have considered all of the above and are satisfied that you are the legal employer of the PA, you must ensure:

- That you have Employers Liability Insurance and that it is renewed on an annual basis
- That you draw up a contract of employment
- That your PA is paid statutory holiday and sick pay. This will need to be calculated correctly
- That you are paying the correct amount of tax and national insurance

For further advice on payroll or any other matters relating to becoming an employer, Direct Payment Support Services are available

and you will be expected to have at least 1 visit from a support service to discuss these matters with you.

Details of the Direct Payment Support Services can be found by visiting our web page www.nottinghamshire.gov.uk and search for the Social Care Directory **or** contact the **County Council on 0300 500 80 80**

If you have considered all of the above and are satisfied that the PA you have chosen to support you is working on a self employed basis and they have a unique tax reference number, you should ensure that they provide you with a Contract of Service which includes an indemnity for HMRC demands for tax or national insurance Provision.

If your PA is self-employed

As a self employed person, they will also need to:

- Have adequate public liability insurance
- Provide cover if they are unwell, on holiday or unable to attend for any other reason
- Be responsible for their own training
- Be aware that they are not entitled to sick pay or holiday pay
- If the work they are doing involves **personal care** and they are providing cover for the times they are unable to provide the support themselves, e.g. when they are on leave, they will need to register their business as a Care Agency with the Care Quality Commission (CQC). **This is a legal requirement.**

Contact information:

Phone the County Council: 0300 500 80 80

Email: enquiries@nottscc.gov.uk

Website: www.nottinghamshire.gov.uk

Minicom: 01623 869598

Emergency Duty Team: 0300 456 4546

Mon – Thurs: 5pm – 8.30am

Operates 24 hours at weekends from 4.30pm on Fridays to 8.30am on Mondays.

Operates 24 hours during all public holidays.

HMRC Status Customer Service Team

Employment status enquires for England:

Telephone: 01274 204425 or 03000 527450

Opening hours 9.00 am to 5.00 pm, Monday to
Friday Closed weekends and bank holidays

Website:

<http://search2.hmrc.gov.uk/kb5/hmrc/contactus/view.page?record=jriKalW18IQ>

Phone 0300 500 80 80 if you need the
information in a different language or format.