

Children and families Directorate

Direct payments – Employing a personal assistant

Direct payments can be used to employ a personal assistant for your child. This is a popular choice in Herefordshire as many people find this is a great way of getting the support they need that fits their lifestyle.

The council advises anyone wishing to employ a personal assistant to use one of the approved direct payment support providers to help with employment related issues such as payroll, training and employment advice, as well as managing your direct payment funds. The cost of paying for the support services that you need will be included in your support plan and can be paid from your direct payment.

If you choose not to use one of these organisations, you must inform the allocated worker or direct payment officer who is supporting you. They will provide you with some guidance to help you understand your responsibilities as an employer.

You cannot use your direct payment to employ a close relative or person living in the same house as you, where the relationship is personal, except in special circumstances. Please talk to us about this to find out more.

Remember you can always ask for help if you need it.

When you choose to employ someone, you will need to make sure you comply with employment law and have the following in place:

Recruiting staff

Herefordshire Council advises using a direct payment support provider to help you recruit your own staff. They can provide you with access to information, support and advice about employment law and help with:

- Job descriptions, specifications, adverts and preparing job application packs
- Shortlisting and interviewing staff and checking job references
- Conditions of service (rates of pay, pension auto enrolment, hours, breaks)
- Training for personal assistants (if appropriate)
- Disclosure and Barring Service checks (DBS)
- Covering for annual leave, sickness or other unplanned time off work
- How to keep safe when advertising, interviewing and recruiting
- What to do if difficulties arise between you and your personal assistant
- Employers liability insurance

If you choose not to have this support, we strongly recommend that you take the following steps to keep safe:

- Do not put your home address, telephone number or details about yourself on the job advert. You could ask the Job Centre to advertise the role for you, as they have their own processes which will help you to stay safe or you can use a mailbox number
- Ask for two written job references from the people you interview and always follow them up
- If possible, interview people away from your home address and have someone with you for additional support
- You must comply with employment legislation and the council strongly advises you have support to do this
- It is advised that you arrange for a friend, parent or someone you trust to spend some time with you when your personal assistant first starts work
- Carry out DBS checks before your personal assistant starts work with you

Employing people legally

The law says you must make basic document checks with every person you are considering employing to confirm they can legally work in the United Kingdom. If you fail to do this, it may result in a fine.

A direct payment support provider can help with this. If you want to manage this yourself, please see the 'right to work' guidance on the Home Office website at www.homeoffice.gov.uk.

You can also complete an online check to see if a potential employee has the right to work in the UK and what documents you need to check. If you need further advice, please contact the Home Office's employers helpline on 0300 123 4699.

You must complete these checks before offering anyone employment and you must not employ anyone who is not legally able to work in the United Kingdom.

Being a good employer means you are more likely to keep your personal assistant.

To keep within the law you must:

- Provide your personal assistant with a written contract of employment that defines their terms and conditions of employment
- Operate PAYE, tax and national insurance contributions. You can use a payroll service of your choice, but you are responsible for ensuring that your employer responsibilities are met
- Register with HMRC as an employer. If you are organising this yourself, please contact the new employers helpline on 0845 607 0143 or contact your local tax office for advice
- Pay your personal assistant no less than the minimum wage and keep up to date with any changes to this rate. The approved direct payment support providers and HMRC can provide further advice
- Check sick pay qualifying conditions with HMRC
- Adhere to legislation around holiday, sickness (SSP), maternity or paternity pay

- Be aware of working time regulations and your responsibilities as an employer
- Ensure that any **eligible** employees are enrolled into a workplace pension and that you make appropriate contributions to the scheme. Please note that the cost of funding the minimum employer contribution can be paid from your direct payment. The council recommends that you seek advice from an approved direct payment support organisation or an organisation specialising in employment. You can contact the pension regulator customer support line on 0345 600 1011 or e-mail customersupport@autoenrol.tpr.gov.uk for queries about meeting your employer duties. There is also a booklet available from HMRC entitled stakeholder pensions
- If you choose to top-up your direct payment and employ your personal assistant for additional hours, you will be responsible for the additional employer costs such as tax, national insurance contributions, additional holiday or redundancy entitlement (where applicable)
- If you need to increase or decrease the number of hours you employ your personal assistant, it is important that you give appropriate notice and seek advice about amending the contract of employment

Pensions

Under the Pensions Act 2008, every employer must put eligible employees into a pension scheme and contribute towards it. This is called auto-enrolment. The Government has set minimum levels of contributions that must be paid to the workplace pension scheme by the employer and the employee.

Herefordshire Council will fund the **minimum employer contribution** from the direct payment. This will be based on qualifying earnings between the lower earnings threshold and the upper earnings threshold, which is £6,032 to £46,350 per year from April 2019. The Secretary of State will review these amounts each tax year.

The table below shows the minimum contributions that employers who set up a defined contribution scheme for automatic enrolment must pay.

Date effective	Employer minimum contribution (to be funded by direct payment)	Staff contribution	Total minimum contribution
6 April 2019 onwards	3%	5%	8%

These are the minimum contributions that **must** be paid. However, your personal assistant can choose to contribute more to the scheme if they want to.

The Government contributes towards the pension by giving tax relief. There are two ways that your employee can get tax relief on what they pay into their pension.

Net pay arrangement – pension contribution deducted from salary before tax is deducted. No tax is deducted from the employee's contribution.

Relief at Source – tax is deducted, the contribution is paid net of tax relief and pension provider claims this from HMRC to add to the pot.

How your employee receives tax relief will depend on which method your chosen Pension Provider uses.

It is your responsibility as an employer to make sure you are using a qualifying scheme for your auto enrolment duties and ensuring the right amount of pension contributions are deducted.

Support with auto enrolment can be funded through your direct payment. The Council recommends that you seek advice from an approved direct payment support organisation or an organisation specialising in employment. You can contact the pension regulator customer support line on 0345 600 1011 or email customersupport@autoenrol.tpr.gov.uk for queries about meeting your employer duties.

Insurance

If you employ staff, you are legally required to have insurance and this must be renewed each year. This should cover you as an employer for any accidents that your personal assistant may have whilst working for you, such as trips or falls.

Sometimes employers' liability insurance and public liability insurance can be included in a comprehensive household policy, but this is not always the case. You must check with your own insurance company and not assume that you are covered for these purposes.

The following insurance must be in place before your personal assistant can start work:

Employers' liability insurance

If your employee is injured whilst working for you and you are held legally liable, you will be protected to cover legal costs and compensation. By law, most employers must have employers' liability insurance.

Public liability insurance

This will insure you against any damages or injury caused to someone else by you or your personal assistant whilst they are working for you.

The council will fund the cost of this insurance as part of your direct payment. We cannot recommend who you should use to provide your insurance cover, but we will provide you with information on where to go.

We advise you take out a policy that covers you in the event that your personal assistant takes you to an industrial tribunal or you need to make someone redundant. There are terms and conditions you must adhere to and the insurance company will explain these.

If the direct payment ends and the insurance policy is cancelled, any refund must be repaid to the council.

Costs towards in lieu of notice and redundancy can often be covered by your insurance and the council expects you to explore this option. For more information, please contact the council or your chosen direct payment support provider.

Insurance and using a vehicle

If your personal assistant is providing transport for you in their own vehicle, they must ensure they take out the appropriate insurance cover. You must advise the personal assistant to contact their insurance company and request business cover and show you a copy of the certificate. If your personal assistant is driving your vehicle, you must ensure they are added onto your insurance policy and most insurance companies will not charge for this cover.

Training

Your personal assistant needs to be able to carry out the tasks you expect of them, without any risk of injury to you or them. As an employer, it is your responsibility to make sure your personal assistant is trained appropriately and you must provide your staff with instruction, information training and supervision. We strongly advise that you identify your own training needs first, so you can provide formal guidance / training to your personal assistant. The type of courses you may need to consider are:

- Moving and handling*
- Paediatric First aid
- Infection control
- Food hygiene
- Administration of medication
- Health and safety

* Insurance companies state that they will only pay out if the personal assistant is trained by an appropriate trainer.

Your support provider will be able to advise you on this and provide information about suitable training and appropriate trainers. You may need to consider other specialist courses, such as autism and diabetes training.

You can also apply for funding from Skills for Care to cover the cost of care related training for yourself and your personal assistant. Please discuss any training needs with your allocated worker, when you are planning your support.

Please see the contact details on the general factsheets for accessing funds from Skills for Care or visit www.skillsforcare.org.uk/funding.

Self-employed personal assistants

Some personal assistants say that they are self-employed, however HMRC rarely recognises a personal assistant as being self-employed for tax purposes. If HMRC decides at a later date that the person is employed, you may incur additional costs.

HMRC states: “Individuals and their employers may have to pay unpaid tax and penalties, or lose entitlement to benefits, if their employment status is wrong.”

The council strongly recommends that you do not use people who are self-employed to support you as a personal assistant. If you decide to use a self-employed worker, the council must see a copy of confirmation from HMRC that they are registered as self-employed to work as a personal assistant. Self-employment status for other job roles will not be valid. We will also need to see a copy of the self-employed personal assistant’s public liability insurance, which they must provide. You should not pay for the insurance of someone who is self-employed.

This information must be provided before they can be paid from your direct payment.

HMRC may regard someone as self-employed for **tax** purposes even if they have a different status in **employment law**. Employers should also check if a worker is self-employed in employment law and has employee’s rights.

How do I check self-employed status for tax purposes?

You or the personal assistant can check their self-employed status on the HMRC website at www.hmrc.gov.uk

You will be asked some questions about your working relationship. Before you start, you will need to know:

- Workers responsibilities
- Who decides what work needs doing
- Who decides when, where, and how the work is done
- How the worker will be paid
- If the engagement includes any benefits or reimbursements for expenses

When you have answered all of the questions, you will be given an indication of the assistant’s employment status. You can only rely on the result if:

- All of the answers are accurate
- If the questions have been answered by you or the personal assistant

HMRC will not stand by the results through contrived arrangements to get a particular outcome from the service. This would be treated as evidence of deliberate non-compliance with associated higher penalties.

If the decision is inconclusive, the council will be unable to accept the person as self-employed and they should be paid through PAYE.

If HMRC rule at a later date that the PA is employed you will be responsible for paying any penalties and additional costs.

How do I check if the personal assistant is self-employed in employment law?

Someone is **probably** self-employed and does not have the rights of an employee if they are exempt from PAYE (confirmed self-employed by HMRC) and most of the following are also true:

- They put in bids or give quotes to get work
- They're not under direct supervision when working
- They submit invoices for the work they've done
- They're responsible for paying their own national insurance and tax
- They don't get holiday or sick pay when they're not working
- They operate under a contract (sometimes known as a 'contract for services' or 'consultancy agreement') that uses terms like 'self-employed', 'consultant' or an 'independent contractor'

If the personal assistant is recognised as self-employed by HMRC, you will not become the employer. They can choose if and when they work for you and you must decide if this will meet your requirements.

You should always ask for references from other people they have worked for. Direct payment support organisations can provide you with support to ensure you are safe when using self-employed personal assistants.

You can get further information and advice from the HMRC employer helpline on 0845 714 3143 or www.hmrc.gov.uk.

You can find details of direct payment support providers on the council's website at www.herefordshire.gov.uk (search approved providers for direct payments) or contact your allocated worker.