



# Sefton Direct Payments

## Employing Personal Assistants

Guide to becoming an employer

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 the particular circumstances.

You should consult your professional advisor provided by your Employers Liability Insurance provider, for legal and other advice.

Information referenced throughout this booklet may be subject to change at any time.



## Contents

<b>Introduction</b>	<b>1</b>	<i>Short notice absence and sickness</i>	<b>4</b>
		<i>Sickness pay</i>	<b>4</b>
<b>Staff selection and recruitment</b>	<b>1</b>		
<b>Self Employed Staff</b>	<b>1</b>	<b><i>Ending an employment contract</i></b>	<b>5</b>
		<i>Notice Periods</i>	<b>5</b>
		<i>Redundancy</i>	<b>5</b>
<b><i>Contracts of employment</i></b>	<b>2</b>		
<i>Making changes to a contract</i>	<b>2</b>	<b>Inland Revenue (HMRC)</b>	<b>6</b>
<b>Payroll Support Service</b>	<b>2</b>	<b>Workplace pensions</b>	<b>6</b>
<b>Hourly rate for your Personal Assistant</b>	<b>2</b>	<b>Statutory Leave</b>	
		<i>Pregnancy</i>	<b>7</b>
		<i>Maternity Leave</i>	<b>7</b>
		<i>Paternity, adoption and shared parental leave</i>	<b>7</b>
<b>Employers and Public Liability Insurance</b>	<b>2</b>		
<b>Disclosure and Barring Service (DBS) check</b>	<b>3</b>	<b>Helpful links and contacts</b>	<b>8</b>
<b>Working Hours</b>	<b>3</b>		
<i>Night working hours</i>	<b>4</b>		
<i>The 48-hour working week</i>	<b>4</b>		
<i>Holiday Pay</i>	<b>4</b>		

## Introduction

If you have chosen to employ a Personal Assistant through the Direct Payments Scheme, this booklet should have information you require to employ staff.

This guide is to support you to be an effective employer. Advice is also available from your Direct Payments Support Service based at Sefton Carers Centre

Direct Payments Team  
Sefton Carers Centre  
27-37 South Road  
Waterloo  
L220 5PE

Web: [www.sefton.gov.uk/directpayments](http://www.sefton.gov.uk/directpayments)  
Email: [Direct.payments@sefton.gov.uk](mailto:Direct.payments@sefton.gov.uk)  
Tel: 0151 288 6060

## Staff selection and recruitment

You may find yourself becoming an employer for the first time and be uncertain of many of the responsibilities and legal obligations that this role brings.

Finding the right person and/or people to be your Personal Assistant is very important and you need to make sure you know your legal responsibilities when recruiting and managing staff. Both you and your Personal Assistant should feel able to deal with any issues as they arise.

You may already know somebody or have a family member, not living in the same household, that you wish to employ. Your Direct Payments Advisor can help you to recruit, select and employ your staff including advice on job descriptions, interviews and Contracts of Employment.

We can also signpost you to 24-hour Employment Law specialists who can provide information on recruitment and selection and ongoing employment support.

It is good practice to involve your Direct Payments Advisor, initially to send out application forms and use their telephone number, address or email as a point of contact for applicants. This will limit your personal information being provided to prospective candidates.

[Guide to becoming an employer](#)

It is recommended that you interview prospective Personal Assistant's initially somewhere away from the family home and involving a family member or friend in the process. You should decide on some questions to ask each applicant and you should also ask for references.

Before commencing a new employee, you will need to

- Agree hours of work and rate of pay
- Complete a job description, so everyone is fully aware of what is required
- Check your employee is legally entitled to work in the UK
- Obtain a Disclosure and Barring Services (DBS) check - if your employee will be working with a child or vulnerable adult
- Agree a probationary period, usually 3-6 months from start date. This can be reviewed and extended should there be any issues.

If you need your Personal Assistant to drive you, using your vehicle or their own, you must ensure that they have appropriate business insurance and the vehicle is roadworthy.

## Self Employed Staff

This guide does not apply if your Personal Assistants are self-employed.


It is your responsibility to correctly determine the employment status of your workers – that is, whether they are employed by you or self-employed.

This is important because it affects the way tax and National Insurance Contributions (NIC) are calculated for them. If you do not get this right you may have to pay tax, NIC, interest and possible penalties.

To determine the status of a worker you should contact Inland Revenue on [www.hmrc.co.uk](http://www.hmrc.co.uk)

If your Personal Assistant is self-employed they will not receive the same terms and conditions that an employed member of staff would have:

- holiday pay and sick pay is not payable
- they are only paid for the hours worked
- they pay their own pension contributions.
- they pay their tax and NI contributions directly to the Inland Revenue.
- they purchase their own Liability Insurance



If you receive confirmation that your worker is self-employed we require the following information as part of the audit and monitoring of your direct payments account:

- Individual invoices for all periods worked / payments made from Direct Payments account
- Name and address of worker
- National Insurance number
- Evidence of their Public Liability insurance
- Copy of up to date enhanced DBS where applicable
- Individual Tax Reference number (for this employment)

Please ensure you receive an invoice from your self-employed Personal Assistant. If you cannot provide documented evidence of the payment to your employee, then you may have to refund the payment to the account.

## Contracts of employment

A contract of employment is an agreement between you and your Personal Assistant, which sets out their employment rights, responsibilities and duties. These are called the 'terms' of the contract. A contract will start on the date agreed with you and your Personal Assistant.

Your Personal Assistant is legally entitled to a 'Written Statement of Employment'. This should include details of pay, holidays and working hours.

You can get a template of the employment contract from your Direct Payments Advisor or alternatively you can contact the employment 24-hour help line attached to your insurance provider.

For further information go to [www.gov.uk/contract-types-and-employer-responsibilities](http://www.gov.uk/contract-types-and-employer-responsibilities)

## Making changes to a contract

You should discuss and agree any changes to the contract with your Personal Assistant, recording these changes in writing rather than verbally.

If the Personal Assistant does not agree to a change you make then they may be able to make

a complaint for breach of contract or unfair dismissal.

Before making the change, you must contact the 24-hour employment helpline attached to your insurance policy. They will guide you through the process of making the change and support you with required documentation. If you follow their advice, they will support you should the Personal Assistant wish to make a formal complaint through an employment tribunal.

## Payroll Support Service

The Direct Payments Team has its own Payroll Support Service available that will:

- Produce 4 weekly payslips for all your employees
- Calculate and report your Tax and National Insurance contributions
- Complete all year end returns to Inland Revenue
- Regulate and report on your employer responsibilities for Workplace Pensions


The Payroll service is available to all Direct Payments recipients at no extra cost and operates a 4-weekly payroll system; wages are paid to your employee for hours that they have worked in the 4 weeks period prior to the pay date.

## Hourly rate for your Personal Assistant

All employees must be paid at least the National Minimum Wage. This rate will increase annually in April in line with Government legislation. If you are unsure if your employees are meeting the National Minimum Wage, you must contact your Payroll Support for advice or go to [www.gov.uk/national-minimum-wage-rates](http://www.gov.uk/national-minimum-wage-rates)

Sefton Council currently recommends that the hourly rate paid to you employees is a maximum of **£9.00** per hour.

The difference in the hourly rate paid into your account by Sefton and the rate that you pay your employees is your allowance for employers 'on costs'.



The employers 'on costs' ensure that you have enough money to cover:

- Holiday and sick payments to your employee and for someone to cover their time off
- Redundancy cost should your Direct Payment cease – *This is applicable only if your employee qualifies, you have purchased the appropriate Employers insurance and if you have sufficient on cost monies available.*
- Employer's National Insurance contributions of up to 13.8% dependent on your employee's earnings.
- Workplace pension contributions 3% per year. Your Payroll Service will ensure that you are complying with the New Government legislation.

## Employers and Public Liability Insurance

If you become an employer then you are required to purchase Employers and Public Liability insurance as per your Direct Payments agreement. Your Direct Payments Advisor can provide you with application forms.

The Insurance is paid from your Direct Payments account and you must provide the Direct Payments Team with a copy of the insurance certificate. It is your responsibility to renew the insurance policy every year.

We recommend that you take the **full** insurance policy that includes **Employment Law Specialist Support**. They will provide you with a 24-hour employment law and health and safety advice line, should you require any support in relation to your Personal Assistants.

Some of the advice they could provide you with in relation to your employer responsibilities includes:

- Redundancy payments
- Disciplinary procedures and dismissal of staff
- Statement of employment and job descriptions
- Notice Periods

Should you require the use of specialist equipment, you should ensure that your Personal Assistant has the appropriate training. Refer to your insurance policy for further information.

## Disclosure and Barring Service (DBS) check

The Council strongly recommends that appropriate checks are made through references and Disclosure and Barring Service (DBS). The DBS replaces the Criminal Records Bureau (CRB) check.

DBS checks are compulsory for anyone who is providing care or support to a child or an adult that lacks capacity. The employee cannot commence employment until clearance has been obtained.

The employer must contact the Direct Payments Support Service to obtain a DBS check for any of their employee(s); the costs of the checks will be funded directly by the Council.

Self Employed staff must provide their own clearance checks.

The Council will request further details from the potential employee, should the DBS check show they are unsuitable for the post. This may involve a face to face interview.

DBS clearance must be renewed every 3 years in line with current DBS legislation.

## Working Hours

As an employer, it is good practice to keep records of your employees working hours for payroll and auditing purposes.

Records that you need to keep:

- annual leave
- sick pay / absence
- other absence and lateness
- discipline – including dismissals and grievance
- termination of employment

The working time regulations govern the hours most staff can work, although there are some exceptions.

More details can be found at [www.gov.uk/maximum-weekly-working-hours](http://www.gov.uk/maximum-weekly-working-hours)

## Night working hours

Staff who regularly work at least 3 hours during the 'night period' are night workers.

The night period is 11pm to 6am.

The hourly rate applies to all hours worked during the shift. There is not a higher night working rate.

Staff aged 16 or 17 cannot work between midnight and 4am.

For further information go to [www.gov.uk/night-working-hours](http://www.gov.uk/night-working-hours)

## The 48-hour working week

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

If you need to change your employees' patterns of working, it's best to discuss with your Personal Assistant first.

For more information, you can contact the 24-hour employers line attached to your insurance policy or alternatively visit [www.gov.uk/your-employment-contract-how-it-can-be-changed](http://www.gov.uk/your-employment-contract-how-it-can-be-changed)

## Holiday Pay

Your Personal Assistant is entitled to 5.6 weeks paid leave per year based on their contracted hours.

For example, if your Personal Assistant is contracted for 10 hours per week, they would be entitled to 56 hours' holiday pay per annum.

Holiday pay is NOT in addition to hours worked, it is a payment for time taken off during the year.

You have provision in your Direct Payment monies to cover your employee's time off and pay for another employee to cover the hours. For example, if your employee has 56 hours per annum holidays due then there should be enough in your budget to cover someone else to work 56 hours.

If you recruit someone new during this period then you need to provide the Payroll Team with their details.

The holiday year is between 1<sup>st</sup> April to 31<sup>st</sup> March the following year; all leave MUST be used within the working year and cannot be carried over.

In the year that your Personal Assistant started working for you, they will be entitled to 1/12<sup>th</sup> of their leave for every full month that they work for you.

For further information on holiday entitlement, you can either contact the Payroll Support Team on [dppayroll@sefton.gov.uk](mailto:dppayroll@sefton.gov.uk) or alternatively go to [www.gov.uk/holiday-entitlement-rights](http://www.gov.uk/holiday-entitlement-rights)

## Short notice absence and sickness

It is a good idea to have a plan for when your employee is sick or on holiday. Planning for this in advance will make things easier if your Personal Assistant goes off sick unexpectedly; this is known as a contingency plan.

You could employ a couple of Personal Assistant's on a 'work as and when needed' basis or have a family member or friend as a backup plan or alternatively register with a care agency.


Your contingency plan should be part of your support plan. Best practice is to have a plan in place and not wait until an emergency arises.

For a full list of Agencies in your area go to [www.cqc.org.uk/what-we-do/services-we-regulate/find-services-offering-care-home](http://www.cqc.org.uk/what-we-do/services-we-regulate/find-services-offering-care-home)

## Sickness Pay

Should your employee become unwell, as an employer you may need to pay Statutory Sick Pay (SSP) for up to 28 weeks; if your employee meets the qualifying standards.

- you pay Class 1 National Insurance contributions for your employee (or would do if not for their age or their level of earnings)
- your employee was sick for 4 or more days in a row (including non-working days)  
Your employee will not be paid for the first 4 days of sickness.



If your employee does not qualify, they may qualify for benefits instead. Contact the Payroll Support Team for further advice or alternatively you can check qualification on [www.gov.uk/calculate-statutory-sick-pay](http://www.gov.uk/calculate-statutory-sick-pay)

## Ending a contract of employment

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

Some of the reasons the contract may end are

- Funding ending due to a change in circumstances
- Long Term hospital or care home stay
- Client moves out of the area
- Client passes away

By law, if your Personal Assistant has worked for you longer than one month, you will need to give them notice before letting them go.

If you are terminating the contract due to issues around the Personal Assistant's capability or issues in relation to disciplinary, then you must contact the 24-hour employment helpline attached to your insurance policy before terminating the contract.

The Employment Law specialists will guide you through the process of ending the contract and support you with required documentation. If you follow their advice, they will support you should the Personal Assistant wish to make a formal complaint through an employment tribunal.

## Notice Period

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

- At least one weeks' notice if your Personal Assistant 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.

This applies to continuous service only with the same employer.

For further information go to [www.gov.uk/handling-in-your-notice/payment-during-your-notice-period](http://www.gov.uk/handling-in-your-notice/payment-during-your-notice-period)

## Redundancy

You are advised when you first become an employer on the scheme to purchase the **full** Employers Liability Insurance which includes a 24-hour employers' helpline and redundancy costs package should the care cease. The cost of the insurance is paid from your Direct Payments Account.

If your employee is made redundant, then you are advised to notify the insurance company as soon as possible.

If your employee qualifies for redundancy payments, the amount you will need to pay will depend on how long they have worked for you, how old they are and how much they receive.

The insurance provider usually covers up to £3000 of redundancy costs, should your employees' costs be higher than this amount, then you may have to fund the difference from your personal funds.

Sefton may be able to help with additional monies dependent upon

- Whether your employees hourly rate is above the recommended rate advised by Sefton Council; and
- Whether you have sufficient on cost monies available

For further information go to [www.gov.uk/staff-redundant](http://www.gov.uk/staff-redundant)

## Inland Revenue (HMRC)

You are registered as an employer with Inland Revenue (HMRC), as you employ staff through the Direct Payments Scheme. With that registration, you now have responsibilities as an employer to:

- Make sure that your employee(s) payments are made
- Ensure that tax and National Insurance deductions from your employees' wages are paid to Inland Revenue on time when notified by the Direct Payments Team
- Confirm that all employee information given to the Direct Payments Team is correct to enable accurate reporting to the Inland Revenue i.e. Correct name and address

The Payroll Support Team will safeguard that you comply with all reporting legislation to the Inland Revenue

Your employee will have tax and National Insurance contributions **deducted off** their wages as identified on their four-weekly payslip. Their wages will be **NET pay**.

You must make certain that the deduction from their wages is sent to the Inland Revenue on a quarterly basis to avoid penalties.

The Direct Payments Team will write to you to advise you of the payment that needs to be made. Payments are due to HM Revenue and Customs by the following dates:

- 5th January
- 5th April
- 5th July
- 5th October

To make a payment to HMRC, you need to follow the instructions on the back of the letter you receive from Payroll Support.

## Workplace Pension

The law on workplace pensions has changed. Everyone who employs at least one person has to put eligible employees in a workplace pension scheme.

As a recipient of Direct Payments, the Payroll Team will help to support you in registering your employee(s), provide all correspondence you will

need to meet your legal responsibilities and monitor your payroll for changes in circumstances.

If you employ your personal assistants directly, then the Direct Payments Team can assist you with Auto Enrolment. ***As there are strict deadlines in completing the staging process, any letters that you receive from the Pensions Regulator must be sent to the Direct Payments Team immediately.***

It doesn't matter whether your employee works full time or part time, you will need to enrol them in a workplace pension scheme if they:

- Earn more than £10,000 a year
- Are not already in a suitable workplace pension scheme
- Are at least 22 years old, but under State Pension age
- Work in the UK

The contributions you are required to make under automatic enrolment are a cost of employing someone in the same way as National Insurance contributions on their earnings.

Employees can opt out of the Pension Scheme within one month of joining. It is the responsibility of the employee to complete the 'opt out' pension form available from the Payroll Support Team.

In order for your employee to make an informed long-term decision, we advise that you direct staff to the Pensions Regulator site [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

The Direct Payments Team has calculated that the rate that you currently receive to provide your support will cover the pensions contributions that you will be required to make if your employee qualifies, as long as you:

- Are not paying your employees above the maximum hourly rate, as advised by the Direct Payments Team of £9.00ph.
- Are not using more than your assessed hours as agreed in your Support Plan

You must ensure that you complete the Pension Scheme Form and return to the Payroll Team, for further information visit

[www.thepensionsregulator.gov.uk/individuals](http://www.thepensionsregulator.gov.uk/individuals)



For further information about NEST visit [www.nestpensions.org.uk](http://www.nestpensions.org.uk)

For further information in relation to workplace pensions go to [www.gov.uk/workplace-pensions](http://www.gov.uk/workplace-pensions)

## Maternity, paternity, adoption and shared parental leave

### Maternity

When your employee informs you that they are pregnant, you will need to consider whether any reasonable adjustments need to be made to their work and working patterns to meet their health and safety and the health and safety of their unborn child.

Your employee's rights are protected while on statutory maternity leave. This includes their right to:

- Pay rises
- Accrue holidays
- Return to work

All employees are entitled to 52 weeks maternity leave. This is made up of:

- Ordinary Maternity Leave – first 26 weeks
- Additional Maternity Leave – last 26 weeks

Your employee does not have to take 52 weeks but must take at least 2 weeks' leave after the baby is born.

Your employee may qualify for Statutory Maternity Pay (SMP) if they meet the criteria:

- Earn on average at least £118 per week
- They have given the correct notice
- Provided a MATb1 form
- Have worked for you continuously for 26 weeks continuing into the qualifying week – the 15<sup>th</sup> week before the expected week of child birth.

If your employee does not qualify for SMP, they may be able to claim Maternity Allowance for the Jobcentre Plus.

Statutory Maternity Pay (SMP) is paid for up to 39 weeks:

- First 6 weeks – 90% of your average weekly earnings
- Next 33 weeks – SMP rate, this is reviewed every April
- Last 13 weeks – is unpaid leave, if applicable

To find out the latest rates for SMP go to [www.gov.uk/maternity-pay-leave/pay](http://www.gov.uk/maternity-pay-leave/pay)

### Adoption and surrogacy

You must have been continuously employed by your employer for at least 26 weeks by the 'matching week'. For adoption, this is either:

- the end of the week you're matched with the child (UK adoptions)
- the date the child enters the UK or when you want your pay to start (overseas adoptions)

You must also meet the other eligibility conditions for paternity leave or pay.

### Paternity, adoption and shared parental leave

Fathers and partners (including same sex and civil partners) may be entitled to 2 weeks paternity. The position is similar where a child is adopted.

From April 2015, a mother may 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.gov.uk/paternity-pay-leave](http://www.gov.uk/paternity-pay-leave)

## Helpful Links and Contacts

### **Direct Payments Support Team**

Sefton Carers Centre  
27-37 South Road  
Waterloo L22 5PE

Tel: 0151 288 6060

Email: [direct.payments@sefton.gov.uk](mailto:direct.payments@sefton.gov.uk)

Web: [www.sefton.gov.uk/directpayments](http://www.sefton.gov.uk/directpayments)

All support provided in relation to Direct Payments service, including set up, prepaid cards and payroll.

### **Sefton Carers Centre**

27-37 South Road  
Waterloo L22 5PE

Tel: 0151 288 6060

Web: [www.sefton-carers.org.uk](http://www.sefton-carers.org.uk)

Sefton Carers Centre provides free advice and guidance, emotional and practical support, training and a range of holistic therapies for unpaid carers living in Sefton

### **Sefton MBC**

Adult's and Children's services

Tel: **0345 140 0845** (Monday to Friday, 8am to 6pm, closed weekends and Bank Holidays)

Web: [www.sefton.gov.uk](http://www.sefton.gov.uk)

### **Gov.uk**

This is the website for all government departments and includes information from other agencies and public bodies

The website provides important information in relation to direct payments and employing staff

Web: [www.gov.uk](http://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.

Employers helpline – General **0300 200 3200**

New employer's helpline **0300 200 3211**

Web: [www.hmrc.gov.uk](http://www.hmrc.gov.uk)

### **Sefton @ Work for Employers**

Can assist you to find new staff and the service is free of charge to Sefton Employers.

**Sefton@Work** is a part of Sefton Council that acts as an intermediary between companies that need support to recruit new staff, and residents that are looking for work.

Employer Liaison Team

**0151 934 2875**

[elt@sefton.gov.uk](mailto:elt@sefton.gov.uk)

### **The Pensions Regulator**

Has information for employers about work-based pension schemes for your employees as well as information about automatic enrolment

Tel: **0845 600 1011**

Email: [customersupport@autoenrol.tpr.gov.uk](mailto:customersupport@autoenrol.tpr.gov.uk)

Web: [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)

### **Nest Pensions**

Default workplace pension provider for Sefton Direct Payments unless advised different by employer

Web: [www.nestpensions.org.uk](http://www.nestpensions.org.uk)