



Solihull
METROPOLITAN
BOROUGH COUNCIL

Document 7

Personal Assistants & Employers: Statutory responsibilities of Employers as of July 2013

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Employer support

Being an employer can be daunting; keeping records, working out holiday and maternity pay etc. are some of the responsibilities an employer has. However, Solihull MBC has a duty to ensure that people who use Direct Payments to buy their own support have sufficient support to enable them to do it legally.

There are currently two services contracted by SMBC to provide support around Direct Payments. The Direct Payments Information and Advice Service, provided by Age UK and DIAL, offers information and advice about Direct Payments and employing Personal Assistants. The Ideal for All Service will manage the Direct Payment and ensure that all statutory duties are carried out, including the provision of a Payroll service. This can take much of the stress out of being an employer.

Creating a Circle of Support is a method of arranging services which can also be useful in supporting Clients to manage their money and make decisions, as can appointing a suitable nominated person to manage the Direct Payment, setting up a user controlled trust, or asking relatives or friends to help.

Using the methods of support available, a person employing a Personal Assistant needs to inform the PA how they want things to be done, as long as this is within the law. All of the paperwork can be undertaken by someone else.

What information must an Employer give to an Employee when they start?

By law, the employer has to give an employee a Contract of Employment or a "statement" of employment within 2 months of the employee starting work. This covers what would normally be in a Contract of Employment; however the statement of employment is not a contract between the employer and the employee.

If there is a dispute and the employer has not given the employee a contract, the court may use the terms in the statement to decide the terms of employment.

If no statement has been given within 2 months, an employee can apply to an Employment Tribunal at any time after the 2 month period, (or within 3 months of termination of the employment) for the tribunal to determine what should have been in the statement.

Statutory Holiday Pay

Statutory Holiday Pay is 5.6 weeks per year, as set out in the working time regulations 1998 and amendments 2003. Working out an individual's entitlement is done by multiplying the average number of hours worked per week by 5.6. For example, a PA working 35 hours a week is entitled to: 5.6 multiplied by 35 = 196 hours. Therefore the worker is entitled to 196 hours holiday leave a year.

Maternity leave

An employer cannot dismiss an employee because she is pregnant; it does not matter if the employee does not have 1 year's continuous employment with the employer. The dismissal will be automatically unfair.

Below are the main rights and entitlements of a pregnant employee:

1. A pregnant employee is entitled to Maternity Leave without having worked for 1 year. Ordinary maternity leave is 26 weeks. They also have a right to Additional Maternity Leave. This starts at the end of the Ordinary Maternity Leave period and lasts for 26 weeks.

2. A pregnant employee also has the right to Maternity Pay, if she has worked for 26 weeks or more. The 26 weeks is counted from 15 weeks before the week the baby is due, so take the week that the baby is due and count back 15 weeks. If an employee has worked for 26 weeks at that stage the employee can claim Maternity Pay; this is paid for 39 weeks.
3. Right to same contractual terms whilst off work (except same pay).
4. Right to paid leave for ante-natal care.
5. Right to return to work under the same contractual conditions after Ordinary Maternity Leave, and a comparable position after Additional Maternity Leave.
6. The employee should be offered alternative work (if it is available), if the pregnancy means they cannot do the work they are normally employed to do.

Paternity leave

To qualify for Ordinary Paternity Leave you must be an employee. You must be taking the time off to support the mother or carer for the baby and intend to be fully involved in their upbringing. Rights to Ordinary Paternity Leave are extra to your normal holiday allowance.

To qualify for Ordinary Paternity Leave, you must have been with your employer for at least 26 weeks by either:

- the end of the 15th week before the start of the week when the baby is due
- the end of the week you are notified you are matched with your child in the case of adoption

You must also be either the:

- biological father of the child
- mother's husband or partner (including same-sex relationships)
- child's adopter
- husband or partner (including same-sex relationships) of the child's adopter

If you are an employee you may not qualify for Ordinary Paternity Leave but may qualify for Ordinary Statutory Paternity Pay.

If you are an agency worker, office holder or subcontractor, you will not normally have the right to Ordinary Paternity Leave. However, you may be eligible for Ordinary Statutory Paternity Pay.

Statutory Sick Pay for Personal Assistants

Who can get Statutory Sick Pay

You may be able to get Statutory Sick Pay (SSP), if you have:

- been sick for at least four or more days in a row (including weekends, bank holidays and days that you do not normally work)
- average weekly earnings equal to or more than the Lower Earnings Limit (LEL)

Lower Earnings Limit (LEL)

The LEL is the amount you would need to earn before you start paying National Insurance Contributions. For 2013/2014, the LEL is £107 a week.

How average earnings are worked out

For 2013/14, you must have average earnings of £107 a week before tax and National Insurance contributions are deducted. Whoever is responsible for the deduction of National Insurance Contributions from your earnings is also responsible for payment of SSP.

Your average weekly earnings are calculated over the eight weeks before your sickness began. This period may vary slightly depending on whether you are paid weekly, monthly or have other pay patterns. If you have just started your job the calculation may be different, contact your employer for more information.

Only earnings actually paid in this eight week period can be used for the average weekly earnings calculation. These earnings must be subject to National Insurance Contributions or would be if your earnings were high enough and may include:

- your normal earnings
- bonuses
- holiday pay
- overtime
- other Statutory Payments

Salary Sacrifice Scheme and Statutory Sick Pay

If you have a salary sacrifice arrangement, your average weekly earnings are calculated using the actual earnings (minus the salary sacrifice) paid to you.

This could mean that your average weekly earnings may not reach the Lower Earnings Limit for payment of SSP.

What days you'll be paid for

SSP is paid for qualifying days. These are the days that you would normally work for your employer under a contract of employment. However, it is not payable for the first three qualifying days. These days are known as waiting days.

If you work part-time, you must still serve your three waiting days before you can get payment. This means you may not receive a payment at the start of your period of illness.

If you have a varied work pattern, your qualifying days may be different in each week that you work.

For example, if you work Monday to Friday and become sick on a Friday your waiting days will be Friday, Monday and Tuesday. If you continue to be sick, SSP will be paid from Wednesday. If you work Thursday and Friday and become sick on a Friday your waiting days will be the Friday of the week that you are first sick and the Thursday and Friday of the next week. If you continue to be sick, SSP will only be paid from the Thursday of the following week. Please speak to your employer about this.

Linking with a previous period of Statutory Sick Pay

If you have received SSP for a previous period of illness within the last eight weeks, your new period of illness may link to this. For periods of illness to link, you must have been sick for at least four days in a row in the second period for this to be treated as one continuous period. SSP will be paid for the new period, without you having to serve waiting days.

Phased return to work or altered hours after illness

If you and your employer have agreed that you have a phased return to work or altered hours after a period of sickness, you should get:

- your normal earnings for the days and/or hours you work
- SSP for the days that you are sick, if the qualifying conditions for payment continue to be satisfied

Insurance

People who employ workers, including PAs need to ensure that they have sufficient insurance in case there is an accident. Most people who employ PAs buy both Employers and Public Liability insurance.

This protects the Employer, Employee and any third party.

It is also a good idea to have insurance that covers costs associated with Employment Tribunals in case the PA has to be dismissed and claims against their Employer.

People can check their Household Insurance

A number of Insurance Companies specialise in providing insurance for Employers of PAs.

Disclosure and Barring Checks

To protect children, Employers must ensure that a PA has a DBS (previously CRB) check if:

- they are a parent employing a PA to look after their disabled child
- a child lives in their household

A DBS check highlights criminal convictions and an enhanced disclosure highlights cautions and spent convictions. Local Authorities may pay for these checks.

A PA does not need to be DBS checked for providing support to an adult, but an Employer can choose to have a PA checked and it is good practice to make the following checks.

Options for Employers to use as further checks include:

- PA's references preferably from last Employer.
- An optional DBS check

Someone employing a close relative is unlikely to need to make these checks.

Recording & Reporting

Records which an Employer is required to keep by law include:

- Tax and National Insurance contributions for all workers.
- Records of individual hours worked and holidays taken to enable averaging over a period to meet the requirements of the Working Time Regulations 2003.
- Pay to ensure the Minimum Wage Act 1998 is being met, and to meet the statutory requirement that workers are issued with pay statements.
- Paid Sickness (more than 4 days); Statutory Sick, Maternity and Paternity Pay.
- Accidents, injuries, diseases and dangerous occurrences.

It is good practice for Employers to keep information/records readily to hand to provide to new workers and to keep other records in case of future challenge. For example:

- Records of all recruitments carried out
- Daily records
- Induction information
- Training and development information
- Records of absence, lateness, and staff turnover
- Disciplinary and grievance procedures
- Termination of employment information
- Equal opportunities issues and information

National information: sources for Employers and P.A.'s

<http://www.skillsforcare.org.uk/home/home.aspx> - contains a very comprehensive PA toolkit and training resources.

ACAS

<http://www.acas.org.uk/index.aspx?articleid=1461>

BIS

<https://www.gov.uk/government/organisations/department-for-business-innovation-skills>

Equality Act 2010

<https://www.gov.uk/definition-of-disability-under-equality-act-2010>

Health and Safety Executive

<http://www.hse.gov.uk/>

Fire Service

<http://www.fireservice.co.uk/>

Department of Health

<https://www.gov.uk/government/organisations/department-of-health>

Disclosure and Barring service

<https://www.gov.uk/government/organisations/disclosure-and-barring-service>

No Secrets

<https://www.gov.uk/government/publications/no-secrets-guidance-on-protecting-vulnerable-adults-in-care>

Mental Capacity Act 2005 and Deprivation of Liberty Safeguards -

<https://www.gov.uk/search?q=mental+capacity+act&tab=government-results>

