Toolkit
Before your personal assistant starts

Updated November 2017
These are the key tasks you should carry out before your personal assistant starts work. This section contains quite a lot of information, but it is all essential.

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Contract of employment

For each person you employ you must make sure that you have an agreement between you and them. This is important because it gives details of employment rights, responsibilities and duties. These are called the ‘terms’ of the contract. It means that both you and your personal assistant will be clear about each other’s responsibilities.

Once you have checked and are happy with the candidate’s references and have done all your other checks, you should send two signed copies of the contract of employment to your new personal assistant and ask them to sign both. They keep one copy and send the other one back to you. You must provide this within two months of taking on a new employee.

What to include in the contract

<table>
<thead>
<tr>
<th>Your name and the name of the personal assistant</th>
<th>The job title (e.g. Personal assistant) and main duties</th>
<th>The place of work (your home address)</th>
<th>Start date and type of contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Probationary period</td>
<td>Notice period for both of you</td>
<td>Salary and when it is to be paid – weekly or monthly</td>
<td>Working time, hours and breaks</td>
</tr>
<tr>
<td>Holiday entitlement</td>
<td>Sick leave and sick pay arrangements</td>
<td>Pension arrangements</td>
<td>Reference to disciplinary and grievance procedures</td>
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<tr>
<td>What happens when you are away</td>
<td>Redundancy</td>
<td>Confidentiality</td>
<td>Dismissal</td>
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</tbody>
</table>

More information:
There is an example contract of employment in the templates booklet or on our website www.skillsforcare.org.uk/PAtemplates
This section explains why you need to include this information in the contract. The first four sections; your name and the name of the personal assistant, the job title e.g. personal assistant and main duties, the place of work* (your home address), the date when employment begins or date of continuous employment have not been included here because they do not need further explanation. Remember that the contract must state what the employment arrangement is i.e. whether the job is full-time or part-time.

**NOTE:** If you want to make any changes to the contract of employment, you must get your personal assistant’s agreement. You will need to consult with your personal assistant, explain the reasons for any changes and listen to alternative ideas for changes. If you do not, then your personal assistant may have the right to take legal action. Once any changes are agreed, then you must confirm them in writing within one month of the changes being made.

**Probationary period**

This is a trial period, when you can find out what your new personal assistant is really like. It will give you a chance to get to know them without committing yourself completely. Set a probationary period that is suitable for you, for example three months, and make sure your PA is clear about how it will be used.

The probationary period is two-way and so it allows your personal assistant to think about whether they are suited to the job. It’s a good idea to set aside some time for you to speak with your personal assistant during the probationary period so you can both talk about what is working well or not going so well. You could also use this as an opportunity to talk about any training that your personal assistant may need.

At the end of the probationary period either confirm that you would like your employee to continue in their role or that you’d like to extend their probationary period. If you are worried about any aspect of their work, and have previously discussed this with them, then you may extend their probationary period by one to three months or end their employment.

**More information:**
See the section on ‘Supervision’ in toolkit 4: 'Managing your personal assistant' or visit [www.gov.uk/browse/employing-people](http://www.gov.uk/browse/employing-people) and [www.acas.org.uk](http://www.acas.org.uk)

“You need to ensure that you have the proper policies and procedures in place and that employment law is followed.”

* If your PA will be expected to work outside the UK, this should be included under place of work.
Notice period for both of you

If your personal assistant wants to stop working for you, this will be the amount of time they must work after they have told you they want to leave. This is two-way, so it is also the amount of time your personal assistant will need to work once you have told them they must leave your employment. You should make sure that the notice period gives you enough time to employ another personal assistant.

The notice period can be different during the probationary period and in cases of dismissal for gross misconduct or gross negligence, notice is not paid.

Legally the notice period for your personal assistant must be at least one week if they have worked for you for over one month but less than two years (you can agree on a longer period of time). If they have worked for you for two years or more, the legal minimum notice period is two weeks, plus an extra week for every additional year they have worked for you (up to 12 weeks).

Salary and when and how it is to be paid – weekly or monthly, Bacs or cheque

This is where you say how much your personal assistant will be paid, when you will pay them and how you will pay them. As an employer you have a legal responsibility to deduct National Insurance and Income Tax.

Bacs is a scheme for the electronic processing of financial transactions within the United Kingdom.

More information:
See the section on ‘Paying your personal assistant’ on page 12
Working time, hours and breaks

This will be the hours you want your personal assistant to work. It is also an opportunity to say what the process is if your personal assistant is going to be late or is unable to turn up for work. You must not ask your personal assistants to work an average of more than 48 hours per week, unless they have given their voluntary consent to opt-out in writing. An employee can cancel the opt-out agreement at any time by giving seven days notice.

Your personal assistant is allowed to have regular rest periods. This is in addition to any holiday entitlement. This means your personal assistant is allowed:

- a minimum of 11 consecutive hours’ (11 hours in a row) rest in any 24-hour period
- a minimum 20 minute rest break if their working day is longer than six hours
- one day off each week, that is one day off out of every seven
- a limit on the normal working hours of night workers to an average eight hours in any 24-hour period, and an entitlement for night workers to receive regular health assessments.

For young people (under 18) the maximum working week is 40 hours, other than in exceptional circumstances. These hours may not be averaged out and there is no opt-out available. If you employ someone in this age group you must also give them a break of 30 minutes every four and a half hours worked.

You must also allow ‘reasonable’ paid time off to your personal assistants for such things as:

- attending ante-natal appointments
- training.

For some things you must allow your personal assistant unpaid time off. This includes family emergencies, and time to perform public duties like jury service or acting as a school governor.

If your personal assistant asks to work flexibly, you must consider this if they have worked for you continuously for at least 26 weeks.

You have legal responsibility to consider any request, but do have the flexibility to refuse requests on reasonable grounds. If you agree to a request the details should be changed in your personal assistant’s contract of employment. Only one request can be made every 12 months.

More information:

www.gov.uk/business-support-helpline
Telephone the Business Support Helpline 0300 456 3565
www.acas.org.uk or phone ACAS on 0300 123 1100
**Holiday entitlement**

You should say how much holiday your personal assistant has per year and when the holiday year starts and finishes, for example 1 January – 31 December. It is good to be clear about things like how bank holidays will be treated and the process for agreeing time off.

Most workers are legally entitled to a minimum of 5.6 weeks’ paid holiday a year. This is a minimum entitlement – you can choose to offer more. The statutory paid holiday entitlement is capped at 28 days. So, a worker who works five or six days a week is entitled to 28 days’ paid holiday, including bank holidays; while a worker who works two and a half days a week is entitled to 14 days leave, including bank holidays.

If your personal assistant works part-time in a flexible working pattern, it might be easier to calculate their holiday allowance in hours rather than days. For example, a worker works three days a week. Their leave is calculated by multiplying 3 by 5.6, which comes to 16.8 days of annual paid leave. You can work out the holiday allowance of someone who works irregular hours e.g. shift work by using an online calculator [www.gov.uk/holiday-entitlement-rights](http://www.gov.uk/holiday-entitlement-rights).

### To work out holiday pay

<table>
<thead>
<tr>
<th>Fixed or contracted hours</th>
<th>Normal weekly pay.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Shift work with fixed hours</td>
<td>An average of the number of fixed hours worked in the last 12 weeks at an average hourly rate.</td>
</tr>
<tr>
<td>Casual work</td>
<td>An average of the pay received each week (in which your PA was paid) for the last 12 weeks. If your PA was on holiday or sick for all or part of one of these 12 weeks, do not use this week but go back one further week or more if necessary.</td>
</tr>
</tbody>
</table>

Holiday pay must be based on the worker’s average pay. So if their normal pay includes extra money for working unsocial hours, so must the holiday pay.

If someone stops working for you, they are entitled to be paid for any holiday they are due but not taken.
Bank and public holidays

You can count any days off for public or bank holidays towards your personal assistant’s statutory holiday entitlement – but only as long as you pay them for those days off. You do not have to give your personal assistant paid time off for bank and public holidays, but you need to be clear about this in their contract of employment.

More information:
www.gov.uk/hmrc
www.gov.uk/calculate-your-holiday-entitlement

Sick leave and pay arrangements

Statutory Sick Pay (SSP) is paid to employees who are unable to work because of illness. SSP is paid at the same time and in the same way as you would pay wages for the same period, for up to 28 weeks.

If your personal assistant is unable to work for four or more days in a row, you must pay SSP. SSP starts on the fourth day your personal assistant is off. You do not have to pay SSP if your personal assistant earns less than £113.00 (before tax) per week. This is the Lower Earnings Limit. Your personal assistant must tell you they are sick within the terms of their contract.

For up to seven days of sickness your personal assistant can self-certificate. After seven days your personal assistant will need to produce a statement of fitness (or fit note) from their doctor.

You must keep all records of sickness periods lasting for four days in a row or longer and all SSP payments you make. You can use a form provided by HMRC to keep these records.

More information:
www.gov.uk/hmrc/contact and search for ‘Employers: support for new employers’ or call their helpline on 0300 200 3211
Pension arrangements

Under the Pensions Act 2008, every employer in the UK must put certain staff into a pension scheme and contribute towards it. This is called ‘automatic enrolment’. You need to give details of the pension scheme you are using and how contributions will be made by both you and your personal assistant.

More information:
See the section called ‘Providing a pension’ on page 14

Disciplinary and grievance procedures

This section should include reference to how problems will be dealt with including details of warnings; the contract of employment and your disciplinary or grievance procedure should be separate documents.

Before taking disciplinary action using the procedure, you will need to be certain that:

- the matter cannot be resolved through informal mediation
- you have investigated the matter fully
- your personal assistant is told that they will be called to a meeting and have the right to be accompanied by a fellow employee, friend or a trade union official of their choice.

At the disciplinary meeting, make sure that:

- your personal assistant knows the details of the allegation
- they have the opportunity to put across their side of the matter
- any disciplinary measure is appropriate to the circumstances.

If a warning is given, it should tell your personal assistant:

- the level of improvement required
- the date by which it is to be achieved
- what will happen if it is not achieved
- how to appeal.

Further details about gross misconduct is available from ACAS www.acas.org.uk.
**Dismissal**

This section should say how your personal assistant will be dismissed under certain circumstances, e.g. gross misconduct or gross negligence. Further information about how to deal with disputes and problems at work can be found in booklet 6 ‘Sorting out problems’ or you can visit [www.acas.org.uk](http://www.acas.org.uk) and search for disputes and problems at work.

**What happens when you are away**

You should make a plan for what happens when you are away, for example on holiday without your personal assistant or if you have to go into hospital. Use this section to say what you need to happen. If you would like more information about short-term working or lay-off please visit [www.gov.uk/lay-offs-short-timeworking](http://www.gov.uk/lay-offs-short-timeworking).

**Confidentiality**

You should provide your personal assistant with information and/or training so that they understand the importance of confidentiality and how to maintain this in their work.

Confidentiality is important for both you and your personal assistant. You will hold confidential information about your personal assistant, and they will know much about you that you wouldn’t want passed on. Most of the time you should ask each other before you share any information with anyone else. This should be with informed consent (this means you understand the consequences and have had no pressure put on you). There are some exceptions to this.

Your personal assistant will have access to personal information about you in order to meet your needs and wishes. As it is personal, it is important that you make it clear to your personal assistant exactly who they may share it with and in what circumstances. For example, it is only shared with people who really need to know it, such as other people or organisations who provide you with support; and only if you are not able to give that information yourself. No information should be shared with anyone, even your family or friends, against your wishes.

Sometimes your personal assistant may have to share information about you without your agreement, such as in medical emergencies, or if they thought you were being abused by someone else.

Your personal assistant would also be obliged to pass on information if you have broken the law or if they believe you intend to break the law.

There is also information you need to hold on your personal assistant. This should be kept securely so that other people cannot access it. If a personal assistant breaks a confidence this should be treated as a disciplinary matter. Further details about gross misconduct is available from ACAS [www.acas.org.uk](http://www.acas.org.uk).
Other things to consider

This section provides further information that you will need to think about as an employer.

- Paying your personal assistant
- Providing a pension
- Redundancy
- Maternity, paternity, adoption rights and parental leave
- Health and safety
- Insurance
- Keeping records
Paying your personal assistant

You can do this yourself or use a payroll provider, such as a local accountant, or a direct payment/user led support organisation.

Doing it yourself

You may need to contact HMRC to register as an employer. It is your responsibility to decide on the correct employment status of someone that works for you. If you are unsure of the employment status of someone that works for you; you can find the HMRC check employment status for tax

www.gov.uk/employment-status-indicator

HMRC has developed a programme of webinars (online seminars) that look at issues such as payroll responsibilities, how to deal with expenses and benefits, and PAYE in real time. One of the webinars is for care and support employers and can be found here


More information:

www.gov.uk/hmrc or call 0300 200 3200 text phone 0300 200 3212

www.disabilitytaxguide.org.uk

Using a payroll scheme

Payroll schemes make sure that your personal assistant’s tax and National Insurance contributions are deducted correctly. They also tell you how much Employer’s National Insurance to pay. They can also sort out your paperwork and deal with the tax office (HMRC) for you.

How much does it cost?

You can ask your direct payment adviser, local support organisation or the organisation that provides any funding you receive about payroll providers. You might be able to find local accountants who will do this for you very cheaply. You could contact a few, and ask what they would charge. If you receive a direct payment this should include money to cover payroll costs.
How much should I pay my personal assistant?

You must pay at least the minimum wage. This changes every year so call the Pay and Work Rights Helpline on 0300 123 1100 for the latest rate or go to www.gov.uk/national-minimum-wage. You must always give your PA a payslip.

Personal assistants must be paid at least the national living wage (or the national minimum wage for workers 24 and under) while they are on call or working a sleepover; this includes sleeping time.

More information:
www.gov.uk
Pay and Work Rights Helpline 0300 123 1100

Your local authority will have standard hourly rates of pay for personal assistants’ salaries, which you may want to check.

Employment Allowance

Individual employers can claim the National Insurance Contributions Allowance and reduce their NIC bill by up to £3000 a year.

More information:
www.gov.uk/claim-employment-allowance

As an employer you must pay at least the minimum wage.
Providing a pension

Every employer has a legal duty to help their workers in the UK save for retirement. As an employer, you'll have duties in relation to everyone working for you:

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

**Automatic enrolment**

All employers must automatically enrol certain workers into a workplace pension scheme and make contributions towards it.

Existing employers will have been given a staging date - this is the date your automatic enrolment duties come into effect. From 01 October 2017 all new employers will have immediate automatic enrolment duties (staging dates will not apply). This means your automatic enrolment duties start when you employ your first personal assistant.

The table below will help you work out if your personal assistant qualifies for automatic enrolment (these amounts change every April, for current information search automatic enrolment earnings threshold at [www.thepensionsregulator.gov.uk](http://www.thepensionsregulator.gov.uk)).

<table>
<thead>
<tr>
<th>Age of PA</th>
<th>Under £5876</th>
<th>£5876 and up to £10,000</th>
<th>Over £10,000</th>
</tr>
</thead>
<tbody>
<tr>
<td>16-21</td>
<td>Entitled worker</td>
<td>Non-eligible job holder</td>
<td>Non-eligible job holder</td>
</tr>
<tr>
<td>22-State pension age</td>
<td>Entitled worker</td>
<td>Non-eligible job holder</td>
<td>Eligible job holder</td>
</tr>
<tr>
<td>State pension age-74</td>
<td>Entitled worker</td>
<td>Non-eligible job holder</td>
<td>Non-eligible job holder</td>
</tr>
<tr>
<td>75 and over</td>
<td>Outside legislation</td>
<td>Outside legislation</td>
<td>Outside legislation</td>
</tr>
</tbody>
</table>
An **entitled worker** does not need to be automatically enrolled. However, they can request to join a pension scheme. You will have to deduct contributions from their pay so you can pay it into the pension scheme, but they do not have to contribute to their pension, if they do not want to.

A **non-eligible job holder** isn’t automatically enrolled into a pension scheme, but should be given the opportunity to opt-in to one. If they opt-in you must contribute to their pension.

An **eligible job holder** must be automatically enrolled into a pension scheme which they will need to contribute to. They do have the right to opt-out of this.

**Increasing contributions**

The payments both employers and PAs make to their workplace pensions will be increasing from 06 April 2018. Currently a total minimum contribution into an automatic enrolment pension is 2% (minimum of 1% from the employer), but this will increase to 5% (minimum of 2% from the employer) and then after 06 April 2019 to 8% (minimum 3% from the employer).

**More information:**
Go to www.thepensionsregulator.gov.uk and search for the ‘Essential guide to automatic enrolment for employers of personal care assistants’

The simple tools on the Pensions Regulator website can help you to get to grips with your duties, including how you automatically enrol your staff, what the minimum employer contribution you need to make is and when you will need to start doing this.

Your personal assistant can choose to opt-out of your scheme at any time. If they do opt-out (you can set the deadline for this) you must refund all payments made by your personal assistant.
Redundancy

Redundancy is when you ask staff to leave either because you do not need to employ them anymore or because you need to reduce the number of staff you have.

If you have to make your personal assistant redundant you must comply with the law around redundancy. Your personal assistant will have certain rights, which may include:

- redundancy pay
- a notice period
- consultation
- time off to find a new job.

You must pay statutory redundancy pay if your personal assistant has been working for you for two years or more. When someone has worked for you for two years or more they are entitled to:

- half a week’s pay for each year they worked for you whilst under the age of 22
- one full week’s pay for each year they have worked for you when they were 22 or older, but under 41
- one and a half week’s pay for each year they worked for you when they were aged 41 or older.

Some insurance companies will help with redundancy payment cover as part of independent living insurance, depending on the reason and circumstances for the redundancy.

**NOTE:** There are no set rules regarding consultation if you are making less than 20 people redundant. However, it is still good practice to consult with your personal assistant on the redundancy situation.

**More information:**

[www.gov.uk](http://www.gov.uk)
[www.acas.org.uk](http://www.acas.org.uk)

Redundancy Service Helpline 0330 123 1100
Maternity, paternity, adoption rights and parental leave

Your personal assistant is allowed to have maternity, paternity, adoption and parental leave and pay.

All pregnant employees 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. They may also be eligible for additional paternity leave and pay if their partner returns to work before the end of their maternity/paternity leave. Where a child is adopted the position is similar.

An employee is allowed reasonable time off to deal with an emergency involving a dependant. A dependant could be a spouse, partner, child, grandchild, parent or someone who depends on you for care. For more information please visit www.gov.uk/time-off-for-dependants.

Employers can get back most or all of these payments from the Income Tax and National Insurance contributions they pay.

Your personal assistant may be entitled to parental leave (unpaid leave to look after their child’s welfare). Parental leave is limited to four weeks for each child, each year. Eligibility for parental leave is explained here www.gov.uk/parental-leave/entitlement.

More information:
www.gov.uk/browse/working/time-off
Telephone 0300 456 3565
Health and safety

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

**What you must do:**

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

If you employ five or more 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.

**More information:**

Health and Safety Executive [www.hse.gov.uk](http://www.hse.gov.uk)

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Health assessments for night workers:

If any of your PAs are going to be night workers, you must offer a free health assessment, carried out by a qualified health professional, before they become a night worker. Your PA doesn’t have to accept a health assessment. You’ll need to keep confidential records of any assessments (or dates when they may have been offered, if you PA didn’t want one).

**More information:**

[www.gov.uk/night-working-hours/health-assessments](http://www.gov.uk/night-working-hours/health-assessments)

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Your direct payment adviser, local support organisation or the organisation that provides any funding you receive should also have lots of information on health and safety.

**More information:**

You will find templates for a safety in the home checklist and risk assessment in the templates booklet
Insurance

Employer’s Liability Insurance and/or Public Liability Insurance is essential. If you receive direct payments or a personal health budget, you should check that your local authority or clinical commissioning group has included Employer’s Liability Insurance in the amount it gives you.

It’s a good idea to have comprehensive house insurance to cover your property and its contents. You may want to include cover for accidental damage. You should tell your insurer that you are employing people to work in your house. As an employer you have a legal duty to insure against accidents or injury to your staff, or accidents or injury caused by them while they are working for you.

You may also need to think about travel or car insurance, for example if your personal assistant is going to be using your car. If you will be travelling with your personal assistant in their car, they will need to be insured to use their car for work.

It is worth looking carefully at what your insurance policy covers and any benefits it may include:

- some insurers specialise in Independent Living Insurance (insurance for personal assistant employers). As part of some of these policies you are given access to employment advice
- some Independent Living Insurance policies may also help you meet the costs involved in making staff redundant (depending on circumstances) and/or recruitment costs for a replacement personal assistant following a dispute.

Your direct payment adviser local support organisation or the organisation that provides any funding you receive can give you options for taking out insurance.
Keeping records

As an employer, by law you need to keep the following records – these are called statutory records:

- tax and national insurance information
- for most workers it is advisable to keep records of individual hours worked to enable averaging over a period to meet the requirements of the Working Time Regulations 1998
- holidays, again for the Working Time Regulations 1998
- pay, to ensure the requirements of the Minimum Wage Act 1998 are being met, and to meet the statutory requirement that workers are issued with pay statements
- paid sickness (more than four days) and Statutory Sick Pay
- accidents, injuries, diseases and dangerous occurrences. The Health and Safety Executive can advise on particular requirements and necessary assessments.

**NOTE:** All confidential information should be stored in a secure place.

**More information:**
ACAS www.acas.org.uk Telephone 0300 123 1100
Personal data and record keeping
www.gov.uk/personal-data-my-employer-can-keep-about-me

Make sure you understand your duties and responsibilities as an employer.
Notes
Notes
Different formats of this toolkit are available on request from Skills for Care.

Please email marketing@skillsforcare.org.uk or call 0113 245 1716