

Kent County Council

Direct Payments Factsheet #7

Self-Employed Personal Assistants

1. Who is this factsheet for?

This factsheet is for direct payment users who pay self-employed PAs, or who are thinking about paying a self-employed PA. It is produced by Adult Social Care and Health. If it does not give you all the information you need, please contact us; our details are at the end of this factsheet.

2. What is a self-employed PA?

A person may wish to use their direct payment to pay a Personal Assistant (PA) to help them with meeting their needs. If you decide to pay a PA, you will need support from a Direct Payments Support Worker.

You may decide to treat your PA as self-employed, or your PA may tell you that they are self-employed. This means:

- you will pay them without deducting any tax, national insurance, or pension contributions from them – they should be paying their own tax and national insurance
- they will not receive any holiday pay
- they will not have a contract of employment with you
- they should show you their terms and conditions of service and give you a service contract to sign
- they will set their own fees
- they will invoice you for their services
- they must have their own Liability insurance
- they will have obtained their own current DBS check
- it is their responsibility to provide any major pieces of equipment they need to do their job
- they will arrange and pay for their own training
- they should provide someone to cover for them if they are away

3. What are the risks of paying a self-employed PA?

Whether someone is employed or self-employed is referred to as their status. You are responsible for ensuring your PA's status is correct and it is important that you check their status for tax, employment law and pension auto-enrolment purposes.

Remember, a PA may be treated as self-employed by HM Revenue & Customs (HMRC) for tax purposes but still be considered an employee in employment law, or for auto-enrolment into a workplace pension.

The final decision on a PA's status is not a matter of individual choice. It will be decided according to case law by either HMRC or an Employment Tribunal. If you get your PA's employment status wrong there could be serious consequences:

- If HMRC decide your PA should have been treated as an employee, you may be liable for any tax, NIC and possibly penalties due
- If an Employment Tribunal decides your PA should have been treated as an employee, you may have to pay the PA for unfair dismissal, which could be many thousands of pounds
- If the Pensions Regulator decides your PA should have come within the scope of auto-enrolment, they may also levy penalties on you as the employer

It is important to remember that KCC will not pay these liabilities for you.

4. How can I check my PA's status?

If your PA claims to be self-employed, or you decide to treat your PA as self-employed, there are some steps you can take to check that this is acceptable:

- There is more information about working out a PA's status on the HMRC web site: <https://www.gov.uk/employment-status/employee>
- HMRC also have an online Status Indicator Tool on their web site: <http://tools.hmrc.gov.uk/esi/screen/ESI/en-GB/summary?user=guest> This can be completed anonymously and will produce a 14 digit ESI reference number on the outcome screen and the result can be downloaded or printed out
- You can ring HMRC to talk to someone about your PA's status on 0300 123 2326. More details can be found here: <https://www.gov.uk/government/organisations/hm-revenue-customs/contact/status-customer-service-team>
- You can ring the Pensions Regulator Helpline on 0345 600 1011
- You can ring the ACAS Helpline on 0300 123 1100
- Or you can ring the employment law helpline provided by your insurance company

Remember, it is your responsibility to ensure you get your PA's status right or there could be serious consequences.

5. Frequently Asked Questions

My PA already works as a self-employed person in another job. Does this mean they are also self-employed when working for me?

No. It is important to remember that someone can be self-employed in one job but employed in another. For example, your PA may be self-employed as a child minder, but this does not mean that they will be self-employed in the work they do with you. You will need to check as outlined above.

My PA only works for me. Are they self-employed?

This suggests that your PA is an employee, not self-employed. You need to check as outlined above.

What does HMRC take into account when deciding if someone is employed or self-employed?

More information can be found on the HMRC web site here:

<https://www.gov.uk/employment-status/employee>. These are some of the factors they will use to determine your PA's status:

- they're required to work regularly unless they're on leave, eg holiday, sick leave or maternity leave
- they're required to do a minimum number of hours and expect to be paid for time worked
- a manager or supervisor is responsible for their workload, saying when a piece of work should be finished and how it should be done
- they can't send someone else to do their work
- the business deducts tax and National Insurance contributions from their wages
- they get paid holiday
- they're entitled to contractual or Statutory Sick Pay, and maternity or paternity pay
- they can join the business's pension scheme
- the business's disciplinary and grievance procedures apply to them
- they work at the business's premises or at an address specified by the business
- their contract sets out redundancy procedures
- the business provides the materials, tools and equipment for their work
- they only work for the business or if they do have another job, it's completely different from their work for the business
- their contract, statement of terms and conditions or offer letter (which can be described as an 'employment contract') uses terms like 'employer' and 'employee'

My PA lives in and was introduced to me by an agency which charges me a monthly fee. I have a different PA every few weeks, which is arranged by the agency. They have said my PA is self-employed. What steps should I take?

You should take the same steps as outlined in 4. above to ensure that it is ok to treat your PA as self-employed and you will not be responsible for any liability at a later date. You

should also check that they are covered by valid insurance and have a current DBS check. More guidance would be available from the ACAS Helpline on 0300 123 1100.

6. What to do next

If you want more information on direct payments you can contact your Practitioner or contact the Direct Payment Support Team on:

Telephone: 03000 413 600

Email: direct.payments@kent.gov.uk

Or you can contact your Direct Payment Support Worker.

This leaflet is available in alternative formats and can be explained in a range of languages.