

Self-directed support

Employing Your Own Staff

Many people using self-directed support choose to employ their own staff. This brings with it the role and responsibilities of being an employer.

This fact sheet is an introduction to employing your own staff. It is important to get good advice and support before becoming an employer. The fact sheet tells you where you can find more information and advice.



To get more help contact In Control.
Tel: 0121 4745900
Email In Control
help@in-control.org.uk

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www.in-control.org.uk/factsheets



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The basic facts

A personal budget helps you choose what support you want and when you want it. Instead of having services organised by your local agency or council, you directly receive payments. This allows you to choose who provides you with your support and who comes into your home.

You can manage your budget yourself and choose to employ your own staff (such as personal assistants) if you want to. You can also have someone else, such as an agency, trust or another person, to help you. More and more people who use social care services are beginning to employ their own workers.

People have found that it gives them the most flexibility and control, but it comes with responsibility. For most people this is a new role which they don't know much about.

If you want to choose and employ your own staff it means you become an employer. You then must meet the legal requirements involved in employing people.

If you choose to become an employer, you may find it helpful to get support. For example, you may get support from a broker (see Fact sheet 6 – Support brokers), a direct payments support service paid for by your local authority, or a centre for independent living.

This fact sheet will help explain how this works.



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More information about employing your own staff

If you want to employ your own personal assistant or other staff, the first step is finding someone who is suitable and will help meet your support needs.

To help find the right employee, you can:

- Put together a job description and person specification – your support plan may help when thinking of the tasks you would like them to help you with.
- Decide on a rate of pay – remember that the cost of employing someone is more than just the hourly rate you pay them. You will have to pay Employer's National Insurance contributions. You will have to pay for the employee to take annual leave, and cover the cost of someone else doing the work while they are away. You may incur other costs such as insurance, training, and payroll company fees. You should bear this in mind when setting a rate of pay, and when negotiating your resource allocation with the local authority.
- Decide how you want people to apply – you could just ask people to send their CV to you and a letter telling you why they are the right person for the job. Or you could put together an application form if there is certain information that you want people to give.
- Advertise the job – this can be telling people you know about the job and putting adverts in local shops, newspapers and at the job centre. The advert should be as short as possible while giving information on what the job involves, the hours and pay, what kind of person you are looking for, how to apply and a contact number. If you will be carrying out a check with the Criminal Records Bureau, it is good practice to state this in the advert.
- Shortlisting – this will help you choose the best people to interview. It is important to look through the applications to find the ones that best meet what you are looking for. Remember to be fair.



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- The interview – you may want to ask for help when interviewing people, maybe a friend or family member so they can give another opinion. After the interviews, you need to decide who is the best person to support you.

When recruiting someone, you will need to make sure that you follow the requirements of the Equalities Act 2010. This law helps to make sure that everyone is treated fairly, and no-one is discriminated against. If, for example, you wish to employ a personal assistant of a specific gender, you will need to make sure this is an occupational requirement under the act. The act also limits the questions you can ask about health or disability before a job offer is made. You can find out more at www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/recruitment/

When you have decided who to give the job to you will need to contact them to offer them the job. You will need to carry out some checks before they start work. You should explain clearly that your offer of work depends on these checks being satisfactory:

- You should check the person is who they say they are. You can check a person's identity by requesting original copies of documents - such as passports, birth certificates and driving licences. You can also ask for copies of documents that confirm that the person lives where they claim they do - eg by providing a recent bank statement or utility bill with their name and address on.
- It is a good idea to take references, in particular to make sure that you have a reference from a current or most recent employer, or from someone like a college tutor if the person has not worked before. References should not be from their family members. Most employers will ask for at least two references.
- You can carry out a Criminal Records Bureau (CRB) check. You can read more about these in our fact sheet 14, and at www.crb.homeoffice.gov.uk



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- The Independent Safeguarding Authority (ISA) holds lists of people who are barred from working with children and vulnerable adults. The government is changing the way the ISA and CRB work. It is important to check that you know what the current rules are when you employ someone. You can find this out at www.isa-gov.org.uk
- You must check that the person is allowed to work in the United Kingdom. If you don't you could be breaking the law. Even if you think that a potential employee has the right to work in the UK, you should still make the necessary checks. You should ask candidates to provide evidence of their right to work in the UK by producing original copies of documents specified by the UK Border Agency You can find out more about this at www.ukba.homeoffice.gov.uk/employers/preventingillegalworking

You can find out a lot more about these checks at

www.businesslink.gov.uk

You should also make sure you let the other people that applied for the job know that they were not successful.

More detail

Once you have chosen and employed your personal assistant or staff member then certain things need to be put into place such as contracts, sickness pay and the number of holidays. You will also need to know about your legal responsibilities.

Employment contracts: You should have an employment contract so that both you and your employee understand and agree the details of the job. It is very important to get good advice when writing an employment contract. Business Link (see the link at the end of this fact sheet) can help you to put together a contract. As your ability to pay staff is dependent on continuing funding, it is advisable to clearly state that the contract of employment is for a fixed period (for example until the same date as your funding has been agreed to), that it can be renewed if funding continues, and that it can be terminated if funding is withdrawn.



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Probationary periods: It is a good idea to agree a probationary period. This works like a trial so that you have the chance to find out if the person is the right for the job. A probationary period is usually between three and six months. You will have a much better idea of whether things are working out after this time.

Equality legislation: These are laws that make sure everyone is treated equally. The Equality Act 2010 brings together lots of different equality laws, many of which we have had for a long time. The Act prevents discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, sexual orientation. These are called “protected characteristics”. You can find out more at www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers.

Holiday entitlement: All employees are entitled to paid annual leave. At the time of writing (January 2011), this is 5.6 weeks per year. If your employee works part time, or their hours change from week to week, you can get help to work out how many hours it may be easiest to calculate this in hours on websites such as www.businesslink.gov.uk.

Sickness: If an employee is sick, they will be entitled to Statutory Sick Pay. Some employer's offer additional sick pay. You should make sure your employees know what they will be paid when they are off sick, and what you expect them to do to report their sickness to you.

Minimum wage legislation: You must make sure that you are paying your employee at least the minimum wage

PAYE (Pay As You Earn – Income Tax & National Insurance): Employers are responsible for making sure that employees pay the right Income Tax and National Insurance. You will need to register with Her Majesty's Revenue and Customs (HMRC). Income Tax and Employee's National Insurance contributions should be taken from the employee's salary before it is paid to them. This is called Pay as You Earn (PAYE). In addition, the employer must pay Employer's National Insurance contributions.



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Many people find it useful to use an organisation such as a payroll company, a broker, or direct payments support service to help with this. If you decide to do this yourself, it is a good idea to use up to date computer software which does the calculation for you. HMRC will tell you how to make tax and national insurance payments, and you will have to complete an annual return. You can find out more at www.hmrc.gov.uk/paye/intro/index.htm

Health and safety: As an employer, you are responsible for the health and safety of people you employ while they are at work. For example you must make sure they have the equipment and training they need to do their job safely. You can carry out a risk assessment to decide what could harm people and what precautions should be taken to prevent this.

Insurance: As an employer you must, by law, have insurance in place to cover any accidents that may happen to your staff while working for you. This is called Employer's Liability Insurance. It is also a good idea to have insurance to cover your property (your home and possessions) while you have people working in your home. Some insurers offer specialist policies to people who employ personal assistants. Some offer an employment law advice service as part of the policy. It is a good idea to make sure your insurance includes legal cover and meets all your needs.

Training: You may also want to provide training for new staff. This involves explaining your needs and showing them how to carry out their tasks. There may also be the chance for new staff to go on short courses or longer training programmes, such as NVQs, that will help them do their job better. It is a good idea to include the cost of training in your support plan. Remember to include the cost of paying your staff for the time they are being trained. Some local councils and other organisations may provide some free training which your staff can go to.

Grievance and disciplinary procedures: It is important that employee's know what they can do if they are not happy with something that happens at work. It is also very important that they know what you expect of them, and how you will deal with any problems. Your rules and procedures should be set out in writing and follow the good-practice principles set out in the Acas code of practice on disciplinary and grievance procedures.



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You can find this at www.acas.org.uk You may include rules about issues such as absence, timekeeping, performance, health and safety, personal appearance, discrimination, bullying and harassment, smoking, and alcohol and drugs consumption, use of your facilities and equipment for personal reasons in work time. You should also include examples of things that would be considered to be "gross misconduct" and could lead to immediate dismissal, for example violence or theft. You should be clear that these are just examples, and other offences could fall into this category. If you do have a dispute with your staff, it is very important to seek advice as soon as possible, so that you can protect yourself, treat staff fairly, and avoid the risk of a costly employment tribunal.

Maternity, paternity and adoption rights: Employees have certain rights to leave for maternity, paternity and adoption. Some of these rights are for unpaid leave. There are some entitlements to payments such as Statutory Maternity Pay. Some employers offer additional paid or unpaid leave above the amount stated by law. It is important that your contract of employment states clearly what the employee's entitlement is, and that as the employer you are aware of the statutory entitlements.

Redundancy: If you no longer need to employ someone to do the job they have been doing, you may be responsible for making a redundancy payment. You will need to check what the legal requirements are at the time.

There are links at the end of this fact sheet to organisations and websites which can help with these things.



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Examples

Mr E

Mr E felt he was stuck at home waiting for agencies to come and provide care for him. He told us that they never came on time and then did not give him the time allotted to him. He felt this arrangement made him more dependent.

Employing his own staff gave him a whole new outlook on life. He could leave the house and do social activities using his personal budget. He has become active in his community and has developed new friendships. He learnt how to do his own payroll and now uses the skills he has learnt to manage his own care to support others.

Miss S

Miss S has mental health problems. Most of the time, she can manage her staff and deal with payroll herself. At the times she cannot do this she has an arrangement with a broker who deals with it for her. Her staff alert the broker they need to step in.

Miss S subsequently feels confident her care needs will be met when she cannot be in control without having to lose the independence of having her own staff, or approach the crisis team. Her hospital admissions due to crisis are a lot less frequent.



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There is a lot of information about self-directed support on In Control's website: www.in-control.org.uk

Other support and advice on employing your own staff can be found on these websites:

Being the Boss

www.beingtheboss.co.uk

Business Link UK

www.businesslink.gov.uk

0845 600 9 006

Direct Gov

www.direct.gov.uk/employment

NAAPS

www.naaps.co.uk

Skills for Care

www.skillsforcare.org.uk

Personal Assistant Net

www.panet.org.uk

National Centre for Independent Living

www.ncil.org.uk

Advice line: 0845 026 4748

ACAS

www.acas.org.uk

ACAS Helpline Monday-Friday, 8am-8pm and Saturday, 9am-1pm:

08457 47 47 47

Criminal Records Bureau

www.crb.homeoffice.gov.uk

0870 90 90 811

Her Majesty's Revenue and Customs (HMRC)

www.hmrc.gov.uk/paye/intro/index.htm

08457 143 143

Equality and Human Rights Commission

www.equalityhumanrights.com

0845 604 6610



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