INTRODUCING EMPLOYING STAFF

Introduction

This factsheet introduces what it means to employ someone (a ‘Personal Assistant’) using Direct Payments. Most people come to Direct Payments having never employed anyone before and it can seem daunting. This factsheet helps you to realise that you will have a number of responsibilities, but you will be helped to understand these and gradually be trained to carry these out.

This factsheet is simply an overview and you’ll receive more detailed information later.

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1. Introduction

1.1 Before you employ a Personal Assistant

Social Services or the NHS will need to assess that you are eligible to receive a Direct Payment. As part of this process you will put together a Support Plan which you will agree with Social Services. A Support Plan describes the ‘outcomes’ (goals) that you need to achieve with your Direct Payment money and the way that you will achieve those outcomes. Usually you will seek to achieve your outcomes by employing your Personal Assistants (PA’s) and as such their job description will depend on your outcomes.

1.2 About Independent Lives

- Independent Lives is a user-led charity helping people who have care needs to be independent.
- We provide a range of services to help people gain and maintain their independence.
- We listen to what our customers want and develop our services around their needs.
- We invest all surpluses into improving and widening our services.
- We’re led by our members - people with health and social care needs and their carers.
- Independent Lives has been operating Direct Payments support and advice for over ten years - people find that it’s such a success for them, that they recommend Direct Payments to their friends!

2. Employing a PA

Independent Lives can help you to:

2.1 Write a job description

Before you recruit a Personal Assistant, you will need to think about and write down exactly what you want them to do - this will become a job description.

Later on when you start employing a Personal Assistant (PA) this job description will form part of their employment contract.

2.2 Make sure you are in a position to offer a job

Although you can enquire amongst your friends if they might be interested, you should not offer a job before you have certain arrangements in place. Avoid
confusion by not even offering a job verbally before you’ve received training on
becoming a Direct Payment employer. Many people will need to recruit people
they don’t know to do their jobs - Independent Lives can help you do this safely.
You will need to do checks on your potential employees before you confirm the
job - Independent Lives can help you with this.

2.3 Once you have recruited PA(s)

You will need to:

Agree working hours

Your rota of working hours will need to be reasonable to recruit for, and meet
your needs at the same time.

Agree rates of pay

You must not pay someone less than the national minimum wage per hour. We
recommend that Personal Assistants are paid more than this minimum rate -
Independent Lives can help you to calculate what you can afford.

Take out insurance

As an employer, it’s a legal requirement that you have an Employers’ Liability
insurance policy, to protect you and your Personal Assistant in case they become
injured in the course of their work. The cost of this policy will be covered by
your Direct Payments - Independent Lives can help you organise this.

Prepare employment particulars

You must give your Personal Assistant written information about your job,
sometimes referred to as an employment contract. This would include topics
such as working hours, rates of pay, pension, holiday and sickness entitlements.
This is a legal responsibility. Independent Lives can help you with this.

Carry out ongoing responsibilities

You need to pay your PAs appropriately, safeguard their health and safety, keep
a good working relationship with them and iron out problems. You’ll also need
to maintain some records so you can keep track of where your Direct Payment is
being spent and to make sure that you act as a fair employer.

This is not a complete list of everything you’ll be trained on, but it is hopefully
enough to give a sense of what it is like to be a Direct Payments employer.
There are responsibilities and laws that will apply to you, but Independent Lives
will help you to understand these in a step-by-step way. You will gain a lot of
knowledge and skills about becoming an employer and new learning can, at
times, feel off-putting. Most people feel that they have to learn a lot at the
beginning, but one of the main comments disabled people tell Independent Lives about their Direct Payments is that their confidence grows as they progress and it all becomes a lot easier over time.

3. Frequently asked questions

3.1 I’ve found one PA to do all my hours - is this a problem?

Depending on the number of hours you need, and the type of support, it can be sensible to split the hours between more than one PA. No-one can work 52 weeks of the year for you.

All Personal Assistants are entitled to paid holiday, the law requires this. The cost of holiday pay, and of employing another PA to cover for holidays, is included in your Direct Payment - Independent Lives can help you with this.

3.2 How do I arrange cover if my PA is sick or on holiday?

Money for contingency cover is included in your Direct Payments - Independent Lives can help you plan for this. You will also develop your own ‘emergency plan’ to make sure that you have a number of options if your regular PAs are unavailable.

3.3 Do I have to sort out my PA’s tax and national insurance?

You must pay HMRC any income tax, employee national insurance, and employer’s national insurance contributions due. You will need to hold these amounts back from gross pay and send them to the HMRC regularly. The cost of tax and National Insurance contributions are included in your Direct Payments and Independent Lives can help you budget to cover these.

Many people use a Payroll Service to make these calculations, so you don’t need to worry about this.

3.4 Can my PA’s be self-employed?

It’s extremely unlikely. The tax office has very strict rules around this which means that they almost never determine that a PA is operating their own business of self-employment. Almost always, a PA must be directly employed by you.

3.5 Can I pay my PA’s cash?

You should check your agreement with Social Services or the NHS before doing this. For example, it’s against West Sussex County Council policy to do so, although other areas may allow this. It is not generally recommended practice
and you should discuss this with your Social Worker or practitioner before doing it. If this presents a problem, contact Independent Lives for advice.

3.6 What about health and safety?

You will have a responsibility to think about the risks to your PAs and to minimise these, including risks to yourself. Independent Lives will help you to think about how different risks might apply to your jobs and we’ll provide a ‘support sheet’ so you can write this down.

3.7 What type of employment records will I need to keep?

You’ll ask your PA to complete a timesheet showing all the hours they work (preferably on a weekly basis) and get them to sign it. You should keep a copy of the timesheets in case of dispute.

3.8 What type of financial records will I need to keep?

You must keep proper records of all the payments you make, together with the receipts.

You should make all payments from your Direct Payments account by cheque, standing order, direct debit or electronic transfer (for example, Internet banking or telephone banking) - not cash. Funders will want records of your spending, for example in West Sussex you will need to give the County Council a copy of your bank statement from your DP bank account each month. Check with Social Services or the NHS to see what they require.

After you’ve drawn up a budget with Independent Lives’ help, you’ll be able to check that your spending is staying on track - Independent Lives can help you to learn about this.

3.9 Do I have to pay sick pay and maternity pay?

Your Personal Assistants may be entitled to statutory sick pay or statutory maternity pay - your Payroll Service would help calculate these.

3.10 What happens if my PA is pregnant and needs to take maternity leave?

Pregnant PAs have special legal rights and you cannot refuse someone a job or dismiss her just because she is pregnant. If you are in this situation you would contact Independent Lives for further advice.

3.11 When I employ PAs will other employment law apply to me?

Yes, but that is why you are about to go through a training programme with Independent Lives. Many people find that Direct Payments is the best way to
achieve their support. They have learnt about their responsibilities and found that they’ve been able to carry them out.

3.12 What happens if I have a problem with my PA or I need to sack them?

If you are faced with a difficult situation after you’ve been trained, you could first visit Independent Live’s website to read factsheets that will remind you of key points. After that, you can contact Independent Lives for advice before taking any action. If you wish to end someone’s term of employment, it’s essential to follow the correct procedure - otherwise you could be breaking the law. But that is why Independent Lives operates Direct Payments services to help you.

This factsheet has been produced by Independent Lives for use within its advice and support services. We aim to ensure the information is as up to date and accurate as possible but do be aware some of the content is subject to change.

If you would like further advice on this topic or to access to any of the factsheets or support sheets referred to in this document please visit www.independentlives.org or call us on 08456 0123 99 or 01903 219482

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