

24/08/2017

EMPLOYING PERSONAL CARE WORKERS

Hiring a personal assistants or care workers can be very empowering for many disabled and older people but it often sets up a unique and sometimes challenging employment relationship.

Budget holders or their relatives can find themselves taking on the role of employer for the first time, uncertain of many of the responsibilities and legal obligations that entails.

Personal assistants can also be uncertain about their rights and there may be a lack of clarity about the nature of the duties to be performed in such a domestic setting.

Questions and Answers:

My employer is an elderly gentleman who employs 3 care workers. He has begun to criticise everything I do, constantly finding fault and undermining me. As a result, he makes me feel anxious and stressed. Is there anything I can do about this?

Everyone has a right to be treated with dignity and respect in the workplace. There is also a legal obligation on your employer to ensure that a care worker's health, safety and welfare at work are protected; this includes preventing and dealing with bullying and harassing behaviour.

Try talking to your employer first. He may not realise how his behaviour has been affecting you. Decide what you want to say beforehand to describe what has been happening and why you object to it. Stay calm and be polite, sticking to the facts. The discussion should lead to an agreement that the behaviour will cease.

If you feel unable to discuss the matter with your employer yourself, you could ask one of the other care workers to do so on your behalf, especially if they have also witnessed what has been happening. Get support by talking to a friend, colleague or even the employer's Direct Payment Advisor (available through your local county council) and let them know what is happening. You may find it useful to record incidents to help you recall them later.

I am often required to do some shopping for my employer. However, he often gets confused about the items I bought. Is there anything I can do about this?

It is a good idea for you and your employer to sit down and discuss the job at regular intervals so that you can both understand what might need to be improved and likewise what is working well. Without good communication between you mistakes might be made and conflicts might arise. When a problem does arise, it is best to be open and honest with your employer because it is important to sort out these issues as soon as possible.

As a first step set aside time to discuss the matter with your employer to try to reach agreement about checking and recording what he has asked for and the monies given to you for purchases, paying bills etc. You will need to provide receipts to him and ask him to keep them safe for a set period of time in case of any future dispute. You can make things more transparent by ensuring that you keep your personal purchases separate from items you have bought on his behalf. If you are collecting money on your employer's behalf (**like benefits, pension etc**) you will need to establish how and when this will be done and what should happen to the money.

It may be easier and result in less confusion if this is paid directly into his bank account.

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I am a care worker and my employer has just bought a dog and is asking me to walk it. I am not happy with this as I don't think it should be my responsibility.

Look at the job description in your written statement of terms and conditions to see what type of duties are listed there. If you don't have any written terms then think back to what you agreed with your employer. Your employer may feel that asking you to walk the dog comes under one of the duties already agreed, such as carrying out any domestic duties. If you don't think that this is covered, or have specific concerns about this request then speak to your employer informally explaining why you are reluctant to do walk the dog. You may be able to reach a compromise.

For example, if you are worried that walking the dog will give you less time to complete your other duties, your employer may agree to vary what he asks of you.

I have just found out that I am pregnant and am worried about the impact my job will have on my baby. I am a care worker and my job involves lots of lifting.

The first thing to do is inform your employer in writing that you are pregnant. She will look at your job to see if there are any risks to you or your baby. If this assessment identifies a problem, your employer should make changes to ensure that you and your baby are kept safe. For example, they may be able to borrow a hoist from the physio or occupational therapist to help with the lifting. If it is not possible for you to do your job safely your employer might ask you to undertake other duties or stay at home until there is no longer a risk to you or your baby. You will receive your normal rate of pay during this time.

You may also wish to speak to your midwife to establish if there are any risks specific to your pregnancy. If this highlights any specific concerns you should talk to your employer.

I have been given a job by a lady to look after her mother. She insists that I have self-employed status. Am I an employee or self-employed?

Employees work under an employment contract which is sometimes known as a contract of service. Usually you would have something written down, but you can still be an employee without a written contract.

Some signs that you might be an employee are:

- You have to do the work yourself - you cannot send someone else to do your work or sub-contract it
- The person who provides you with work can tell you when and how to do your job
- You do not do work for a number of different customers - you work exclusively for one person/business
- You are not responsible for your own Tax or National Insurance contributions; these are deducted straight from your wages
- You work at your employer's premises and use their tools or equipment
- You are covered by a disciplinary policy.

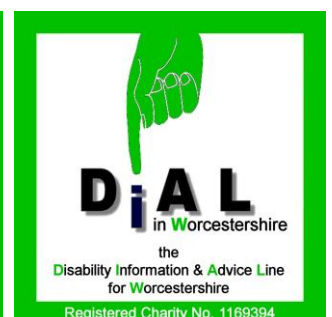
Self-employed people are usually identified by the fact that they are in business for themselves.

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- You provide a service to more than one person
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- You can decide when or how to do the work
- You have a financial risk or reward from your business. For example you may agree to do a job for a set price and are responsible for any additional costs that arise and benefit if it can be done more cheaply
- You send invoices for the work that you do.

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I wish to employ 2 personal care worker to work 3 consecutive days per week from 8 am to 8 pm and 3 on-call sleeping nights from 10 pm to 8 am. Can I do this?

Yes, but you will need to be aware of the rules around working hours.

The Working Time Regulations provide rights to:

- a limit of an average 48 hours a week on the hours a worker can be required to work, though individuals may choose to work longer
- 5.6 weeks' paid leave a year
- 11 consecutive hours' rest in any 24-hour period
- a 20-minute rest break if the working day is longer than six hours
- one day off each week
- 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.

There are different rules for young workers (aged under 18 years old but over the compulsory school age).

If your care worker regularly works at night you may have to offer them a free health assessment to make sure that they are fit to work at night.

You may find it helpful to speak to **www.health4work.nhs.uk** who can offer Occupational Health advice to small employers. You should also check on a regular basis whether there would be any health and safety risks to the night work.

The Health and Safety Executive (**www.hse.gov.uk**) can provide advice on risk assessments.

I am going into hospital for an operation and will be convalescing at a rest home afterwards. What happens to my personal care worker? Can I insist that she takes this time as her paid holiday period?

There are a number of options for you to consider depending on the contractual arrangement and the length of time away.

You can ask the carer to take paid holiday on particular days by giving appropriate notice. You will need to specify when you want her to take leave and the notice must be twice as long as the period of leave required to be taken. For example, if you need the carer to take 2 week's paid holiday at a particular time, you must give them at least 4 week's advance notice.

Another option is to 'lay-off' the care worker (not provide them with work for a short period). You will need to have a specific clause in the contract of employment allowing for lay off without pay do this lawfully. If not, you would need the carer to agree in writing to be laid off and not be paid their normal rate of pay. During this time you would be required to pay a lower level of pay known as "guarantee pay".

If the period of absence is likely to be very lengthy, you may decide to terminate the contract of employment by reason of redundancy. If your carer has 2 continuous years of service or more, they will be entitled to redundancy pay as well as notice and any outstanding holiday pay.

You should discuss the situation with your carer so that they know what is happening. It can be helpful to explain what options are available as the care worker may have a preference or be willing to be flexible. For example she may be willing to accept a lay off for a set period if she knows she can get some temporary work from another employer during this time.

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My father died suddenly and the care worker he employed says that I am liable for her redundancy pay and notice. Is this right?

When an employer dies it is classed as a frustration of contract. This means their contract ended on the day the employer died. The employee would not be entitled to notice pay but would qualify for a statutory redundancy payment if they had worked for your father for at least two years, unless the personal representative of his estate (sometimes known as the executor) offered to renew the contract within eight weeks.

If your father was the direct employer then the redundancy pay, any outstanding wages and holiday pay would have to be paid out of his estate.

You might find it helpful to sit down with the employee and explain what is happening and when she can expect to get paid. If you are not the person dealing with your father's estate then you can pass on the contact details to allow the employee to speak directly to the personal representative.

I'm thinking of employing a care worker but am confused about bank holidays. Do I have to allow time off on these days or do I pay overtime?

Your care worker will be entitled to 5.6 weeks' holiday a year but the law doesn't say that this has to include bank holidays. Any right to paid time off on bank holidays depends on what has been agreed between the employer and employee so it may be worth thinking about what you need from your care worker. Are there specific days in the year when you know that you will not need their help, for example if family visit for Christmas? You can write into the contract that these will be days when the care worker must take annual leave. Remember to be specific, the bank holiday for Christmas may not fall on the 25th December - do you want them to take Christmas Day or the bank holiday off?

If you need help every day of the year then you will have to think about getting cover for the days that your care worker takes as leave. This may prove more expensive on bank holidays so you may prefer that your regular carer has these as normal working days and takes their annual leave at another time.

As with time off, there is no obligation to pay overtime rates on a bank holiday and would depend on any agreement that you have reached with your employee. You should record what you have agreed with your employee in their Written Statement of Terms and Conditions.

My care worker has started turning up late and doesn't let me know what is happening. I'm finding this really difficult as without her help I can't get washed and dressed but am not sure how to raise this with her.

The first step would be to talk to your employee to find out what is causing her to be late and explaining the impact that this is having on you. This can help to highlight any difficulties that the employee is having. For example, if the person who usually takes their children to school is ill you may be happy to arrange a temporary variation in their hours to cover this.

It also gives you the opportunity to explain what you need from them and why it is important that they are punctual. This may be a good time to write down what you expect them to do if they are unable to get to work at the agreed time, if you haven't already. For example you can ask that they ring you if they are going to be more than five minutes late.

Confirm in writing what improvements you require or changes you have agreed. Should problems persist, you may wish to signal your dissatisfaction by taking formal action.

The **Acas Code of practice: Discipline and grievances at work** sets out principles for handling disciplinary and grievance situations. Can be got from www.acas.org.uk

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Criminal Record Checks

Where carers are employed to care for a vulnerable disabled person, young adult or child they should be able to provide an up-to-date, satisfactory **Criminal Records Bureau certificate (CRB)**.

The employer usually has the responsibility of sending for a CRB check that provides satisfactory CRB status to allow the employee to perform the required work for that employer. Therefore, where individuals employ their own carers, it is advisable to carry out CRB checks for each carer.

Where the carer already has a current certificate you should check that it has been obtained in connection with the type of work that you will require the carer to carry out: **caring for a vulnerable person.**

Insurance

If anyone is employing their own carers they must, by law, **obtain employer's liability insurance**. The certificate should be displayed in the workplace.

If a number of carers are employed - or more carers are taken on after the original insurance is obtained - it is advisable to inform the insurance company of this and of any other change of circumstances.

The insurance may be organised in price bands according to the number of people employed, so do ensure you have adequate insurance.

Before you employ any carer, Please try to ensure you have access to support and an adequate source of professional legal advice.

We cannot be held responsible for the level of service provided by the organisations included in this publication.
All details correct at time of publication, if you find that this info is inaccurate please call us.

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