



Fact Sheet Employment Legislation

This Fact Sheet gives some useful information around Employing your Personal Assistant (PA). It is for general guidance. DASH have checked the information to the best of its ability, but are not responsible for content accuracy. For more up to date information and advice around employment call **ACAS** on **0845 747 4747**.



Rate of Pay

Under Direct Payments in Hillingdon, it is up to the recipient how much they pay the PA they are employing, however there are some rules around payment you should remember.

The national minimum wage is different depending upon age.

- If the person you are employing is aged under 18 (but above compulsory school age), the minimum you can pay is £3.57 an hour (from 1/10/09).
- If the person you are employing is 18-21 years old, the minimum you can pay is £4.83 an hour (from 1/10/09).
- If the person is aged 22 years or more, the minimum you can pay is £5.80 an hour,(from 1/10/09).

Most DP users pay around £7.00 to £9.00 an hour, however the rate of pay is for you to decide. (Remember to make provision for paid annual leave when working out a rate of pay).

Contract of Employment

It is good practice to provide your employee with a Contract of Employment which sets out his/her terms and conditions of employment and the disciplinary procedure. In the unlikely event that you should need to use the disciplinary procedures, it is vital that you follow the stages set out in the contract. If you do not provide a contract, you **must** at least issue your employee with a **written statement setting out the main terms and conditions of their employment within two months of them starting work.**





Working Time Limits

- PA's cannot be forced to work for more than 48 hours a week on average. Working time includes travelling, where it is part of the job, working lunches and job-related training. Working time does not include travelling between home and work, lunch breaks, evening classes or day-release courses.

Working at Night

- If you are employing a PA to work at night you should offer a health assessment.
- A night PA is someone who normally works at least three hours at night.
- Night time is between 11pm and 6am, although employees and employers may agree to vary this.
- In Hillingdon, a Direct Payment will not cover the pay for when a PA is asleep. (E.g. the money will be worked out to cover care for when the PA is awake).



Time Off

- A PA is entitled to a rest of 11 uninterrupted hours between each working day.
- A PA is entitled to one whole day off a week. Days off can be averaged over a two-week period, meaning PA's can take two days off a fortnight. Days off are taken in addition to paid annual leave.

Rest Breaks at work

- If a PA is required to work for more than six hours at a stretch, he or she is entitled to a rest break of 20 minutes. The break should be taken during the six- hour period and not at the beginning or end of it. The exact time the break is taken is up to the employer to decide. Employers must make sure that PA's can take a break (this is a health and safety regulation).

Paid Annual Leave

- Every PA, whether part-time or full time, is entitled to 5.6 weeks (or 28 days if your PA works a five day week), pro rata, **paid** annual leave a year (capped at 28 days).
- A week's leave should allow the PA to be away from work for a week. The leave entitlement under the regulations is inclusive of bank holidays.
- PA's must give notice as to when they want to take leave.
- Employers can set the times that workers take their leave, for example, for Christmas shutdown.
- If a PA's employment ends, he or she has a right to be paid for the leave time due and not taken.

If you need help with working out holiday pay due to a PA who is leaving, call the Direct Payment Support Team at Dash.

Giving notice to take leave

Employer and PA's should agree how and when to give notice of when leave is to be taken. PA's should give notice to take leave. The notice must be twice as long as the period of leave requested. e.g. if they want to take a weeks holiday, they have to give you two weeks notice. The employer can refuse permission by giving notice at least as long as the leave requested, i.e. one week.

It is important to keep records showing the days worked. We suggest you keep time sheets, which we can supply you.

Statutory Maternity Leave

All pregnant employees whose baby is due on or after 1 April 2007 are entitled 52 weeks maternity leave made up of:

- 26 weeks ordinary maternity leave, and
- 26 weeks additional maternity leave

to align with current and proposed changes to SMP entitlement.

This means that SMP may be payable for the first 13 weeks of the additional maternity leave, although the other differences between ordinary and additional maternity leave have not been changed.

The employee should tell her employer when she expects to stop work and start her leave by the Saturday of the 15th week before the week baby due and when she expects to return to work. She can change her mind about the start date but should give her employer 28 days notice of her intended new start date.

Statutory Maternity Pay

A woman can get Statutory Maternity Pay (SMP) when she stops work to have her baby, if she worked for the same employer for the last 26 weeks into the

15th week (the qualifying week) before the week the baby is due (i.e. when the woman is 26 weeks pregnant). For the woman to qualify for Maternity Pay she will need to earn at least £95 a week, and give the employer the correct notice.

Statutory Sick Pay

If a PA is sick for four consecutive days or more, they may be entitled to statutory sick pay from you. If a PA is going to claim Statutory Sick Pay, they must supply a medical certificate after 7 days off sick. More details are in the Statutory Sick Pay Manual for Employer's (E14 supplement) which is available from the Inland Revenue Employment Order Line on 0845 764 66 46 .

Illegal workers

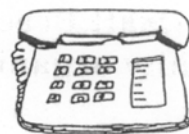
To comply with legislation on preventing illegal working, all new employees should be asked to provide identification. For a list of documents that you can ask for, call the Direct Payment Team at Dash on 0208 848 8319.

If the PA is from one of the countries listed below, they must register with the Home Office and a copy of the application must be kept on file until a copy of the registration is received from the Home Office:

Latvia, Slovakia, Lithuania, Hungary, Estonia, Slovenia, Czech Republic, Poland.

Bulgarian and Romanian nationals can apply for permission to work in the United Kingdom. Bulgarian and Romania nationals cannot start work in the United Kingdom without permission from the Home Office.

If you need any more information about Employment Law or need support surrounding your Direct Payment issues, please contact the Direct Payment Team at Dash on 020 8848 8319.



Useful Names and Telephone Numbers

DASH	0208 848 8319
ACAS	0845 747 4747
For help with matters about employment	
Contact a Family	0207 608 8701
National Centre for Independent Living	027 587 1663
The New Employers Helpline	0845 714 3143
Home Office	020 7035 4848
HM Revenue & Customs Employment	
Order Line	0845 764 6646