

Personal Health Budgets Employers Guide:

Employment status of your personal assistants (PA)

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1. Employment status of your personal assistant (PA)

Cheshire and Merseyside Integrated Care Board (ICB) is committed to ensuring that people holding their personal health budget as a direct payment get the full support they need to further their independence, choice and control. However, the ICB also have a responsibility to ensure that when providing a direct payment to an individual, that the person is fully legally protected and not put at risk from potential unforeseen tax liabilities.

This guide for employers has been put together based on information provided by Skills for Care and the Low Incomes Tax Reforms Group.

2. Who decides if my PA is employed or self-employed?

It is very important to understand that it is your responsibility to correctly decide the 'status' of your PA (that is, whether they are employed or, less commonly, self-employed), based on the specific working arrangements between you, so that you can operate PAYE if you need to.

You cannot just pick a status because it is either better for you or because the PA wants to be self-employed or because the PA states they are self-employed for the work they do for others. Tax law can override what either you or your PA intended. This means that even if you have a contract with your PA that says they are self-employed, if the facts indicate otherwise, HMRC can decide that they must be treated as your employee.

You need to decide the status of any PA that works for you, including ones that you are matched with via an 'introductory' agency (even if the agency calls them 'self-employed'). The only time you do not need to worry about deciding the status of your PA is where they supply their services through their own limited company or through an agency that they are both paid and managed by – in these cases, the responsibility for deciding their status lies elsewhere.

3. How do I decide if my PA is employed or self-employed?

In most cases it is generally straightforward as to whether your PA is an employee or self-employed. The general rule is that your PA will be:

- An employee if they work for you and do not have the risks of running a business
- Self-employed if they run their own business on their own account and are responsible for the success or failure of that business

In deciding whether a PA is working for you or in business on their own account, a variety of factors are relevant. Some of the most important ones in a care and support situation are outlined in section 3:

3. How do I apply the rules?

You will need to carefully consider each of the factors above, based on the relationship you have with your PA and weigh up those pointing to employment against those pointing away from employment. Having done that, a picture will emerge from which employment status can usually be decided.

If you have more than one PA, you will need to decide the status of each of them separately (and you should note it is perfectly possible for someone who does not work full-time to be an employee). Your PA may have another job in which they are self-employed, or they may have a 'Unique Taxpayer Reference' from having been self-employed previously, but all of this is irrelevant – you need to work out their status solely on the work they do for you now.

In general, most PAs would be classed as employees (unless they work through their own limited company or are paid and managed by an agency). This is because the work of the PA is very much determined by the person they care for, which means that the PA may struggle to fall within some of the tests of self-employment.

For example:

- **Mutuality of obligation:** You may rely on your PA to help you with day-to-day living, so they will probably work regular and set hours and not have the ability to turn down work.
- **Control:** Given that care needs are usually very specific, and you will have your own care plan, it is unlikely that a PA will have a great degree of control over what work is carried out and how. Indeed, they would be at risk of negligence if a care plan had been agreed and they deviated from it without prior agreement/good reason.
- **Substitution:** By virtue of the very personal nature of your relationship with your PA, it may not be appropriate for them to be able to send someone else in their place.
- **Provision of own equipment:** This may well not be appropriate or necessary as you may have all the necessary equipment in your own home for use, as it is likely that much will be in the form of adaptations fitted within the property – lifts/hoists, etc.

4. What do HMRC say?

HMRC's guidance in relation to care provided in a client's home, set out in the Employment Status manual (<https://www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4015>), states the following:

'The case law tests normally indicate that a careworker who looks after a client in the client's home is likely to be an employee. In particular there will often be a significant right of control, for example the carer required to arrive at a pre-arranged time and perform tasks at the request of the client. On occasions the facts may indicate self-employment. For example, it may be the case that a careworker looks after a number of people concurrently and has a business organisation in place.'

5. What are the risks of incorrect employment status?

If an employment status is determined as wrong (by HMRC), individuals and their employers may have to pay unpaid tax and penalties or lose entitlement to benefits.

6. Further information and support

You can speak to your NHS team who will offer guidance on your options available to you when considering a direct payment to hire PAs. The ICB is committed to supporting you in having the most effective care provision to suit your agreed needs.

You can also find more information here:

[Personal Health Budget and Integrated Budget Policy Version 1](#)

[Check employment status for tax - GOV.UK](#)

[Understanding the employment status of PAs \(skillsforcare.org.uk\)](#)

We are grateful to Nottingham and Nottinghamshire ICB for permission to use this guide in Cheshire and Merseyside.