

Getting the support you need

Self-employed personal assistants



There's a big difference between the tax and employment status of a personal assistant (PA) who is employed by you and one who's self-employed.

This Fast Fact is designed to help you check if any of your PAs can be treated as self-employed.

What does it mean if my PA is self-employed?

A self-employed person runs a business on their own account and is responsible for the service they provide. They often provide support for more than one client.

- They should show you their terms and conditions of service and give you a service contract to sign; insist on this.
- They must send you an invoice for the service and support they provide showing the hours worked and the support provided; insist on this.
- They are responsible for their own tax and National Insurance deductions.
- They must have their own Liability insurance; insist on this.
- You will not be expected to contribute to sick pay, holiday pay or pensions.

In addition, the PA should provide references from people they've worked for before and should have a recent DBS check.

In deciding whether a PA is working for you or is self-employed, you will need to consider several, including:

- mutuality of obligation - if the PA is self-employed, they will have no guarantee of work from you and are under no obligation to accept any work you offer them.
- right of control - if you can tell your PA what to do, how to do it and when to do it by, this usually indicates that you're their employer. A self-employed PA will have far more control over the work they do.
- right of substitution - if an employee is unable to work (e.g. if they're sick or on holiday), they will have no freedom to send someone else in their place. A self-employed PA, however, will usually have freedom to provide a substitute of their choosing to work in their place if they're unable to work.

How can I check the status of my PA?

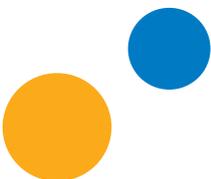
It's your responsibility to check that your PA is registered as a business for tax and you will need to weigh up the factors above to make a decision about your PA's employment status. So that you can be sure, we suggest that you contact the tax office (www.hmrc.gov.uk or call 0845 915 4515 and explain the sort of work you want your PA to do. Revenue & Customs (HMRC) should be able to tell you if it is okay for your PA to be self-employed. You can ask them to confirm this in writing.

What about paperwork?

You will need to keep copies of the invoices that your PA sends you. If you're paying a self-employed PA with your direct payment from Surrey County Council, this is part of your monitoring requirements.

My PA only works for me. Are they self-employed?

No. Working for only one person clearly indicates that someone is an employee. Ask SILC for help with employing your PA.





My PA already has self-employed status. Does this mean that they are self-employed when working for me?

No. Being self-employed in one job does not mean that a PA is necessarily self-employed in another. For example, your PA may be self-employed as a child minder but not for the work they do for you. Check your PA's status with HMRC.

My PA is self-employed but I pay their sick pay. Is this correct?

No. Only PAs directly employed by you are entitled to Statutory Sick Pay (SSP), pensions, maternity rights etc.

My PA is self-employed and I pay their holiday pay. Is this correct?

No. Only PAs directly employed by you are entitled to holiday pay.

I provide Employers' Liability insurance for my PA. Is this correct?

Having Employers' Liability insurance suggests you are the employer and therefore that your PA is not self-employed. Self-employed PAs should fund their own insurance and training.



What could happen if my PA, who I thought was self-employed, goes to an employment tribunal claiming I was the employer and I had dismissed them unfairly?

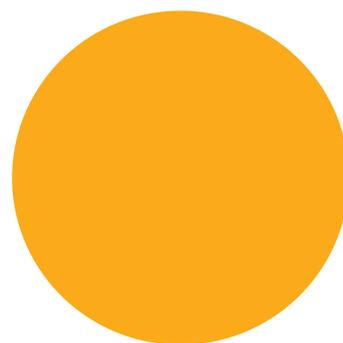
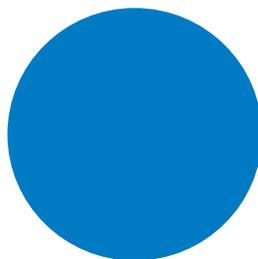
If a tribunal rules that you are the employer, you may have to pay the PA for unfair dismissal. That's why it's essential to check the status of your PA.

What could happen if Revenue & Customs discovers I have been wrongly paying a PA as self-employed when the PA should have been directly employed by me?

If Revenue & Customs judges you to have been the employer, it's possible that you could be required to pay all the tax and National Insurance - plus interest and a fine - going back for years (or even further if they think you've been 'careless'.)

I have a self-employed PA and, when she is ill, she gets someone to cover her shift. Is this OK?

Self-employed PAs may provide someone to cover for them if they're sick, on holiday or otherwise unable to work and the PA providing cover should be appropriately insured. However, it's not a requirement for self-employed PAs to provide cover and you might, for example, use a care agency to cover instead.



Contacting HMRC (also referred to as Revenue & Customs or the tax office)

HMRC New Employer Helpline: [0300 200 3211](tel:03002003211)

HMRC Newly Self-Employed Helpline: [0845 915 4515](tel:08459154515)

www.hmrc.gov.uk/employment-status/index.htm

The HMRC Employment Status Indicator tool is a useful way of working out whether your PA should be employed or self-employed:

www.hmrc.gov.uk/calcs/esi.htm

We're here to help

If you're puzzled about the employment status of your PA, please get in touch.



If you would like this information in large print, on audio CD, in Braille or another format, please contact us.

SILC is a voluntary organisation led and run by disabled people. To find out more about us, call [01483 458 111](tel:01483458111), text [07919 418 099](tel:07919418099), email admin@surreyilc.org.uk or look on our website www.SurreyILC.org.uk

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