

Benefits & Work

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YOUR QUERIES ABOUT EMPLOYING CARERS

Last month **Benefits & Work** covered the issue of a disabled person who received a tax bill for **£35,000** for unpaid employers' tax and national insurance in respect of her full-time carers.

The story resulted in a number of responses from readers with their own concerns about the law relating to employing carers. They passed these on to Holiday Whitehead, their resident barrister.

MINIMUM WAGE

One reader told **Benefits & Work** that they simply hand over their whole direct payment as a lump sum to the person who provides their care, rather than paying an hourly rate. Whether such an arrangement is in breach of the National Minimum Wage Act would depend entirely on how many hours the personal assistant is working for. **If the sum they are paid equates to a figure that complies with the current minimum wage hourly rate of £5.80 per hour, for workers aged 22 years and older**, then they would not be in breach of those provisions. If this was not the case the employer would be breaching the Act and could be pursued for the difference between what they did pay and the statutorily required rate of pay for the whole period they were in breach.

LEGAL AID

Another issue raised related to the availability of legal aid for disabled employers, should they find themselves faced with an employment dispute and particularly one that was heading for an employment tribunal. Unfortunately, employment never has, and still does not, attract legal aid funding for any of the parties involved.

It may be possible to obtain advice from a local advice centre but, depending on the limitations of the centre's funding, that help may not extend to representation at a tribunal. Where support to take a case to a tribunal is available, it is most likely that support will be restricted to employees and not offered to employers. It is assumed that employers are the economically superior party to the proceedings and capable of paying for the services of a legal representative.

WORKER OR EMPLOYEE?

Further queries touched upon the question of what differentiates a worker (**such as a casual or sessional worker**) from an employee. This depends very much on the nature of the work performed, the hours worked, how regularly the work is provided, etc. However, since the introduction of the Part-time Workers (**Prevention of Less Favourable Treatment**) Regulations 2000 there is very little difference between the two types of employment status when it comes to statutory rights and employment protection. The regulations provide for equal treatment '**pro-rata**' as between part-time workers and their full-time counterparts.

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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.

ANNUAL LEAVE

Don't forget that even if the carers are employed for just a few hours per week they are still entitled to statutory paid annual leave, pro rata. **The current allowance is 28 days (5.6 weeks) per year**. The usual way of dealing with this is to calculate the pro rata entitlement by averaging the hours worked over a 17 week period.

You can use the online annual leave calculator at www.businesslink.gov.uk to do the calculations or contact the **Acas Helpline on 08457 47 47 47**. The calculated amount is then paid to the worker at regular intervals or annually.

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**.

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 views provided by Benefits & Work 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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