

# Employer Support Information Note

## Introduction

ILF Scotland provides funding to disabled people living in Scotland and Northern Ireland to support them to live independently. We aim to ensure that the disabled people we fund can exercise choice and control over how they use ILF Scotland funding to achieve independent living outcomes.

This information note provides guidance on directly employing Personal Assistants (PAs) along with information about what support ILF Scotland can provide. It is correct at the time of issuing.

There are a range of organisations who can provide you with information and direct support in relation to the matters discussed in this information note. Please see our website at [www.ilf.scot](http://www.ilf.scot). If you need help to identify a suitable organisation to help with your particular circumstances, please get in touch with us.

ILF Scotland's Your Responsibilities Guide (<https://ilf.scot/go/your-responsibilities>) provides additional information along with information about self-employed PAs.

## **About this Information Note**

The purpose of this information note is to provide guidance, information and signposting to help ensure that ILF Scotland funding is used to employ PAs as part of safe and effective recruitment processes, in line with relevant legislation and good practice, as detailed below. It is aimed at supporting ILF Scotland Recipients who directly employ their own PAs and those that employ a PA on the Recipient's behalf for example an Award Manager, family member or trustee. We refer throughout this note to this person as the employer.

ILF Scotland cannot provide legal advice. Employers must ensure that they comply with their legal obligations under employment law and any other relevant legislation. It is important that employers seek advice when required from suitably qualified employment law specialists.

This document provides guidance and information on:

- Employment Contracts
- Scottish Living Wage (Scotland)
- National Minimum Wage (Northern Ireland)
- National Insurance Contributions (NIC)
- Pay As You Earn (PAYE) Tax
- Workplace Pensions
- Holiday Pay and Replacement Support
- Payroll Costs
- Statutory Sick Pay
- Contributions Towards Redundancy and Related Costs
- Legal Costs
- Employer's Liability Insurance
- Protecting Vulnerable Groups
- Health and Safety Training

- On-the-Job Training
- Advertising and Recruitment Costs

ILF Scotland can make payments to cover costs that, in its reasonable opinion, are necessary to purchase support and services to help achieve independent living outcomes. ILF Scotland's Management Team has the discretion to make decisions on the individual matters of policy detailed below as required.

Throughout this note, local authority (LA) includes Health & Social Care Partnerships, Health & Social Care Trusts, NHS Organisations and Integration Joint Boards.

## **Employment Contracts**

If you employ a PA, you are legally obliged to ensure you have a contract of employment in place. For ILF funded PAs, we expect there to be a contract of employment in place. The employer and the employee (the PA) must both sign this contract and should each keep a copy. The contract should detail what is expected of the PA, and what the PA will receive in return in terms of conditions of employment like the number of hours they work, holiday entitlement etc.

You can get help with employment contracts from a range of organisations. Further advice, along with an example contract, is available at <https://ilf.scot/go/employment-contracts>.

## **Scottish Living Wage (Scotland)**

In Scotland, the Scottish Living Wage applies to all directly employed staff over the age of 18, regardless of the number of hours that they work. You can find details of current rates at:

<https://scottishlivingwage.org/>

In line with Scottish Government policy, ILF Scotland will apply the Scottish Living Wage to all awards in Scotland for all PAs working with Recipients whether employed or self-employed. We will apply this for both day and nighttime care and support.

## **National Minimum Wage (Northern Ireland)**

In Northern Ireland, employers should pay National Minimum Wage rates to all PAs they directly employ for all day time hours and for all hours the PA works during night periods. You can find details of current rates at <https://www.gov.uk/national-minimum-wage-rates>.

During night periods the National Minimum Wage does not necessarily need to be paid for hours that a PA does not undertake work, for example, when they are resting or sleeping. However, this may be different depending on the type of contract that a PA has. It is an employer's responsibility to establish if they should pay their PAs the National Minimum Wage during night periods. ILF Scotland may award an extra amount to enable a Recipient to pay this where appropriate.

It is not a requirement to pay the National Minimum Wage to PAs who are self-employed, however, we would expect Recipients in receipt of ILF Scotland funding not to pay less than this minimum level. It is the responsibility of the employer to establish the correct employment status

of a PA. Find further information from CILNI's Purchasing Support from a Self-Employed Personal Assistant brochure at <https://ilf.scot/go/cilni-pa>.

This is a complex area of law and we recommend that you take further advice if needed.

## **National Insurance Contributions (NIC) and Pay as You Earn (PAYE) Tax**

An employer needs to consider three bands of earnings when assessing their National Insurance Contributions for employees. The amount payable by the employer is dependent on how much of the employee's earnings fall into each band. You can find further information at <https://www.gov.uk/national-insurance-rates-letters>.

ILF Scotland will not include any additional amount within its award for Employee National Insurance Contributions or PAYE Tax Contributions. These should be deducted through payroll from each PA's gross wage / salary.

From 6 April 2020, an employer can apply for Employment Allowance if:

- they employ a number of PAs
- their total maximum amount of National Insurance Contributions exceeds £5,000
- they have an Employer National Insurance Contribution bill of less than £100,000 in the previous tax year
- they are claiming against Class 1 National Insurance

Employers should contact HMRC or their Payroll Company for more information. These amounts may change each tax year but currently,

employers can claim up to a maximum of £5,000 of National Insurance Contributions.

If an employer pays in excess of £5,000 of National Insurance Contributions, ILF Scotland may be able to contribute to this on a discretionary basis. ILF Scotland may, at its discretion and in individual circumstances, allow a payment to exceed the usual ILF maximum sum in order to meet these employer obligations.

## **Workplace Pensions**

Employers have a legal obligation to ensure that they pay the correct minimum pension contributions to their employees who:

- are a minimum age of 22 and who have not reached the pensionable age
- earn at least £10,000 per year
- work in the UK

From April 2019, the minimum amount all employers must pay into employee pension is a minimum of 3% of a portion of the employee's earnings (based on employee earnings of £6,136 - £50,000). Employees must contribute a minimum of 5% towards their pension, so the total combined payment between employee and employer must be no less than 8%. If the employer pays the total minimum contribution of 8%, the employee is not required to contribute, but can do so if they wish. Employer and employee contributions may be subject to change. You can find the current requirements at: <https://ilf.scot/go/pension-contributions>.

The following rules also apply:

- when calculating payments, the employer must take into account: salary, wages, commission, bonuses, overtime, statutory sick pay, and any pay related to family leave, such as statutory maternity or paternity pay
- the amount paid by both employer and employee will be dependent on the type of scheme enrolled in and the rules of this scheme
- if the employee has been automatically enrolled on a workplace pension, they may ask to opt-out. The employee should contact the employer to ask for details on how to do this
- the employee may opt back in by writing to the employer. The employer does not have to accept this if the employee has opted in and out within the last 12 months.
- every 3 years the employer must re-enrol any member of staff who has left the pension scheme and who meets the criteria

There are tools on the UK Government website guiding employers on how to enrol members of staff on the Workplace Pension Scheme, which you can find at: <https://www.gov.uk/workplace-pensions-employers/how-to-enrol-staff>.

We recommend that you seek further advice on this topic from a pension expert.

## **Holiday Pay and Replacement Support**

ILF Scotland will include an amount of money for statutory holiday pay within all awards to Recipients who directly employ PAs. This will be equivalent to 5.6 weeks annual leave per annum on an averaged basis.

This is to enable the employer to give regular PAs paid annual leave and to pay for replacement PAs (along with any associated employer costs). You should be aware that if you increase an existing PA's hours, or recruit a new PA to provide replacement support, they would accrue their own annual leave entitlement.

ILF Scotland will include provision for holiday pay within any award where a Recipient requests a retainer payment to allow them to attend respite. It may allow, at its discretion, the funding in these circumstances to exceed the applicable annual group maximum sum.

ILF Scotland will assume that provision for holiday pay is included when it is matching a Direct Payment (DP) or using an inclusive rate to calculate an offer.

Recipients may also need replacement assistance or support while their usual PA is taking other, family-related, unpaid leave. ILF Scotland may make an award to cover this, including one, which at its discretion, exceeds the maximum sum relevant to the Recipient's group. The PA still accrues annual leave entitlement during periods of family-related leave.

ILF Scotland will not make any financial contribution towards statutory maternity, paternity, shared parental or adoption leave payments. This is because employers should be able to claim back all monies paid to a PA from HMRC. You can find further information at:

<https://www.gov.uk/parental-leave>.

ILF Scotland cannot contribute towards a cost:

- required to cover individual contractual agreements that exceed statutory or policy entitlement



- related to any other (for example, contractual) payments that a Recipient may have agreed to make
- associated to holiday pay where the PA is self-employed

## **Payroll Costs**

ILF Scotland can pay towards the cost of payroll services, where requested, for directly employed PAs. We will normally consider a payroll charge of up to £12 per week and will normally only include this additional cost within an award if it does not take the overall funding above the annual group maximum sum applicable to the Recipient although in exceptional circumstances, we may, at our discretion and on an individual basis, allow a payment to exceed the maximum sum.

See ILF Scotland Policy 20 at <https://ilf.scot/go/policy-20> and Policy 26 - Managing an ILF Scotland Award at <https://ilf.scot/go/policy-26> for further information on Payroll and Financial Management support costs.

## **Employers Liability Insurance**

Employers should take out Employers Liability Insurance. ILF Scotland can meet the cost of this where the PA is directly employed using ILF Scotland funding or if the PA is jointly funded using ILF Scotland and local authority payments. ILF Scotland will offer the enhanced level of Employers Liability Insurance at reviews, or earlier if requested. This is because the enhanced level of insurance normally covers redundancy. ILF Scotland can, at its discretion, consider paying this even if it takes the overall award above the annual group maximum sum.

ILF Scotland will not cover these costs where the PA is not HMRC registered, is self-employed or where an agency provides care or support.

Where ILF Scotland receives a request to make a payment for statutory sick pay, redundancy related or legal costs, it will first confirm if the Employers Liability Insurance will meet the cost of this.

## **Statutory Sick Pay**

All employers are responsible for covering all Statutory Sick Pay, in full for up to 28 weeks if their employee is eligible for Statutory Sick Pay.

You can find information about Statutory Sick Pay responsibility at <https://www.gov.uk/statutory-sick-pay/eligibility>.

If an employer is finding it financially difficult to pay Statutory Sick Pay to a directly employed PA ILF Scotland will consider requests to contribute towards this. We will first verify whether Employers Liability Insurance is in place that should cover the cost of sick pay. ILF Scotland will not contribute where the PA is self-employed.

## **Contributions Towards Redundancy and Related Costs**

### **Redundancy**

A directly employed PA can claim statutory redundancy pay from their employer providing they have been employed for a period of more than two years.

## Time Limits

There is currently a six-month time limit for doing this, which runs from a relevant date - usually the date when the employee was dismissed with notice, the end of that notice period, or if the employee was dismissed with payment in lieu of notice, the date of termination. Please seek Employment Law advice if you require further information.

ILF Scotland does not have a legal obligation to make redundancy contributions, but can consider making a discretionary payment towards redundancy costs as a result of the employer ending the employment of a directly employed PA. There is no equivalent arrangement for PAs who are self-employed.

When a Recipient passes away, the contract between the employer and the directly employed PA is immediately terminated. We would expect the employee to claim the statutory redundancy pay from the deceased's estate and so they should contact the personal representative or executor regarding this who should investigate whether there are any insurance policies in place from which to claim the statutory redundancy payment. ILF Scotland can consider making a contribution towards the cost of redundancy if required and at its discretion.

A directly employed PA may be able to apply for payment to the Secretary of State through Section 166(6) (b) of the Employment Rights Act 1996 if they are unable to claim statutory redundancy or claim through the estate in the event of the death of their employer. There is a maximum payout, which may not be the full amount that would have been due by the employer. More information is available at <https://www.gov.uk/your-rights-if-your-employer-is-insolvent>.

## **Pay in Lieu of Notice (PILON)**

ILF Scotland can also contribute towards pay in lieu of notice (PILON). In doing so, it will take account of the notice period in a PA's contract. ILF Scotland will not pay PILON in excess of the statutory notice entitlement.

If a Recipient passes away and where the PA was employed by another person, for example a family member, friend, trustee, etc., ILF Scotland can consider making a contribution towards PILON.

If the Recipient directly employed the PA and passes away, the PA has no rights to PILON and so ILF Scotland cannot pay this. If however, within eight weeks of the Recipient's death, a representative took over the employment of the PA for a legitimate reason relating to the ILF Scotland award, we can consider paying PILON.

## **Employers Liability Insurance**

If the employer holds an Employers Liability Insurance policy, they should first make a claim against this. The insurer will normally carry out a financial check relating to available funds for redundancy from the business. In this case the business is the employer of the PA(s). If an employer has sufficient private funds, they may be liable to make redundancy payments from these funds. This can include the employer's estate in the event of death. You can find further information on Employer's Liability Insurance at <https://www.gov.uk/employers-liability-insurance>.

It is important to note that insurance companies will not pay out where ILF Scotland funds are still available in the employer's account and are sufficient to cover the costs. ILF Scotland is a public body responsible

for the use of public funds and, as such, requires that any unspent monies be returned to us.

## **Requests for Payment**

For redundancy costs not covered by Employers Liability Insurance, the employer should submit a Redundancy Contribution Request form to ILF Scotland detailing the amount requested (separating redundancy and PILON), along with all relevant documents.

ILF Scotland will base any payment it makes purely on the hours of care and support it funds. Where there is joint funding with a local authority, and it has agreed a share of the costs, ILF Scotland will apply a percentage split to any payment. Where a Recipient receives a Direct Payment or a Self-Directed Support payment from a local authority, the Recipient or their representative should check if Employer's Liability Insurance is included in this and if it covers redundancy costs.

## **Records**

It is important for the employer to keep records of a PA's original, signed and dated contract of employment detailing terms and conditions, including hours, employment status and any subsequent amendments to these, along with time sheets, a record of payment rates, payslips and a record of leave entitlement and accrued leave to date.

## **Advice and Support**

ILF Scotland is unable to advise an employer about specific redundancy situations or costs. Where an employer needs support, they should seek this from an external source, such as ACAS or an employment solicitor.

## **Legal Costs**

ILF Scotland may consider paying for legal costs incurred that relate directly to the role of employer if there is no other source of income. ILF Scotland's Management Team must make the decision to pay such costs. In agreeing to this, ILF Scotland will take account of an existing Employers Liability Insurance policy that offers cover for legal costs. ILF Scotland will not consider this additional cost within an award if it would take the overall funding above the group maximum sum. ILF Scotland will consider any non-statutory requests of payment at its discretion.

## **Protecting Vulnerable Groups**

ILF Scotland strongly advises employers to obtain PVG or Access NI check for PAs. You can find further information at <https://ilf.scot/go/pvg> or <https://ilf.scot/go/accessni>.

ILF Scotland can pay for the cost of PVG or Access NI scheme records and any associated umbrella costs for anyone who will be providing support to an ILF Scotland Recipient, providing that there is scope within the ILF Scotland maximum sum. ILF Scotland may cover these costs whether the PA is employed directly or is self-employed.

## **Health and Safety Training**

ILF Scotland can assist employers to be compliant with health and safety law by providing financial support to pay in full or in part for health and safety training, such as 'Moving and Handling' providing they are not the responsibility of local authority or any other agency, for example NHS. The employee's risk assessment must identify that this training is

required. ILF Scotland will consider payment requests of a non-statutory nature at its discretion.

ILF Scotland can only meet such costs as and when they incur and on request and will not include these costs within the normal award. ILF Scotland will not cover these costs where the PA is self-employed. Neither will it cover these costs if they would take the overall funding above the group maximum sum applicable to the Recipient.

## **On-the-Job Training**

ILF Scotland can consider paying a reasonable sum for extra time needed for an existing PA to provide on-the-job training for a new PA to perform specific tasks but will not include this cost if it takes the overall funding above the group maximum sum.

Where ILF Scotland and the local authority shares joint support costs, ILF Scotland would expect to share any training costs.

ILF Scotland will not pay a PA to attend formal training to expand their skill base or attain educational qualifications.

## **Advertising and Recruitment Costs**

ILF Scotland can consider covering advertising costs if an employer needs to recruit a new directly employed PA. An employer should request agreement from ILF Scotland to fund recruitment costs other than advertisement costs in advance of incurring the costs. We will not pay these costs retrospectively.

ILF Scotland will only cover advertisement and recruitment costs as and when they occur on production of evidence. They will not be included within the normal award.

ILF Scotland will only provide advertisement and recruitment costs where there is scope within the maximum sum limits to do so. ILF Scotland will consider any non-statutory requests for payment at its discretion.

## **Useful Links**

You may find it useful to read the following policies and documents:

Your Responsibilities Guide - <https://ilf.scot/go/your-responsibilities>

Policy 20 - ILF Scotland Payments - <https://ilf.scot/go/policy-20>

Policy 26 - Managing an ILF Scotland Award - <https://ilf.scot/go/policy-26>

Please send any enquiries relating to this Information Note to the ILF Scotland enquiry mailbox. [enquiries@ilf.scot](mailto:enquiries@ilf.scot).