

Common Nanny Contract Pitfalls

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When employing a nanny or housekeeper to help your family, you take on the role of employer. This may be the first time you assume this role and PC Payroll & Legal are here to help you with issues around salary and employment contracts which you may not be aware of.

Salary

It is very important to understand the actual costs to you, the employer, that are associated with your nanny's salary. These include deductions for tax, National Insurance, pension, student loans and other benefits.



Net wage agreements

It is very common for nannies to request a net hourly, weekly or monthly rate. In very basic terms this is what the nanny will take home and any tax or national insurance obligations on top of that will be met by the employer. This is known as a net wage agreement. This sounds very simple but when calculating the total cost of a nanny many employers of nannies fall foul of the net rate and don't realise what the actual cost of the nanny is to them.

For example:

A nanny works 40 hours per week and earns £10 net per hour. Her total weekly take home pay is £400. However, once tax, national insurance, employers' national insurance and pension have all been calculated the weekly cost to the employer is in fact £545.60. Over a one-year period that is an additional £7,751.20, which is huge if you were not aware of it!

Pitfall 1 - You must include your nanny's total deductions when calculating your total commitment per annum. Even if you start the negotiations on a net rate basis you should convert it to a gross salary figure and use that within the contract of employment.

See the [PC Payroll salary calculator](#) to obtain a gross and net figure for your negotiations.

Pitfall 2 - If your monthly payments to HMRC increase it is your responsibility (as part of the net wage agreement) to pay them, NOT the nanny's responsibility.

There are several reasons for this:

Collecting underpaid tax from a previous employment

A nanny has not paid enough tax to HMRC and a change in tax code results in an increase in monthly income tax. Under a net wage agreement, the employer is responsible for this cost.

The nanny has two part-time jobs

A nanny's personal tax allowance will automatically attach to the first job she has so, in order to allocate it fairly between two employers, her tax code has to be split.

Student loans & taxable benefits

Student loans are calculated by HMRC and paid through PAYE. Therefore, on a net pay agreement, a parent, as the employer, will be responsible for paying any student loans the nanny has. There is also the potential risk for increased cost to you if you provide any taxable benefits to your nanny such as personal use of a car.

Gross wage agreement

By agreeing to pay a gross wage your total employment costs are protected and any changes in your nanny's personal tax situation are borne by your nanny, which is fair and reasonable. On the other side of the coin, by agreeing a net wage, the nanny risks missing out on any changes in personal allowances or income tax cuts as the employer will not be obliged to pass these savings on.

National minimum wage

Paying less than the minimum wage is illegal and if employers break the law, they need to know the HMRC will take tough action. It makes no difference to a nanny's entitlement to the national minimum wage whether they work for you full time or part time, or whether they are working for you on a temporary or permanent basis.

Current rates of national minimum wage can be found on the HMRC [website](#).

Weekly v monthly payslips

Many nanny wage agreements are negotiated weekly and this is fine if you are prepared to produce a payslip on a weekly basis. The downside of this is that your payroll service will cost you more as it is a lot of extra work to produce weekly payslips and any changes such as overtime or sick pay have to be notified as soon as they happen in order to be reflected in the payslip. In addition, it makes your employer returns to HMRC a little less straightforward. Once the payroll is set up for weekly payslips to HMRC, they cannot be changed to monthly.

Pitfall 3 - You go down the route of paying weekly yet produce monthly payslips.

A parent agrees a net wage with their nanny. The net pay is £500 per week so the parent and the nanny think that every week a payment of £500 will be made and that their monthly payslip will reflect this by showing a payment of £2000 net to be made.

However, if you multiply £500 by 52 weeks, the total net per annum is £26,000. There are however only 12 months in the year. $12 \times £2000$ adds up to £24,000 which leaves your nanny £2000 short over the year. Similarly, if you apply the same logic and pay for five weeks each month you would end up overpaying the nanny by £4000 over the year. The only way to work out a more correct approximation is to calculate a month's pay as 4.33 multiplied by the weekly net amount. This will never give you the exact amount entirely as it can vary by £1.00 each time but this would be closer to the exact amount than a multiple of 4.

Contracts and employment rights

By law your nanny is entitled to a written contract on the day they start work. This should not be downloaded from the internet but drafted by an appropriate person. This will guarantee it will be legally up to date and allow the lawyer to make you aware of your obligations.

Parents (as employers) can often be caught out when attempting to create a contract or cover during negotiations.



For instance, it is important to be aware that your nanny has the same rights as any other employee and that you must include the following in an employment contract:

- Statutory sick pay
- Maternity pay
- Paid annual leave

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- Redundancy pay

Statutory Sick Pay (SSP)

SSP is paid to employees who are unable to work because of illness. SSP is paid at the same time and in the same way as you would pay wages for the same period.

There are conditions to be met for an employee to receive SSP which include:

- The days your nanny is off must make up part of a 'period of incapacity for work' which is a period of four or more days in a row when the employee can't work because they're sick or incapacitated.
- The days for which the nanny receives SSP must be qualifying days - these are days they normally work.
- The employee must have notified you about their sickness - either within your own time limit or within sev days and must give you evidence of their incapacity if you require it.

PC Payroll can help to calculate and reclaim from HMRC any amount of SSP that you have paid back.

Statutory Maternity Pay (SMP)

Whether you must pay SMP to your nanny depends on how long they've worked for you and how much they earn. She will have to provide you with evidence of when the baby's due and give you notice of when she wants you to start paying her SMP. If a nanny is eligible for SMP, for the first six weeks you must pay her at the rate of 90 per cent of her average weekly earnings. For the next 33 weeks you must pay her the lower of the following:

- £151.20; or
- 90 per cent of her average weekly earnings.

For an employee to be considered eligible for SMP, she must have worked for you continuously - full or part-time - for at least 26 weeks up to and into the 15th week before the week the baby's due (the qualifying week). If your employee's earnings are below a certain level, or they're not entitled to SMP for some other reason, they may be entitled to Maternity Allowance from the Department for Work and Pensions. Payments of SMP count as earnings. You must deduct PAYE tax and NICs from them in the usual way. You will normally be able to recover some or all of the SMP you pay.

PC Payroll can work out all calculations with regards to SMP and sort out any recovery from HMRC of SMP that you have paid and are due to receive.

Paid annual leave

Any worker who works five days a week is entitled to 28 days holiday including statutory and public holidays (currently eight per year). If your nanny works less than five days for you, then regardless of hours per day, she will be entitled to the pro rata proportion of 28 days. So, if she works for three days for you, then she will be entitled to 17 days (28 divided by 5 x 3 rounded up). Anyone working six days a week is still only entitled to 28 days' paid holiday and not 33.6 days (5.6 multiplied by 6).

You can choose to give more leave than the legal minimum and you can offer unpaid leave as well. Eligible employees are entitled to take unpaid parental leave of 18 weeks up to their child's 18th birthday with a limit of four weeks per year (unless you agree otherwise).

Redundancy pay

A nanny will be entitled to redundancy pay if they have been working for you for two years or more. She will be entitled to one week's pay for each full year worked if they are between 22 and 41- and 1.5 week's pay for each full year worked if she is 41 or older. Any redundancy pay under £30,000 is not taxable. Being dismissed for misconduct does not count as redundancy, so a nanny would not get redundancy pay if this happened.

Any redundancy pay is in addition to any pay a nanny would be entitled to through her notice period or pay she may receive through pay in lieu of notice. The statutory redundancy notice periods are:

- at least one week's notice if employed between one month and two years.
- one week's notice for each year if employed between two and 12 years.
- 12 weeks' notice if employed for 12 years or more.

Your Employee Wellbeing's top tips

So, don't get caught out! Remember:

- Negotiate a gross annual salary. Check out the PC Payroll easy to use [salary calculator](#).
- Calculate the full cost of the employment to you before making an offer to your nanny.
- Pay monthly if you can, but if paying weekly use weekly payslips.
- Use a proper employment contract and be aware of your statutory obligations as an employer.



Your Employee Wellbeing has been making a difference to working parents and carers since 2011. If you would like to find out more about our bespoke childcare search services, to help you employ a nanny or find another form of childcare, please get in touch.

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