

Employment of Personal Assistants

This help sheet has been prepared to try and assist real estate industry employers and their salespeople work through the issues surrounding employment of Personal Assistants (PA's).

Background Information

Both the business owner and the salesperson often think that the salesperson's personal assistant (PA) is employed by the salesperson. Based on this (often invalid) assumption, they then make incorrect employment decisions.

It might be valuable to start by thinking about the following questions:

- Is the PA a clerical employee or a salesperson?
- If some of the PA's work involves sales-related activity, whose business do they ultimately represent – the salesperson's business, or the employer's business?
- What is the working relationship between the PA and the salesperson they are employed to assist?

Is the PA a clerical employee or a salesperson?

A small percentage of PA's do clerical duties only. This help sheet does **not** cover the employment of those PA's who primarily do clerical work.

This help sheet looks at those PA's whose duties include canvassing for listings, answering queries about property from buyers and sellers, conducting property inspections with buyers, providing seller feedback, etc. In other words, those PA's who, as a significant portion of their work, "perform the activities of a real estate agent".

Under the *Property Agents and Motor Dealers Act 2000* (PAMDA) any such person must be a "registered real estate salesperson".

Under Definitions in the Property Sales Award, " "Property salesperson" shall mean an employee engaged in the listing, sale, auction, tender, purchase . . . of real property."

Most PA's are considered to be "an assistant" to the salesperson; not a salesperson in their own right. However, if we look at what many PA's actually do, what are these people, technically?

They are salespeople.

As a Salesperson, whose business does the PA represent?

The application for a salesperson to be registered with the Office of Fair Trading is usually signed by the Principal Licensee, either as or on behalf of the business owner, and it is under the Principal Licensee's licence that the PA "performs the activity of a real estate agent".

Therefore, the PA represents the business of the Principal Licensee.



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What is the relationship between the PA and the salesperson they are employed to assist?

In any workplace, it is common for someone other than the employer to have management authority over another person or people.

This is also the case with salespeople and their PA's – the salesperson does not actually employ the PA, but has the authority to manage that PA in their day to day activity.

The employer may then be authorised by the salesperson to recover the cost of employing the PA from the salesperson's earnings.

Some Specifics

Forget, for a moment, that the PA is a PA. Think of the PA as being a salesperson – which is, technically, what they are – and you will be on track to getting things right.

Here are some issues the employer should address regarding the employment of sales PA's:

1. Award coverage (Property Sales Award Queensland - State);
2. Licensing/Registration with the Office of Fair Trading (under PAMDA);
3. Occupational Superannuation;
4. PAYG Taxation;
5. Professional Indemnity Insurance; and
6. Workers' Compensation.

We will restrict our advice below to Award and some PAMDA matters, however we would encourage employers to ensure that all matters outlined above are attended to.

Award Coverage and Documentation of Employment Arrangements

The employer is responsible to ensure that the PA is correctly employed, either under the Clerical Employees' Award or, more likely, the Property Sales Award.

All normal Property Sales Award entitlements will apply to the PA, and the requirements for the registration and approval of employment agreements with the PSAQ, as required by the Property Sales Award, are the same as for any other salesperson.

However there are three key differences in how the PA's employment will differ from that of a normal salesperson:

Job Description

The PA is assigned to assist another of the employer's sales employees. Therefore the PA's job description should identify who the PA is employed to assist, and the basis of their working relationship.

Management of the PA

The PA will be subject to authority on two levels:

- Licensing (PAMDA) issues;
- Day to day activity.

It is quite difficult to “serve two masters”, and yet the role of the PA will often involve just that. In terms of their day to day activity the PA will normally be directed by the salesperson they are assisting, however both the salesperson and the PA are answerable to the Principal Licensee for PAMDA issues.

Therefore, the PA’s employment agreement should clearly outline the differing levels of authority that the salesperson and the Principal Licensee have with respect to the PA.

Tenure of Employment

The employer may wish to consider what will happen to the PA’s employment if the salesperson they are employed to assist no longer works for the office.

To cover such a scenario, the Real Estate Employers’ Association may be able to assist employers in drafting a clause to insert into the PA’s employment agreement.

REEA can be contacted by phoning Bruce Siebenhausen on 07 3376 1397.

The Salesperson and the Employer

There are a number of issues specific to the employment of the PA that may need to be attended to in the salesperson’s employment agreement. These items should be included in any agreement the salesperson has registered with the PSAQ . . .

Recouping the PA’s Employment Costs

It is most likely that the employer will want to recoup certain of the PA’s costs of employment from the salesperson being assisted by the PA.

Under the *Industrial Relations Act 1999*, an employer may only deduct monies from an employee’s income with that employee’s written consent.

Therefore the salesperson’s employment agreement should detail which of the PA’s employment costs, if any, the employer is authorised to deduct from the salesperson’s income.

Who is the PA’s manager?

As outlined above, the PA will be subject to authority on two levels. Therefore, the salesperson’s employment agreement should clearly outline:

- the differing levels of authority that the salesperson and the Principal Licensee have with respect to the PA; and
- under what circumstances the PA should be answerable to the salesperson and the Principal Licensee respectively.

In Conclusion

This summarises the employment issues for the majority of PA's in Queensland's real estate industry.

If you have any questions about matters raised in this help sheet, please contact the PSAQ on 07 3841 6977.

Disclaimer

This document contains information relating to Property Management and Real Estate Sales employees, pursuant to the Industrial Relations Act 1999 ("the Act") and the Property Agents and Motor Dealers Act 2000 ("PAMDA").

The information contained herein must not be taken to be a definitive statement of all employment matters. Whilst every care has been exercised in the preparation of the information contained herein, a user should not rely upon the information contained without recourse to the respective Award/s, the Act, PAMDA, and their own legal, accounting and other professional advice.

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