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Pensions

Auto-enrolment: the basics and practicalities for employers

Briefing

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Introduction

With effect from June 30, 2012, legislation came into effect which required employers to automatically enrol eligible employees into pension schemes which meet certain minimum criteria. The background to this legislation was concern about the increasing size of the retired population in the UK, as people live longer, which results in rising state pension costs. The automatic enrolment regime was therefore introduced as a way of encouraging more people to save for retirement.

The auto-enrolment duties were introduced in stages in relation to existing employers. Now the auto-enrolment duties apply to all new employers from the date on which their first worker begins to be employed.

Auto-enrolment

Under the Pensions Act 2008 (PA 2008), all employers must assess their employees (called “workers” in the legislation) and if they meet certain criteria, they must be auto-enrolled into a pension scheme to which minimum contributions are paid. Auto-enrolment started with the largest employers in October 2012, and since February 1, 2018, it applies to all employers (even those with only one employee).

Workers may opt out of the pension scheme within one month of being auto-enrolled. The employer has a duty to re-enrol any eligible jobholders who have opted out every 3 years.

Types of worker

The legislation applies to everyone who works or ordinarily works in the UK under a contract of employment. The legislation distinguishes between the following different types of worker

- Eligible jobholders – aged between 22 and State Pension Age (SPA); earning above the annual earnings trigger for auto-enrolment, currently £10,000 p.a. These individuals *must be auto-enrolled* into a scheme to which minimum contributions[1] are paid.
- Jobholders – aged between 16 and 21 or between SPA and 74; earning above £10,000 p.a. or aged between 16 and 74; earning above £6,032 p.a. for the 2018/19 tax year but below £10,000 p.a. These individuals *have a right to opt in* a scheme to which minimum contributions are paid.
- Entitled workers – aged between 16 and 74; earning below £6,032 p.a. for the 2018/19 tax year. These individuals have a right to *join a scheme*, but there is no obligation for minimum contributions to be made.

Minimum contributions are being phased in. Up to April 5, 2018 the minimum contribution was 2 per cent of qualifying earnings, of which at least 1 per cent had to be an employer contribution[2]. From April 6, 2018, the minimum contribution is 5 per cent of qualifying earnings, of which at least 2 per cent must be an employer contribution. From April 6, 2019, the minimum contribution will be 8 per cent of qualifying earnings, of which at least 3 per cent must be paid by the employer.

	Minimum employer contribution	Minimum total contribution
Up to April 5, 2018	1%	2%
April 6, 2018 to April 5, 2019	2%	5%
April 6, 2019 onwards	3%	8%

From April 6, 2018, qualifying earnings are earnings (defined in the PA 2008) between £6,032 p.a. and £46,350 p.a.

Certain categories of person may not be workers and may need further evaluation; for example, where the individual does not work normal hours in a regular place of work, casual workers, agency workers, and individuals on zero-hours contracts. In addition, employees whose existing pension benefits have special protection under various Finance Acts need not be auto-enrolled. For multi-national employers, advice may be needed on whether an employee is working or ordinarily works in the UK.

1 This guidance assumes that employers will use a defined contribution scheme. A defined benefit scheme can be used for auto-enrolment, if it provides a minimum level of accrual. A group personal pension scheme may also be used for auto-enrolment.
2 The legislation specifies a minimum amount of the total required contributions which must be paid by the employer and the remainder must be paid by the worker. An employer can however choose to pay a greater contribution than the statutory minimum (some employers pay the full amount of the total required contributions themselves).

Auto-enrolment and employer duties

Between October 2012 and February 2018, a statutory timetable was implemented which required existing UK employers to have a private sector workplace pension scheme in place by a designated date - their staging date. Staging dates were dependent on the number of employees; larger employers had an earlier staging date than smaller employers.

The last existing UK employers passed their staging dates in February 2018. Now, all new employers must comply with the auto-enrolment requirements as soon as the first worker begins to be employed by the employer. Employers can, however, postpone an employee's auto-enrolment date for up to 3 months.

The key employer duties are to

- Auto-enrol eligible jobholders.
- Enrol a jobholder who chooses to opt in.
- Enrol an entitled worker who chooses to join (the scheme need not be an auto-enrolment scheme).
- Inform workers about how auto-enrolment affects them.
- Register with the Pensions Regulator (TPR) to state that the employer has complied with the new duties. A registration process is available through TPR's website.
- Process any opt-outs, including refunds of contributions.
- Ensure no act or omission means any eligible jobholders cease being active members without putting them into an alternative auto-enrolment scheme.
- Ensure no act or omission results in the scheme ceasing to qualify for auto-enrolment without providing an alternative auto-enrolment scheme.
- Re-enrol any eligible jobholders who have opted out after 3 years.

Employers must also ensure that

- No action by them induces an eligible jobholder to opt out of a scheme.
- Recruitment is not dependent upon whether the applicant intends to join a scheme or not.
- Individuals are not unfairly dismissed or suffer detriment on grounds related to the employer duties.

Types of workplace pension schemes

Employers must enrol eligible jobholders in a scheme which meets the minimum contributions requirements. Alternatively if the scheme has a different benefit structure, employers can self-certify that contributions are made on one of the following bases

- Tier 1 – contributions of at least 9 per cent of basic pay (as defined in the PA 2008), including 4 per cent employer contributions.
- Tier 2 – contributions of at least 8 per cent of basic pay, including 3 per cent employer contributions, provided at least 85 per cent of all workers' total pay (as defined in the PA 2008) is pensionable.
- Tier 3 – contributions of at least 7 per cent of total earnings, including 3 per cent employer contributions.

All the Tiers have phased contribution rates which are currently similar to those for minimum contributions.

Minimum contributions or one or more of the different Tiers can be used for different sections of the employer's workforce.

The employer must also check that the scheme rules

- Do not require the worker to give consent to join.
- Do not require the worker to provide any information or make any choices.
- Enrol new joiners from the first day of employment (subject to the 3-month postponement, explained above).

What are the first considerations for new employers?

A newly-established employer should undertake an initial assessment of its workforce in order to determine who will need to be auto-enrolled, and what information other workers need.

The employer will then need to take steps to prepare for auto-enrolment including

- Deciding on a pension scheme to use to fulfil its duties.
- Preparing the data to send to the scheme provider.
- Preparing the information to send to the various categories of workers.
- Setting up the relevant payroll processes.
- Getting ready to manage opt-outs and opt-ins.
- Setting up the required record-keeping processes.

Different employee communications will be required in respect of eligible jobholders, jobholders and entitled workers.

Worker communications – what information will workers need?

Generally, workers will need information on

- Relevant dates.
- Processes to follow.
- Contribution levels.
- Default investment option.
- Opt-out options.

When do employers need to communicate?

Information packs will have to be assembled for eligible jobholders. Information must also be given in advance if the employer will be postponing an employee's auto-enrolment date. Record keeping is key. The employer should talk to its payroll provider, since information will need to be pooled each time someone joins the employer's workforce, so that the correct information can be provided. Ongoing records need to be kept for opt-outs, opt-ins and new eligible jobholders for auto-enrolment.

The Pensions Regulator

TPR, which enforces compliance with the auto-enrolment duties, has published online guidance about auto-enrolment and has also provided template letters which can be tailored for use by employers. The penalties for non-compliance are harsh: TPR can impose a £400 fixed penalty plus escalating penalties of up to £10,000 per day for employers with 500 or more employees. Senior office holders could be jailed for up to 2 years for wilful failure to comply.

As at December 2017, TPR had issued almost 80,000 compliance notices, 32,000 fixed penalty notices and 6,700 escalating penalty notices in relation to non-compliance with the auto-enrolment requirements.

Automatic Enrolment Review 2017

In December 2017, the Department for Work and Pensions (DWP) published the findings of its review of automatic enrolment. The main proposals are as follows

- Reducing the lower age limit from 22 to 18 for auto-enrolment eligibility.
- Removing the lower earnings limit for calculating contributions, so that contributions are calculated by reference to all earnings up to the upper earnings limit (£46,350 from April 6, 2018). Currently, contributions are only required to be paid in respect of earnings between the lower earnings limit (£6,032 from April 6, 2018) and the upper earnings limit.
- Removing the “entitled worker” category. “Entitled workers” earn less than the current lower earnings limit and they are currently not entitled to employer contributions, even if they opt in. If the “entitled worker” category is removed, these employees will be entitled to employer contributions.

The intention is to implement these proposals by the “mid-2020s”.

There was discussion in the review about the issue of pension-saving for the self-employed, who are not covered by the current auto-enrolment regime. It was acknowledged that this is an important issue, given the number of self-employed people working in the UK. However, it was decided that further consideration of this issue was required and there are no specific statutory proposals to address this issue in the review.

Summary – what should new employers do?

- Start preparing in good time.
- Clarify strategy. How is the employer planning to approach its auto-enrolment duties? What needs to be done in relation to scheme design, preparing communications, compliance with consultation requirements, and the management of contributions? Read the DWP guidance for details.
- If planning to postpone an employee’s auto-enrolment date, ensure the required notice is given.

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