

Pensions Auto-Enrolment – Overview for Employers

Before the new auto-enrolment duties came into effect, there was no requirement in law for a UK employer to contribute to a pension scheme in respect of its employees.

However, an employer with five or more employees was, until 1 October 2012, generally obliged to designate and facilitate access to a stakeholder pension. From 1 October 2012, the statutory duty on an employer to designate a stakeholder pension scheme was repealed. The effect is that UK employers are not obliged to provide access to any pension scheme until they have reached their '*staging date*' (see next page).

Once an employer has reached its staging date, it must ensure that all its eligible jobholders are auto-enrolled into a qualifying scheme from their *automatic enrolment date* ("AED"), unless they are already active members of the employer's qualifying schemes. The duty to automatically enrol arises under statute and there is no change to a jobholder's terms of employment requiring any consultation with jobholders.

An employer will be obliged to auto-enrol eligible jobholders in an automatic enrolment scheme, unless they are already active members of the employer's qualifying scheme. Employers may also use 'NEST', a central scheme set up by the UK government. Several private pension providers have also established competitive schemes.

An employer's obligations under the auto-enrolment regime will apply in respect of "workers who work, or ordinarily work in the UK". The definition of worker in section 88 of the Pensions Act 2008 is broadly the same as under section 230(3)(b) of the Employment Rights Act 1996, which provides that, a "worker" means "an individual who has entered into or works under...(a) a contract of employment or (b) any other contract, whether express or implied...oral or in writing, whereby the individual undertakes to do or perform personally any work or services for another party to the contract whose status is not by virtue of the contract that of a client or customer of any profession of business undertaking carried on by the individual and any reference to a worker's contract shall be construed accordingly."

It will often be easy to identify whether someone is a worker, as they will satisfy the above criteria. However, employers should not rely solely on a person's tax status as to whether they are a worker. An individual who is considered by HMRC to be self-employed for tax purposes may still be classed as a worker for the purposes of the Pensions Act if they work under a worker's contract.

There are three types of 'workers' under the auto-enrolment regimes:

1. "eligible" jobholders, who must be automatically enrolled in an automatic enrolment scheme and are entitled to minimum employer contribution. An eligible jobholder can opt out of a pension scheme in which they had not been enrolled;
2. "non-eligible" jobholders, who have the right of joining a scheme and are entitled to minimum employer contributions; and
3. "entitled" workers who have the right of joining an employee qualifying scheme but are not entitled to receive employer contributions.

Employers are expressly restricted from “prohibitive recruitment conduct” and offers of inducements to opt out of an auto-enrolment scheme. Employers are also under a duty to provide certain written information relating to the auto-enrolment regime. The Pensions Regulator which governs compliance with the new employer duties, has published online guidance with respect to these reforms. For more information go to www.thepensionsregulator.co.uk.

As a general rule, an employer is required to auto-enrol an eligible jobholder in an automatic enrolment scheme and provide the prescribed information about the scheme within one month from the job holder’s AED. The jobholder’s AED may simply be the date on which they start employment or, it could be the employer’s staging date if the jobholder is employed on that date. However, there will likely be cases where a jobholder’s AED will be later than this, for example, where a jobholder is a low-earner and does not receive earnings that exceed the earnings trigger in the first pay reference period. An employer can defer autoenrolling an eligible jobholder by up to three months from the AED, known as a “postponement”.

Contributions

Once auto-enrolment has occurred, an employer has a duty to make a minimum contribution to an automatic enrolment scheme. An employer using a *defined contribution* (“DC”) pension scheme for auto-enrolment will be required to pay a minimum of 3% of a jobholder’s qualifying earnings into the scheme each year. The overall contributions to a DC scheme must be no less than 8% of the jobholder’s qualifying earnings and this means that jobholders will be required to contribute 5% of the qualifying earnings. There are transitional periods which allow the full rates of employer and jobholder contributions to be phased in over six years.

Staging Dates (see separate document in Free Resources)

To ease the compliance burden, staging dates for small businesses have been delayed and, broadly speaking, employers with between 50 and 249 workers have been assigned revised staging days, running from 1 April 2014 to 1 April 2015. Employers with fewer than 50 workers have been given staging dates between 1 April 2015 and 1 April 2017. New businesses have staging dates at the end of the overall timetable.

The Personnel Dept can arrange for a Benefits and Pensions specialist to discuss your specific situation and obligations. Call **0845 3313 2325** or email info@thepersonneldept.co.uk