PENSIONS - AUTOMATIC ENROLMENT

What is automatic enrolment?

Automatic enrolment places duties on employers to automatically enrol 'workers' into a work based pension scheme. The main duties are:

- assessing the types of workers in the business
- providing a qualifying automatic enrolment pension scheme for the relevant workers
- writing to most of their workers explaining what automatic enrolment into a workplace pension means for them
- automatically enrolling all 'eligible jobholders' into the scheme and paying employer contributions
- completing the declaration of compliance and keeping records
- Doing a re-enrolment and re-declaration every three years.

Assessing the types of workers in the business

Whether this is an easy or difficult task depends on the type of business. A business which uses the services of casual workers, very young or very old workers will need to spend some time in analysing its workforce. A business which only employs salaried staff will have an easier task.

A 'worker' is:

- an employee; or
- a person who has a contract to provide work or services personally and is not undertaking the work as part of their own business.

The second category is defined in the same way as a 'worker' in employment law. Such people, although not employees, are entitled to core employment rights such as the National Minimum Wage (NMW). Individuals in this category include some agency workers and some short-term casual workers.

There are three categories of workers: eligible jobholders; non-eligible jobholders; and entitled workers.

An 'eligible jobholder' is a worker who is:

- aged between 22 years and the State Pension Age
- earning over the minimum earnings threshold (currently £10,000)
- working or ordinarily working in the UK
- not already in a qualifying pension scheme.

Most workers will be eligible jobholders unless the employer already has a qualifying pension scheme. These are the workers for whom automatic enrolment will be required.

Other workers (non-eligible jobholders) may have the right to 'opt in' (ie join a scheme) and should therefore be treated as eligible jobholders if they do opt in. 'Entitled workers' are entitled to join the scheme but there is no requirement on the employer to make employer contributions in respect of these workers.

The categorisation of workers can be difficult in some circumstances. Please contact us if you are unsure of how to assess the types of workers you have.

What is a qualifying automatic enrolment pension scheme?

Employers are able to comply with their obligations by using an existing qualifying pension scheme, setting up a new scheme or using the government low cost scheme - the National Employment Savings Trust (NEST).

It is important that the pension scheme chosen will deliver good outcomes for the employee's retirement savings. This may mean that an employer's existing scheme may not be appropriate as it may have been designed for the needs of higher paid and more senior employees. This may mean that NEST for example may be an appropriate scheme for employees who are not currently entitled to be a member of an existing employer scheme.

To be a qualifying automatic enrolment scheme, a scheme must meet the qualifying criteria and the automatic enrolment criteria.

The main part of the qualifying criteria requires the pension scheme to meet certain minimum standards, which differ according to the type of pension scheme. Most employers will want to offer a defined

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contribution pension scheme. The minimum requirements for such schemes are a minimum total contribution based on qualifying earnings, of which a specified amount must come from the employer.

To be an automatic enrolment scheme, the scheme must not contain any provisions that:

- prevent the employer from making the required arrangements to automatically enrol, opt in or re-enrol a 'jobholder'
- require the jobholder to express a choice in relation to any matter, or to provide any information in order to remain an active member of the pension scheme.

The second point above means, for example, that the pension scheme has a default fund into which the pension contributions attributable to the jobholder will be invested. The jobholder should however have a choice of other funds if they want.

We may be able to advise you on an appropriate route to take. Please contact us.

Does automatic enrolment apply to all employers?

Since October 2017, all employers have automatic enrolment duties from the date they employ their first member of staff.

In principle, contributions will be due from the first day of employment but it is possible to postpone automatic enrolment for some or all employees for a period of up to three months. This may, for example, be used to avoid calculation of contributions on part-period earnings.

An employer can find out more about their duties at www.thepensionsregulator.gov.uk.

Communicating with your workers

Employers are required to write to all workers (except those aged under 16, or 75 and over) explaining what automatic enrolment into a workplace pension means for them.

There are different information requirements for each category of worker. For an eligible jobholder, the letter must include details of how the employee can opt out of the scheme if they wish. The letter must not, however, encourage the employee to opt out.

The Pensions Regulator (TPR) has developed a set of letter templates to help you when writing to your employees.

Automatic enrolment of eligible jobholders and payment of contributions

As part of the automatic enrolment process, employers will need to make contributions to the pension scheme for eligible jobholders.

All employers now need to contribute at least 3% on the 'qualifying pensionable earnings' for eligible jobholders. There is also a contribution which needs to be paid by employees if the employer does not meet the total minimum contribution of 8%.

Example

- If the employer contributes only 3% then the employee's gross contribution will be 5% so that an 8% total minimum contribution is made.
- If the employer contributes 5% then the employee's gross contribution will only be 3%.

What are qualifying pensionable earnings?

Earnings cover cash elements of pay including overtime and bonuses (gross) but minimum contributions are not necessarily calculated on total earnings. Contributions will be payable on earnings between a lower and a higher threshold. These thresholds are currently £6,240 and £50,270. (The earnings between these amounts are called qualifying earnings).

If we do your payroll, we can help you make these calculations and tell you the deductions from pay and the payments required to the pension scheme.

Declaration of Compliance

TPR was established to regulate work-based pensions.

An employer should have initially completed the Declaration of Compliance within five months of their duties starting. In essence the Declaration of Compliance process requires the employer to:

- confirm the correct auto enrolment procedures have been followed; and
- provide various pieces of information such as the number of eligible jobholders enrolled.

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Employers' ongoing duties

Employers continue to have ongoing duties in respect of auto-enrolment.

Re-enrolment

Employers have a legal duty to re-enrol certain employees back into an automatic pension scheme every three years. The process involves reassessing the workforce and re-enrolling certain employees into their chosen qualifying automatic pension scheme. Employers are also required to complete the re-declaration of compliance with TPR, even if they do not have any staff to re-enrol. Re-enrolment should take place approximately three years after the original staging date.

As part of their re-enrolment responsibilities, employers are required to carry out the following tasks:

- **Re-enrolment date** – unless it is the first re-enrolment date this is always the third anniversary of the previous re-enrolment date. There is no option to postpone the re-enrolment date.

If it is the first re-enrolment date there is a six-month window from which to choose a date for re-enrolment. This can be either three months before or after the third anniversary of the original staging date. This situation is likely to be unusual.

- **Reassess the workforce** – the employer will only need to assess employees who were previously auto-enrolled and have subsequently either: asked to leave (opted out) of the pension scheme; left the pension scheme after the end of the opt-out period; or stopped or reduced their pension contributions to below the minimum level (and who meet the age and earnings criteria to be re-enrolled). Once the assessment is complete, employers should re-enrol eligible staff into a qualifying pension and start making contributions within six weeks of their re-enrolment date.
- **Write to those who have been re-enrolled** – the employer will need to write to each employee who has been re-enrolled into the pension scheme. This should be done within six weeks of the re-enrolment date. Template letters are available on TPR website.
- **Complete the re-declaration of compliance** – the employer is required to complete and submit the re-declaration of compliance with TPR to let them know that they have met their legal duties. This should be done within five months of the third anniversary of the staging/previous re-enrolment date. An employer is required to do this even if they have not re-enrolled any staff into the pension scheme.

Remember, re-enrolment and re-declaration is a legal requirement and failure to comply with the regulations may result in a fine.

The penalties for non-compliance

Employers who fail to comply with their legal duties may be subject to enforcement action. TPR has a range of powers it can utilise when taking action for non-compliance. This can range from warning letters and statutory notices to financial penalties. Fines range from a £400 fixed penalty, to a varying daily escalating penalty of between £50 and £10,000, depending on the number of employees. In the most extreme cases the Regulator may seek a criminal prosecution.

Keeping records

Finally, an employer must keep records which will enable them to prove that they have complied with their duties. Keeping accurate records also makes good business sense because it can help an employer to:

- avoid or resolve potential disputes with employees
- help check or reconcile contributions made to the pension scheme.

Duties checker TPR guidance

TPR guidance is available for employers to help them comply with their automatic enrolment duties: www.thepensionsregulator.gov.uk/en/employers.

Using the duties checker and the guidance, employers can follow a step-by-step process to comply with their duties. The guidance also includes links to tools and resources.

Changes ahead

New law in the form of The Pensions (Extension of Automatic Enrolment) Act 2023 extends the automatic enrolment regime. The Secretary of State will have the authority to be able to introduce new regulations to:

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- Reduce the lower age limit for auto-enrolment from 22 to 18.

- Remove the lower earnings threshold for qualifying earnings (this is currently £6,240 per annum) so that contributions are calculated from the first £1 earned up to the upper limit (currently £50,270 per annum).

The implementation date for this has not yet been announced.

How we can help

As you can see pensions automatic enrolment is not straightforward. Please do contact us for help and advice. We can help you to manage the road to automatic enrolment and help you to comply with the requirements when you are in automatic enrolment.

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