

Auto Enrolment Update

(Lecture B1088 – 15.26 minutes)

Since October 2012 all employers are required to automatically enrol employees, known as “eligible jobholders” into, and contribute towards, a qualifying pension scheme.

Initially The Pensions Regulator (TPR) contacted employers between three to twelve months before their “staging” date (the date auto enrolment applies) in order to help them prepare for the changes. From 1st October 2017 businesses taking on staff for the first time will have automatic enrolment duties from the day the employee starts work.

Who will it affect and what do they need to do?

Auto enrolment applies to all employers with one or more workers, defined as an employee or someone who has a contract to perform work or services personally, that is not undertaken as part of their own business. Under auto enrolment employers will need to:

- Provide a qualifying pension scheme for “workers”;
- Automatically enrol eligible jobholders into the scheme;
- Tell all eligible jobholders they have been automatically enrolled and they have the right to opt if they want to do so;
- Pay employer contributions into the scheme;
- Register with The Pensions Regulator and provide details of the qualifying scheme and number of employees auto enrolled .

Who can be excluded?

Self employed individuals working under a contract for services are not normally workers.

Office holders such as non-executive directors, company secretaries, trustees and board members of statutory bodies are not normally workers. They usually have no contract or service agreement, do not receive a salary but may be paid expenses or a fee to cover their services. Where the person who appears to be an office holder also has a contract of service for part of their duties they will be a worker for those duties.

One person limited companies – The Pensions Regulator Guidance 1 “Employer duties and defining the workforce” says that if an individual is a director of a company and the company has no other employees, that individual is not a worker by virtue of any office that they hold or contract of employment under which they work. The company is therefore not subject to the employer duties in relation to that individual. However, if the company takes on a second worker, and both the director and the new employee work under a contract of employment, then both will be workers for the purposes of the employer duties and the company will have responsibilities in respect of both of them. There is further guidance on the TPR website.

Employers must assess their workforce

Employers must assess all their workforce to ascertain their responsibilities for each type of worker. Employees who are working their notice out, are under notice of dismissal or have given notice of retirement can be excluded from the assessment. However employees on sick leave, long term sick leave, maternity, adoption, paternity or shared parental leave must be assessed.

There are two main categories of worker – jobholder and entitled worker. A jobholder may then be “eligible” or “non-eligible”. An employer’s duties apply to eligible jobholders, non-eligible jobholders and entitled workers and the duties for each are different.

A worker is a jobholder if they:

- have a contract of employment or have a contract to perform work or services personally;
- are aged between 16 and 74;
- work or ordinarily work in the UK (not Jersey, Guernsey, Isle of Man);
- have qualifying earnings.

Zero hours, term time, fixed term, temporary workers, carers and nannies must be included when assessing the workforce. Individuals seconded from another employer will usually remain a worker of that employer. Agency workers will be employees of either the agent or principal depending which is paying the worker.

The earnings trigger for auto enrolment for 2018/19 is £10,000 which equates to £192 a week, £384 every 2 weeks, £768 every 4 weeks and £833 a month. Earnings means gross salary, wages, commission, overtime, bonuses, SSP, SMP, SPP, SHPP and SAP. It excludes any payments from third parties such as PHI.

Obligations for different categories of worker

Eligible jobholder: This is an employee aged 22 up to state pension age with earning over £10,000. This worker must be automatically enrolled and both they and their employer must make pension contributions.

Non eligible job holder: This is an employee:

- Aged 16 to 21 or between state pension age and 74 with earnings over £10,000, OR
- Aged between 16 and 74 with earnings of £6,032 per annum to £10,000

This individual does not have to be automatically enrolled but has the right to ask to be enrolled in an automatic enrolment scheme. Employer must provide them with information on their right to “opt in” within 6 weeks of date they became a non-eligible jobholder, i.e. the employer’s staging date or if after staging their first day of employment. If the person chooses to opt in they must give employer an “opting in notice”.

The employer must then enrol them into the automatic enrolment scheme following the same process as auto enrolment. The employer must contribute to the scheme.

Entitled worker

This is an employee aged 16 to 74 with earnings of £6,032 or less (£116 a week or £503 per month).

These workers have a right to join a pension scheme.

The scheme the employer chooses can be different to the one used for automatic enrolment. The employer must provide information to these workers about their right to join a pension scheme within 6 weeks of date they became an entitled worker, i.e. the employer's staging date or if after staging their first day of employment. The employer must provide one if they ask but only after the staging date. If the person chooses to join a pension scheme they must give the employer a "joining notice". The employer must then arrange membership of a scheme for them. The employer will have to deduct contributions from the person and pay these over, however the employer does not need to contribute to the scheme unless the scheme requires.

Employers must choose a pension scheme

Employers with an automatic enrolment duty must choose a pension scheme – it can be an occupational or a personal pension scheme. They may use an existing scheme, if suitable, or set up a new one. Employers who already have a pension scheme can confirm that it is suitable for automatic enrolment by a process called "certification".

Among the scheme providers are:

- The National Employment Savings Trust (NEST). This is a pension scheme which has a public obligation, i.e. it must accept all employers who apply. It has been established by the government to ensure that all employers can access pension savings and comply with their automatic enrolment duties. There are no charges currently;
- The Peoples Pension which is run by B & CE a not for profit organisation. £500 plus VAT set up charge;
- Smart Pension – there are no charges;
- Now Pension – set up is free but there is a £432 plus VAT ongoing fee.

When the pension scheme is in place the employer must provide key personal information to the scheme provider about the staff being auto enrolled. In addition the employer must advise the employees about auto enrolment and their right to opt out of the scheme after they have been enrolled. If the scheme is a personal pension scheme the employer must ensure that the scheme provider has sent the scheme's terms and conditions to the employees being auto enrolled.

Declaration of compliance

Every employer with at least one member of staff must complete their Declaration of Compliance with TPR within 5 months of their staging date and provide details of how many employees have been automatically enrolled.

If there is only one member of staff who needs to go into a scheme they must be enrolled into the scheme before they can ask to leave.

Opt-out notices

Workers who have been automatically enrolled have the right to opt out of the employer's pension scheme. They also have the right to opt back in again at a later date but not within the same 12 month period. If the employee decides to opt out they must complete an "opt out notice" which they obtain directly from the pension scheme and pass to their employer. They have one month from auto enrolment, to opt out and if they do so any deductions from their salary will be refunded. Employers must keep the originals or copies of all opt out notices for four years – either in paper format or electronically.

At any date in the future the worker can chose to cease membership of the scheme although they may not be entitled to a cash refund of contributions after the end of the one month opt out period.

Employers must make contributions

The minimum level of contributions that must be paid into the pension scheme have been set by government. These increase between now and April 2019 and from that date the minimum total contribution will be 8% of the workers qualifying earnings, falling between a lower and upper limit. Any earnings below or above these figures are not subject to contributions. Of the 8% the employer must pay at least 3%, but can pay more, and the employee will pay the rest, receiving tax relief on their contributions.

Contributions

	<u>E'er minimum</u>	<u>Total minimum</u>
Employer staging date to 5/4/18	1%	2%
6/4/18 to 5/4/19	2%	5%
From 6/4/19 onwards	3%	8%

For 2018/19 contributions are based on the earnings falling between the lower limit of £6,032 and the upper limit of £46,350. These limits are known as banded earnings. An employer can choose to pay contributions based on "unbanded" earnings so all salary is liable to pension contributions.

Where the employer pays more than the minimum employer's contribution the employee may reduce their contribution as long as the total minimum contribution figure is met. Similarly if both decide to pay a higher contribution they can and the employer can also pay contributions based on earnings above the qualifying earnings cap if they choose.

Postponement

Postponement is the flexibility for an employer that allows them to choose to postpone automatic enrolment for a period of their choice of up to three months. Postponement does not change the staging date.

The employer can postpone auto enrolment from the staging date, an employee's first day of employment or the date an employee first becomes eligible to auto enrolment.

The postponement is a waiting period. It gives the employer the flexibility to align the administration of the employer duties to their existing business and payroll processes. If a new starter takes up employment after the payroll has closed for the week or month and they are an eligible jobholder they should be enrolled in that PRP. The work this would involve could be avoided by postponing them until the next pay period.

On the last day of the postponement period (the deferral date) the employer needs to check whether employees are still eligible for auto enrolment. If so that is their assessment date, it is not backdated, and they must be auto enrolled into the pension scheme immediately. Where some employees are not eligible at this point then the next time eligibility is triggered a new postponement period can begin.

The employer must issue the worker or workers with a postponement notice within 6 weeks from the date of postponement. This advises the worker that automatic enrolment has been postponed, the deferral date and that on the deferral date they will be automatically enrolled.

Re-enrolment – necessary steps

An employer MUST automatically re-enrolled certain employees into an automatic enrolment pension scheme every three years. There will be a number of employers undertaking this exercise over the coming months by assess those workers to see if they must be re-enrolled. The third anniversary will be three years from the staging date and employers can choose the re-enrolment date. There is a six month window which starts 3 months before the third anniversary and ends 3 months after staging date.

The employer must assess which staff need to be included in re-enrolment. These employees are those who have:

- Asked to leave, i.e. opted out of, the scheme;
- Left, ceased active membership after the opt out period;
- Stayed in pension scheme but chosen to reduce the level of contributions below the minimum level.

The following employees do not need to be assessed if on the re-enrolment date they:

- Are already in the scheme;
- Are 21 or under;
- Are at SPA or over;
- Has not yet had an automatic enrolment date.

Having assessed the staff the employer must re-enrol anyone who left the pension scheme more than 12 months before re-enrolment date and meet the criteria for age and earnings. The timescale is within 6 weeks of re-enrolment date. If there are no staff to re-enrol then the employer should complete the re-declaration of compliance. The employer cannot use postponement at re-enrolment.

Employers will notify TPR of this date when completing the re-declaration of compliance. The re-declaration of compliance must be filed with TPR advising how duties have been met with 5 months of the third anniversary of the staging date.

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