

GUIDANCE NOTE

Auto-Enrolment Pensions

March 2012

This Guidance Note summarises the new laws, due to start coming into effect in October 2012, which require all employers to automatically enrol ‘eligible jobholders’ into a suitable pension scheme and to make contributions to their pensions. For more detailed guidance see The Pensions Regulator website <http://www.thepensionsregulator.gov.uk/>.

Although the new laws start coming into effect from October 2012, not all employers will be required to enrol ‘eligible jobholders’ from this date. The date on which the new laws will apply to individual employers (the ‘staging date’) will be dependent on the size of the employer as at 1st April 2012, with very large employers first, as follows:-

| Employer PAYE size | Staging Date |
|---------------------------|---|
| 50,000 or more | 1 st October 2012 to November 2012 |
| 49,999 to 10,000 | 1 st January 2013 to 1 st March 2013 |
| 9,999 to 4,000 | 1 st April 2013 to 1 st June 2013 |
| 3,999 to 1,250 | 1 st July 2013 to 1 st September 2013 |
| 1,249 to 500 | 1 st October 2013 to 1 st November 2013 |
| 499 to 250 | 1 st January 2014 to 1 st February 2014 |
| 249 to 50 | 1 st April 2014 to 1 st April 2015 |
| 49 to 30 | 1 st August 2015 to 1 st October 2015 |
| Less than 30 | 1 st January 2016 to 1 st April 2017 |

Eligible Jobholders

After the relevant staging date employers need to begin enrolling all ‘eligible jobholders’ into a suitable pension scheme. An eligible jobholder is defined as an employee or worker who is not already enrolled in an eligible pension scheme and who meets the following criteria:-

1. is aged 22 or over;
2. is under State Pension age;
3. earns more than £7,475 a year (this figure is subject to change); and
4. works (or usually works) in the UK.

The definition of employee and worker within these new laws is intended to be extremely wide and cover both employees and workers, both temporary and permanent.

Calculating who is an eligible employee or worker can sometimes be complex and if you have any specific queries, please contact one of the Employment Group, details at the end of this Note.

Agency Workers

With regard to agency workers, the guidance issued by The Pensions Regulator sets out that the agency workers will be classed as workers and that their employer (normally the agency) will be subject to the auto-enrolment duty if they satisfy the criteria set out above. Where there is no contract of employment in place the person responsible for paying the agency worker (normally the agency) will be subject to the auto-enrolment duty. Thus, the end user of genuine agency workers should not include agency staff within numbers calculations to work out their staging date and will not need to automatically enrol them into a pension scheme.

Opting Out

Eligible jobholders (defined above) who have been automatically enrolled into a pension scheme can choose to opt out of the scheme within one month of being enrolled. If an eligible jobholder opts out they will not receive the employer contributions.

If an eligible jobseeker who has opted out of the pension scheme wishes to re-join in the future they are entitled to do so. However, an employer is only required to permit an eligible jobseeker to re-join the pension scheme once in every 12 month period.

Employers will be required to automatically re-enrol eligible jobholders who have previously opted out of the pension scheme on the third anniversary of the staging date and then every three years thereafter.

Employers are prohibited from taking any action which has the sole or main purpose of inducing an eligible jobholder to opt out of the pension scheme. For example, an employer cannot offer an increased salary or bonus in return for an eligible jobholder opting out of the pension scheme, nor can it make job offers conditional upon opting out of the pension scheme.

It is unclear at present whether employers who offer flexible benefits packages would be in breach of the prohibition but it has been suggested that to be on the safe side, employers should review benefits packages to ensure that they are making the minimum contribution regardless of what package an eligible jobholder chooses. Further guidance on this issue is awaited from The Pension Regulator.

Opting In

There is no duty on an employer to automatically enrol workers or employees who do not meet the criteria of eligible jobholders into a pension scheme. However, there are certain groups of employees who, whilst not qualifying as eligible jobholders, have the right to 'opt in' to the pension scheme run by their employer. These workers and employees fall into three categories divided as follows:-

‘Non-eligible Jobholders’

- (A) Workers and employees aged between 16 and 22 and earning more than £7,475 a year;
- (B) Workers and employees aged between 16 and 74 and earning more than £5,035 a year (subject to change) but less than £7,475 a year;

The employer must make the minimum contributions (see below) to the worker or employee’s pension if they fall within the above 2 categories A and B.

‘Entitled Workers’

- (C) Workers and employees aged between 16 and State Pension age but earning less than £5,035 a year.

The employer is not required to make contributions to entitled workers’ pensions.

Suitable Pension Scheme

Under the new laws, an employer may meet its statutory auto-enrolment duties by enrolling eligible jobholders into an existing pension scheme providing that the existing scheme passes the statutory test and is therefore ‘suitable’. Both defined benefit and defined contribution schemes can be used, providing they pass the test. If you are unsure whether your pension scheme would pass the statutory test, we suggest that you contact your pension provider.

If an employer does not have a suitable existing pension scheme it can meet its statutory duty by auto-enrolling eligible jobholders in the National Employment Savings Trust (NEST) which is a defined contribution scheme supported by the Government and set up to enable employers to use it for the purpose of auto-enrolment.

Contributions

Where an employer is using a defined contribution pension scheme (including NEST) it will be under a statutory duty to make a minimum contribution of 3% (calculated by reference to the jobholder’s earnings) to the pension of all eligible jobholders (and those non-eligible jobholders who have opted in and are entitled to employer contributions) enrolled in the pension scheme. The jobholder will be required to make a minimum contribution of 5%. The **minimum** contributions will be phased in over time as follows:-

| Period | Employer Contribution | Jobholder Contribution |
|---|------------------------------|-------------------------------|
| 1 st October 2012 to 30 th September 2017 | 1% | 1% |
| 1 st October 2017 to 30 th September 2018 | 2% | 3% |
| 1 st October 2018 onwards | 3% | 5% |

Both employers and jobholders can choose to pay more than the minimum contribution if they wish, but must make at least the minimum contribution.

Postponement

Employers can choose to postpone the automatic enrolment of some or all eligible jobholders by up to three months from their staging date. This postponement allows employers the flexibility to align the introduction of automatic enrolment with existing payroll processes if they wish or to automatically enrol different groups of eligible jobholders at different times within the three month period.

The three month postponement is also available in respect of:-

1. a new employer or worker who starts work after the employer's staging date; or
2. a worker or employee who only meets the criteria to be an eligible jobholder (see above) after the employer's staging date.

In these circumstances the three month postponement will run from either the first day of employment or the first day the worker or employee becomes an eligible jobholder and not from the staging date.

If employers wish to postpone the automatic enrolment by up to three months they must issue the affected eligible jobholders with a postponement notice. The postponement notice must include certain prescribed information, depending on the type of jobholder.

Compliance

The Pension Regulator is responsible for ensuring that employers are complying with their new auto-enrolment duties. Employers that do not comply with the new duties or those that are found to be inducing eligible jobholders to opt out will face compliance notices and penalties. The penalties will vary according to the size of the employer but large employers could be liable for penalties of up to £10,000 a day.

If an employer is found to be wilfully failing to comply with its statutory duties it may face criminal charges.

The comments in this Guidance Note are of a general nature only. Full advice should be sought on any specific problems or issues.

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