

A pension for all



ROBIN DAVIS EXPLAINS HOW EMPLOYERS WILL BE AFFECTED BY THE PENSION AUTO-ENROLMENT RULES THAT COME INTO FORCE IN OCTOBER, AND WHAT THEY NEED TO DO.

From 1 October 2012, new laws come into force requiring all employers in the UK to automatically enrol eligible "jobholders" in a pension scheme. Affected employers must do so with effect from the date a jobholder becomes eligible, unless they are already an active member of the employer's qualifying scheme. For eligible jobholders who are auto-enrolled, the employer must pay mandatory minimum contributions to a defined contribution scheme or offer a minimum level of benefits in a defined benefit scheme. Initially only larger employers will be affected but, over a period of five years from October this year, all employers will be affected one way or another.

The Pensions Regulator will have overall responsibility for ensuring that relevant employers comply with the new rules. However, in some circumstances an aggrieved employee may have a separate right to take action against their employer directly.

For example, employers will not be able to ask job applicants at interview whether they plan to opt out of auto-enrolment. The Pensions Regulator will be given powers to issue compliance notices to employers who contravene this obligation, and penalty notices to those that flout compliance notices. An applicant discriminated against in this way may be awarded compensation at an employment tribunal.

Nor will employers be able to offer financial inducements to jobholders to opt out of workplace pension schemes after the auto-enrolment requirements come into force this year. An employer will face a compliance notice from the regulator if it takes action for the "sole or main purpose" of inducing an employee or worker to opt out of NEST (the government-backed scheme) or the employer's own qualifying scheme. According to the Department of Work and Pensions, offering higher salaries or one-off bonuses in exchange for opting out of scheme membership would count as inducements.

As well as the provisions relating to prohibited recruitment conduct, the new legislation confers various employment protection rights on "workers" (but not "jobholders"). Workers will have the right not to suffer any detriment in their employment because of their employer's breaches of the regime, and will be able to bring proceedings in an employment tribunal.

This protection does not cover detriment arising from an unfair dismissal. However, a new provision will be introduced into the Employment Rights Act 1996 to render unfair any dismissal arising from an employer's breaches of the auto-enrolment requirements or the prohibited recruitment conduct.

Although employers will not become subject to the new auto-enrolment duties until 1 October 2012 at the earliest, preparatory steps should be taken now. Issues to consider include the following:

- Larger employers (by payroll) will be the first to be affected by auto-enrolment but all will be affected by 2017. Employers should check to see when the new duties will apply to them.
- Employers must identify all eligible jobholders and entitled workers among their workforce.
- Existing pension schemes need to be checked to ensure that they meet the relevant tests for auto-enrolment compliance.
- If an existing scheme is to be used (whether occupational or personal), does it satisfy the quality requirements?
- If an employer plans to use its existing scheme, will any rule changes be required?
- If an employer plans to use its group personal scheme, will it take advantage of the advance self-certification regime? If so, how?
- Opting-out processes for existing jobholders and new joiners will need to be finalised, along with a communications strategy.
- Opting-in processes and communications will need to be agreed for jobholders not auto-enrolled (or who have previously opted out).
 - Re-enrolment processes and communications will need to be considered.
 - What arrangements will be made for so-called "entitled workers" (low earners who are entitled to join a registered pension scheme that does not have to be an automatic enrolment scheme)?
 - Employers should consult with their employment law and pension advisers in good time so that steps can be taken to get appropriate systems in place.



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