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Legal update ——— April 2017

Employment and pensions
Auto-enrolment – all employers to comply by the first quarter of 2018

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By the first quarter of 2018, all employers (regardless of size and date of establishment) will be obliged to auto-enrol certain staff into a pension scheme. The pensions Regulator has warned that it will accept "no excuses" for non-compliance and expects a rise in the number of penalties issued.

Auto-enrolment obligations began for large employers on 1 October 2012. In April 2017, the five-and-a-half-year staging process under which all employers must enrol eligible jobholders into a qualifying pension scheme or the National Employment Savings Trust (NEST), unless they are already members of a qualifying scheme, ends.

The statistics show that auto-enrolment has been a success. By January 2017 over 7 million workers had been successfully enrolled since the process began in 2012 and much fewer people have opted out than expected. With such high levels of employee engagement in pension provision, employers need to consider the future cost on their organisation and the structure of the auto-enrolment scheme they will provide.

The Pensions Regulator has made it clear that explanations given for non-compliance such as illness, being short-staffed, or confusion between employers and their advisers, are not a 'reasonable excuse' and that it expects a rise in the number of penalties issued.

Implementing the new employer duties

Employers need to ensure that from their relevant staging dates all eligible jobholders are enrolled in a qualifying pension scheme and minimum contributions are made on the employees' behalf. The smallest employers are now reaching their staging dates and by 2018 all employers must have complied with auto-enrolment. Certain employers may choose to bring their staging date forward on completion of specific requirements such as notifying the Pensions Regulator. New businesses have staging dates at the end of the overall timetable (from May 2017 onwards).

Identifying which workers need to be auto-enrolled

Employers have to ascertain which category of 'worker' staff fall into, as each category has different duties for the employer. Workers can include agency workers and are categorised as eligible jobholders, non-eligible jobholders and entitled workers. The category a worker falls into is determined by their age and whether they earn 'qualifying earnings'. Workers who are aged between 22 and the State Pension Age and have qualifying earnings in the relevant pay reference period that are above the earnings trigger for automatic enrolment are "eligible jobholders". They must be automatically enrolled in a pension scheme (with minimal overall contributions made by the employee and the employer).

For the tax year 2017/18, the earnings trigger is £10,000 with the band of qualifying earnings set at £5,876 up to a maximum level of £45,000.

Source: Fotolia

Opting out and opting in

Jobholders who have been automatically enrolled have a statutory right to opt out of whichever scheme they have joined, within prescribed time limits. However, a jobholder who opts out of a scheme must be automatically re-enrolled in a qualifying scheme every three years. Opted out jobholders can give notice to their employer once in every 12 month period that they have changed their mind and require the employer to arrange for them to re-join the automatic enrolment scheme.

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Workers who are not eligible jobholders may choose to opt into a pension scheme depending on their category:

- A worker who earns less than the qualifying earnings band is an "entitled worker". They may opt into a pension scheme but the employer is not obliged to make any contributions in respect of them.

- A worker who earns more than the qualifying earnings band and is aged between 16 and 21 or between State Pension Age and 74 is a "non-eligible jobholder". They may opt into an automatic enrolment scheme and receive the same contributions as eligible jobholders.

The contribution requirements

The minimum contribution requirements are being phased in over six years. Where an employer auto-enrols its eligible jobholders in a qualifying scheme operating on a defined contribution basis, until April 2018, the minimum contribution for an employer is 1% of a job holder's qualifying earnings, on the basis that the jobholder also pays 1%. The employer can, however, also pay the entire minimum 2% contribution if it chooses.

By April 2019 the employer minimum contribution will increase to 3% of a jobholder's qualifying earnings. The combined contribution due (from employers and jobholders) will increase to 8% of band earnings. In most cases jobholders will be expected to bay the balance of 5% contributions although the employer can pay the entire 8% if it chooses. Earnings include basic salary, wages, commission, bonus, overtime and statutory pay.

Type of scheme which employers can use to auto-enrol employees

Employers can enrol employees in the National Employment Savings Trust (NEST) or an alternative "Mastertrust" or using their own "qualifying scheme".

A qualifying scheme can be an occupational or personal pension scheme which is registered under the Finance Act 2004 and which satisfies certain quality requirements dependent on the type of arrangement used. A Mastertrust is a type of occupational pension scheme that numerous employers can participate in and where each employer has its own division within the master arrangement. An occupational scheme can be a defined benefit arrangement. The vast majority of employers will use a defined contribution arrangement for auto enrolment.

Enforcement

The Pensions Regulator is given various powers to issue compliance notices against both the employer and/or any other third party who caused the employer to fail to meet some of their core duties and to issue an unpaid contribution notice. The Pensions Regulator will then progress onto fixed penalty and escalating penalty notices if the breach is not remedied. Employers can also be charged with a criminal offence resulting in a fine or imprisonment if auto-enrolment duties are not complied with.

Future changes

The government is currently conducting a wide review of auto-enrolment with the focus being on whether auto-enrolment continues to meet the needs of individual savers. For example, it is considering whether the policies disproportionately affect different categories of employees or could be simplified. It is also looking at coverage for the self-employed and those with multiple low paying jobs.

To make auto-enrolment work in the long term, some commentators argue that radical change is required such as increasing the contribution obligations to ensure that those who are auto-enrolled have a pot at retirement which can provide a meaningful pension.

Next steps

All employers need to comply with auto-enrolment legislation and they should ensure they know their staging date.

To do this they should liaise with the Pensions Regulator. Once employers have a PAYE reference number they can access the Regulator's web page to find out their staging date via the following link: http://www.thepensionsregulator.gov.uk/employers/staging-date.aspx

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