Under starter's orders

Jane Klauber & **Deborah Nathan** provide a guide to getting ready for pensions auto-enrolment

October 2012 will see the beginning of the staggered process of pensions auto-enrolment, with large employers required to comply before smaller organisations. The regime requires employers to contribute to pensions for employees and imposes some significant administrative burdens.

Over a period of approximately six years, all UK employers with one or more employees must register with the Pensions Regulator and employers with three or more staff will have an obligation to enrol all eligible employees into a qualifying pension scheme and make a minimum contribution of 3% of gross salary (however, the level of contributions will be phased in, with an initial minimum contribution level of 1%). Employees will be required to match the contributions and tax relief will ensure that a contribution of up to 8% overall is made. Organisations can postpone commencement of their auto enrolment duties for three months but must give notice to employees that they intend to do so. Coercing employees to opt out or offering inducements to do so are prohibited.

Qualifying schemes

The scheme used must be an "automatic enrolment scheme". These are defined as:

- Schemes that comply with Pensions Act 2008, including the requirement that the employer must pay contributions of at least 3% of qualifying earnings and the total contribution of employer and jobholder must be at least 8% of qualifying earnings.
- Schemes where there is no requirement on the new joiner to make a choice or provide information in order to become a member. This means there must be a default fund available.

The National Employment Savings Trust (NEST) has been established as a default scheme and has a public service obligation, requiring it to accept any employer who applies. It is independent of the Department for Work and Pensions and Pensions Regulator.

Registration with the Regulator

Organisations with one or more employees must register with the Pensions Regulator as soon as they start auto enrolling job holders and within four months of their staging date at the latest. Organisations must provide prescribed information including:

- The employer's address, postcode, the employer's registered company number (or otherwise its industrial and provident society number, registered charity number or VAT registration number) and the employer's pension scheme reference.
- The name, phone number and e-mail address (if there is one) of the person providing the information, and their relationship to the employer.
- The number of jobholders who are auto-enrolled, the number of jobholders enrolled after a postponement period and the number of jobholders not enrolled. If more than one pension scheme is used, this data must be broken down for each scheme.
- The number of jobholders paying tax on a PAYE basis who were active members of a qualifying scheme before the staging date.

Organisations must re-register every three years and re-enrol eligible job holders (who opted out) every three years.

Staging dates

The Pensions Regulator website can calculate your staging date for you: www.thepensionsregulator.gov.uk/employers/tools/staging-date.aspx. For large employers, the new rules start to apply within the next 12 months while the smallest employers will have up to five years before they are required to comply. However, it is crucial, particularly when budgeting for future years, to know exactly when your staging date will arise so the precise date should be confirmed (by using the calculation tool) as soon as possible.

The new regime will be policed by the Pensions Regulator who is also responsible for informing employers and other relevant organisations (such as payroll companies) of their obligations under the new legislation.

Who is entitled to automatic enrolment and 3% employer contributions?

Eligible job holders are entitled to be enrolled automatically and receive employer contributions. They must:

- work or ordinarily work in the UK under a contract of service (an employee or worker);
- be aged between 22 and state pension age
- be paid qualifying earnings by an employer. From 2012 to 2013, the likely band for qualifying earnings will be £5,564 to £39,853;
- be paid earnings that exceed the earnings trigger. This is likely to be £8,105 for 2012 to 2013;
- not already be an active member of the employer's qualifying pension scheme.

Enrolment

All eligible job holders will need to be enrolled in a qualifying scheme within one month of the staging date. If an employer wants to take advantage of the three-month waiting period, they must give their employees notice that they intend to do so within one month of the staging date or eligibility for enrolment.

When staff enrol, they should be given information about the key legal rules governing auto enrolment, including the fact that an employer cannot force an employee to opt out or offer any inducement to do so.

Enforcement

Employees and workers can report any attempts to induce or coerce an opt out to the Pensions Regulator who can impose compliance and penalty notices.

If an employer fails to comply with a compliance notice requiring them to take certain steps (or refrain from certain actions) they can face either a fixed penalty notice of £4,000 or, for more serious or persistent breaches, an escalating penalty notice will be issued. These range from £50 a day for employers with one to four workers to £10,000 a day for employers with 500 or more workers.

While there is no new claim of automatic unfair dismissal as a result of refusing to opt out, dismissing an employee who refuses to opt out or who makes a report to the Pensions Regulator may breach the whistle-blowing provisions of the Employment Rights Act 1996, giving rise to potential claims for detriment or automatically unfair dismissal.

What you should do next

1. Check employment status

The auto enrolment provisions only apply to employees and workers under UK employment law. This is not determined by any label given by the organisation but by the individual's actual working relationship. The position of casual workers, consultants and volunteers should be evaluated and advice should be sought

2. Check your staging date

The first priority for any employer will be confirmation of their staging date and a check of any existing pension arrangements.

Confirmation of the staging date can be done easily with the calculation tool available on the Pension Regulator's website. It will be based on PAYE scheme size and in some cases employer PAYE reference number.

3. Check whether your existing scheme can be used to meet the new requirements

An employer must use a "qualifying" pension scheme to comply with the new requirements. A qualifying scheme cannot have any barriers to entry. Employees should not be required to complete forms or choose particular funds before their scheme membership can start. It is advisable to discuss this with existing pension providers as soon as possible. If you have to source another suitable scheme, this will require considerable additional work.

The level of contributions is staggered (under the current proposal the level of the employer contribution is 1% until September 2017 when it increases to 2%. Employer contributions are currently set to increase to 3% from 1 October 2018).

4. Cost recovery and administrative demands

Organisations need to ensure that projected staff costs include pensions costs when bidding for contracts. The administrative requirements of the auto-enrolment scheme will be onerous and this will be an ongoing drain on staff time and resources as employers must re-register with the Regulator and re-enrol employees who opt out periodically.

5. Review existing employee benefits

Employers are prohibited from offering any inducement to opt out of the auto-enrolment scheme and a breach could lead to action from the Pensions Regulator. Some employers offer a flexible "menu" of benefits to staff, allowing employees to choose from a range of benefits up to a certain value. If pension benefits are part of this, the fact that an employee can choose another benefit instead of pension contributions is likely to breach the new rules and amount to an inducement to opt out.

Small and medium-sized employers may have some time before they are covered by the new requirements. However, it is clear that all employers will have to carry out significant work to meet the new requirements and it is advisable to take basic preparatory steps in advance to ensure that the new deadlines for compliance are not missed.

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