July 2011

NEW EMPLOYER PENSIONS DUTIES

Pensions/Employment/Taxation and Benefits

EMPLOYERS' PENSIONS OBLIGATIONS ARE RADICALLY CHANGING FROM 2012. ALL EMPLOYERS WILL NEED TO PROVIDE SUITABLE PENSION PLANS AND MAKE CONTRIBUTIONS TO THEM.

What do I need to do?

1. **Identify how your workforce will be affected – as well as your employees, you may also have duties towards other "workers" such as contractors and agency staff.**
2. **Determine your "staging date" – when the new regime will apply to you.**
3. **Work out what your extra cost will be – there may be ways to offset this.**
4. **Make sure someone "owns" the issue – it will not go away and requires co-ordination across several areas including HR, Benefits and Payroll.**
5. **Decide whether to use an existing pension plan, a new one, or NEST.**

What is happening in 2012?

The introduction of a new duty that will apply to employers of all sizes. Employers will have to automatically enrol into a pension plan "workers" who:

- are aged between age 22 and state pension age, and
- earn over £7,475[1] per year, and
- work (or normally work) in the UK.

These workers are known as "**eligible jobholders**" and employers must pay minimum contributions to a pension plan on their behalf. Different obligations apply in respect of workers who are not eligible jobholders.

When will the duty apply?

This depends on the employer's payroll size. The duty will apply to the largest employers in October 2012 and will be phased in for smaller employers over a 4 year period. See the staging dates timeline on the Pensions Regulator's website to check the applicable date for your payroll.

What pension arrangements can employers use to satisfy the duty?

Employers can use existing or new pension plans. These can be defined benefit (DB) or defined contribution (DC) plans operating on a trust or a contract basis provided they meet one of several qualifying tests. Alternatively, employers may use the National Employment Savings Trust (NEST). NEST is a nationwide trust-based DC pension plan which will be open to all employers.

Employers will need to make strategic decisions regarding their pension provision – they do not have to offer the same provision to all employees.

What are the qualifying tests?

- If a DB plan is contracted-out then it will automatically meet the qualifying test. If it is not contracted-out then a statutory quality standard has to be met. In practice many registered DB plans will meet the qualifying test.
- For DC plans the qualifying test is more complicated and depends on contribution levels and on how pensionable salary is calculated. If one of several statutory standards is satisfied the employer will be able to self-certify that the plan meets the qualifying test.

All pension plans used to satisfy the new employer duties will have to meet eligibility criteria and comply with information and record keeping requirements – *so action will be needed in all cases.*

Employers and trustees cannot make automatic enrolment conditional upon any other action. For example, employees cannot be required to make an investment choice in a DC plan.

1 This figure may be increased for 2012/13 tax year onwards and is intended to align with the income tax threshold.

What are the minimum contributions for DC plans?

Broadly speaking, the total minimum contribution required from October 2017 will be 8% of band earnings.[2] The 8% breaks down as 3% employer contribution, 4% employee contribution and 1% tax relief. However, it is the overall level of contributions that matters – an employer can contribute in excess of the 3% minimum.

A reduced contribution rate applies for a transitional period. For employers, this is a contribution rate of 1% up to September 2016, and 2% between October 2016 and September 2017.

DC plans that rely on self-certification will vary slightly from this general requirement because specific definitions of 'pay' for pension purposes will be taken into account.

What are the minimum contributions for DB plans?

Specific funding standards apply to DB plans and therefore no minimum contributions apply. For DB plans transitional arrangements will allow the employer to defer automatic enrolment to 2016 even if the employer's staging date is earlier – this is subject to various conditions.

Workforce assessment

The assessment may not be straightforward for employees whose earnings fluctuate – HR/payroll teams need to establish processes to deal with such individuals.

Employees who work (or normally work) in the UK but do not satisfy the age or earnings criteria for automatic enrolment may be able to opt-in to a pension plan and in some circumstances the employer will have to make contributions on their behalf. These employees must be provided with information about their pension rights.

Opting-out

Once an employee has been automatically enrolled into a pension plan he can choose to opt-out. If he opts-out within a month his contributions are returned to him and he is treated as though he has never been a member. Employers will need to keep careful records of opt outs.

Waiting periods

Employers can choose to postpone the automatic enrolment of an employee for up to 3 months, provided they give the appropriate notice.

Automatic re-enrolment

Approximately every 3 years, employers will have to automatically re-enrol employees who have previously opted-out. Employees can choose to opt-out again.

Employee safeguards

Employers must not take any action (or fail to take any action) which attempts to induce an employee to opt-out of a pension plan. There should be no implication that an offer of employment is conditional upon an employee opting-out.

What if an employer fails to comply with the new duties?

The Pensions Regulator will police compliance with automatic enrolment duties and can issue substantial penalty notices to employers. Failure to comply could also amount to a criminal offence.

Further information

Detailed guidance on the new employer duties can be found on the Pensions Regulator's website. Information on the National Employment Savings Trust is on the NEST website. Alternatively, please contact one of the partners below or your usual contact at Squire Sanders Hammonds.

Matthew Giles
Partner, Pensions
T: +44 (0)121 222 3296
E: matthew.giles@ssd.com

Lawrence Green
Consultant, Taxation and Benefits
T: +44 (0)121 222 3394
E: lawrence.green@ssd.com

Gerry Peyton
Director, HR Plus
T: +44 (0)20 7655 1792
E: gerry.peyton@ssd.com

Charles Frost
Partner, Employment
T: +44 (0)121 222 3224
E: charles.frost@ssd.com

2 The lower and upper band earnings will be set by the Secretary of State – they are expected to be broadly in line with the Primary threshold and the Upper Earnings Limit for National Insurance purposes.

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