Automatic Enrolment

What Is an Employer's Automatic Enrolment Duty?

Under UK law, an employer must automatically enrol "workers" into a pension plan if they satisfy certain criteria relating to age and earnings. The employer must make contributions to the pension plan.

A "worker" is broadly defined as an individual who:

- Has a contract of employment
- Has a contract to perform work or services personally and is not undertaking the work as part of his/her own business (i.e. he is not genuinely self-employed)

When Does the Duty Apply?

Since 1 October 2017, all new employers have been required to comply with automatic enrolment from the first day on which they employed their first worker. The Pensions Regulator refers to this as the duties start date. Prior to that, the date on which the duty first applied was calculated by reference to the size of the employer's payroll scheme on 1 April 2012. Each employer was allocated a "staging" date, which was phased in between October 2012 (for the largest employers) and 1 February 2018 (for the smallest or newest employers).

What Type of Pension Plan Must Be Provided?

The duty is to provide membership of either a defined benefit pension plan, under which members accrue a specified minimum level of benefits, or a defined contribution (DC) plan to which a minimum level of contributions is paid by the employer. A pension plan that satisfies the criteria set out in legislation is known as a "qualifying scheme". The employer selects a qualifying scheme which could be an existing or new occupational or personal pension plan. Alternatively, the employer could use the government-created National Employment Savings Trust, or one of a number of other master trust arrangements, which have been set up independently of the government.

If an employer wishes to use an existing pension plan it should take legal advice on whether the plan satisfies all of the criteria to be a qualifying scheme. The criteria include eligibility requirements as well as contribution/benefit levels.

How Much Does the Employer Have to Contribute?

Minimum contributions to DC plans are set out in legislation. Broadly speaking, the total minimum contribution required is 8% of earnings within a specified band of earnings, which for 2021/22 is between £6,240 and £50,270 per year. The 8% must include a minimum 3% employer contribution. The employer can make higher contributions. An employer must not offer an inducement to a worker to opt out of automatic enrolment; offering additional cash or other benefits (instead of pension contributions) as a means of incentivising a worker to opt out of a workplace pension is unlawful.

What Are the Criteria Relating to Age and Earnings?

A worker is an eligible jobholder who must be automatically enrolled into a qualifying scheme if he:

- Is aged between 22 and state pension age
- Is working or ordinarily works in the UK under the worker's contract
- Earns more than the "automatic enrolment earnings trigger" (for 2021/22 this trigger is £10,000 per year)

Workers who are aged between 16 and 21 or between state pension age and 74 also have pension rights. Their level of earnings will dictate whether they are eligible to opt into the employer's qualifying scheme and benefit from employer contributions, or whether a different pension arrangement can be offered.

How Does an Employer Assess Who Is Eligible?

An employer should undertake an assessment of its workforce to establish which workers should be subject to automatic enrolment at its duties start date and which workers have a right to opt-in to pension arrangements. The workforce needs to be monitored on an ongoing basis to ensure that workers who subsequently attain the age or earnings criteria are automatically enrolled. An employer can choose to postpone the automatic enrolment of a worker for up to three months if appropriate notice is given.

If the employer offered a defined benefit pension plan as its automatic enrolment pension scheme it could delay automatic enrolment up until 30 September 2017.

Does the Worker Have to Complete an Application Form?

Any workers who must be automatically enrolled should not be required to complete any paperwork or make any investment decisions as a condition of joining the pension plan. The process must be automatic.

What If the Employee Does Not Want to Be in a Pension Plan?

Workers who have been automatically enrolled can opt out of the pension plan. If they opt out within a month, their own contributions are returned to them and they are treated as though they were never a member.

Re-enrolment

Employers are required to automatically re-enrol eligible jobholders every three years. A re-enrolment date should be chosen from within a six-month window, which starts three months before the third anniversary of the automatic enrolment staging date/duties start date and ends three months after it. The purpose of re-enrolment is to ensure that jobholders who have opted out are forced to reconsider their decision on a regular basis.

What Is a Declaration of Compliance?

Every employer must complete a declaration of compliance online to let The Pensions Regulator know that its legal duties for automatic enrolment or re-enrolment have been met.

Further Information

Employers should consult The Pensions Regulator's detailed guidance on automatic enrolment.

Some Practical Points

Do	Don't
Do allocate responsibility for automatic enrolment compliance to a specific individual or group of people within the business. Employer duties impact on a number of disciplines, including HR, Finance, IT and Payroll. It is important that someone "owns" this responsibility.	**Don't** underestimate the amount of work that may be involved with automatic enrolment.
Do check the legislation regarding which employees are subject to re-enrolment. The legislation has changed over time and the list of exceptions is likely to be different to when the employer reached its original staging date.	**Don't** offer workers any incentives to opt out of the pension arrangement, for example, by telling them they will be entitled to a one-off payment. Inducing an individual to opt out is unlawful.

What Are the Consequences of Failing to Comply?

The Pensions Regulator is responsible for policing automatic enrolment. It has been granted significant powers to enable it to perform this function. Penalties for non-compliance (including the offering of inducements to workers to opt out of automatic enrolment) can be severe, including fixed and escalating fines. In certain limited circumstances, non-compliance can amount to a criminal offence.

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