UK PENSION REQUIREMENTS FOR ALL EMPLOYEES

An Employement Brief by

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October 2012 saw the introduction of radical changes to workplace pensions in the UK which meant that all employers (including non-UK companies) now need to automatically enrol eligible employees in a pension scheme and make minimum contributions each year. This brief guide provides the key facts and information for any employer employing staff in the UK.

<u>When do the duties apply?</u>

Not all employers have had to auto-enrol employees immediately and in order to make the process as simple as possible the UK government set "staging dates". Staging dates depend on the size of an employer's PAYE scheme as at 1 April 2012, with larger employers having to comply earlier than smaller employers. Companies set up between April 2012 and September 2017 (and/or overseas employers that are only starting to employ in the UK) will have a staging date between 1 May 2017 and 1 February 2018.

Employers must automatically enrol eligible jobholders in a qualifying pension scheme, unless the worker is already an active member of a qualifying scheme. Employers must contribute a minimum of 3% of a worker's earnings into the scheme. The worker's total combined contributions must be at least 8% of his/her earnings. However, this level of pension contributions will be phased in over the next six years to help employers and individuals adjust. Full contributions will have to be paid from 1 October 2018. Currently the contributions are 1% from employees and 1% from the employer.

An employer has a period of one month from the staging date (or the employee's start date, if later) to enrol an eligible jobholder (although, if certain requirements are met and the worker is given notice, an employer may postpone compliance with the new rules for up to three months from its staging date). During this time, employers must provide certain information to eligible jobholders. This includes a statement that the jobholder has been or is going to be automatically enrolled, the date of auto-enrolment and information about his right to opt out.

<u>Who is an eligible jobholder?</u>

An eligible jobholder is anyone who:

- works in the UK;
- is aged at least 22;
- is below the state pension age as applicable from to time; and
- earns more than £10,000 per year.

What is a qualifying scheme?

An eligible jobholder must be enrolled in an automatic enrolment scheme unless he/she is already an active member of his/her employer's qualifying scheme. An automatic enrolment scheme is an occupational or personal pension scheme that counts as a qualifying scheme and meets certain additional requirements.

An employer's scheme is a qualifying scheme if it is either:

- an occupational or personal pension scheme of the type defined by the Pensions Act 2008;
- is a registered pension scheme which has been approved by HMRC; or
- satisfies the quality requirements set out in the Pensions Act 2008.

The additional requirements for an automatic enrolment scheme include a requirement that no new joiner must be asked to make a choice or provide information in order to become an active member.

In order to facilitate employer's compliance with the pension auto enrolment obligations, the UK government has set up the National Employment Savings Trust (NEST) which is a government pension scheme. Alternatively, employers can use private pension providers, subject to the scheme satisfying the legal requirements.

What must employers not do?

There are various safeguards to ensure that employers do not try to avoid auto-enrolment or encourage workers to opt out.

- During the recruitment process, employers must not behave in a way which indicates to a candidate that a successful application depends on whether he will opt out of an automatic enrolment scheme. For example, employers would be wise to avoid questions on application forms, and at interview, asking whether a candidate intends to opt out of an auto-enrolment scheme.

- Employers are prohibited from taking any action for the "sole or main purpose" of inducing a worker to give up membership of a pension scheme.

- Workers have the right not to be subjected to any detriment by an act, or deliberate failure to act, by their employer in relation to its duties. Furthermore, the dismissal of an employee will be automatically unfair where the principal reason for the dismissal is the employer's auto-enrolment duties or its contravention of those duties. No qualifying period is needed to bring either of these claims.

What happens if employers fail to comply?

The Pensions Regulator is responsible for enforcing the new rules and will issue sanctions for non-compliance. In the first instance, the Regulator may issue a compliance notice requiring the employer to refrain from, or take, action. If the employer does not comply with the notice the Regulator may impose a fixed penalty fine. If the employer is in serious or persistent breach of its duties, the Regulator may impose escalating fines which depend on the size of the employer. Workers will be able to bring a detriment or unfair dismissal claim in an employment tribunal.

<u>Checklist</u>

1. ***Identify the staging date*.** If it has not already done so, the company should confirm its staging date at the earliest opportunity. This can be done by checking http://www.thepensionsregulator.gov.uk/employers/staging-date-timeline.aspx.

2. ***Assess the workforce.*** The company should carry out an assessment of the workforce to identify which workers will need to be automatically enrolled in a pension scheme. Whilst "blanket enrolment" may seem an attractive option to avoid the administrative burden of assessing everyone, this may fall foul of the law which prohibits employers making unlawful deductions from wages. Employers who make deductions from wages are only protected where there is a legal requirement to do so which would only be the case for eligible jobholders. For other categories of worker the written consent of the worker, or an express contractual provision, would be needed.

3. ***Review/select a pension scheme.*** Eligible jobholders must be enrolled in a pension scheme which meets the qualifying criteria set by the legislation.

4. ***Prepare information.*** The company must provide varying information to each category of worker within the prescribed time limits. It is a good idea to start preparing this information in advance of the relevant staging date.

5. ***Set up payroll.*** The company needs to make sure that an automatic enrolment payroll process is in place from its staging date and that it is in a position to make the required minimum contributions.

6. ***Register.*** The company must register with the Pensions Regulator within four months of its staging date. This can be done online.

7. ***Record Keeping.*** The company must ensure records are kept to demonstrate ongoing compliance with its duties. Records can be used to keep track of workers' ages and earnings to ensure that the University is still compliant when individuals move between categories.

This Employment Brief aims to introduce you to legal issues and is not a substitute for taking appropriate specialist advice in individual cases.

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