

## Pensions: Auto-Enrolment & Employer's Duties

**From October 2012, workplace pensions law is set to change and the new requirements will mean that all employers with at least one employee working in Great Britain will automatically have to enrol their employees in a pension scheme. This briefing note sets out what the changes are and what employers will need to do to comply with them.**

### Implementing the reforms

The new duties will be formally implemented over four years from 1st October 2012, with larger employers required to make the changes before smaller employers and new businesses. Employers will be allocated a date from which the changes apply, the "staging date", and this date is based on the number of employees paid through PAYE. Employers with 50 employees or fewer will not have to make the changes until 1st August 2014 at the earliest and employers can check their provisional staging date on the Pensions Regulator's website - [www.tpr.gov.uk/staging](http://www.tpr.gov.uk/staging)

From the staging date, employers must arrange for all eligible employees ("jobholders"), to be automatically enrolled in a pension scheme (though new jobholders can be required to wait three months). Employers can use existing occupational or personal pension schemes (but will need to confirm that these meet the necessary requirements), or enrol jobholders in the National Employment Savings Trust (NEST), introduced by central government to provide a simple, low cost pension scheme.

For existing schemes, different tests apply depending on whether it is a defined contribution (DC) scheme or a defined benefits or final salary (DB) scheme. If your company already has a pension scheme, you will need to check with the pension provider that this can be used for auto-enrolment.

### Eligibility requirements and using NEST

To be eligible for auto-enrolment, a jobholder must:

- Be between the age of 22 and the state pension age (currently age 65 years);
- Work in the UK; and
- Earn a minimum amount (proposed to be £7,475 being the current income tax personal allowance).

Employers can choose to impose a three month waiting period before a jobholder is enrolled. Jobholders include permanent and temporary employees and agency workers. Non-executive directors are however not included.

- Once enrolled, the Employer must pay a minimum of 3% of 'band' earnings each year. This requirement is to be phased in over five years to October 2017.
- The earnings band is currently £5,035 to £33,540, no contribution is therefore payable on earnings above or below the band. Where the employer makes the minimum contribution, the jobholder must contribute a minimum of 5% of band earnings (actually 4% with 1% tax relief phased in to October 2017) so that, with employer contribution, a minimum of 8% is paid in.

- Band earnings include basic salary, commission, bonus, overtime, statutory sick pay, maternity and adoption pay. An employee earning £20,000 plus £2,000 commission per annum will therefore have to contribute £848.25 (including tax relief) per year.
- There will be an annual limit on contributions (currently £4,200), but this is due to be abolished in 2017.
- NEST is an occupational DC scheme set up under trust. Transfers into and out of NEST will be banned, though this will be reviewed in 2017. NEST pensions are personal to the jobholder and, depending on the new employer's existing scheme, can be transferred from one employer to another.

## Opting out

Although automatic enrolment is compulsory, membership is not, therefore jobholders who have been enrolled have a statutory right to opt out and must do so in writing. However, while they can cease to be a member at any time, they may not be entitled to a refund of contributions made by them unless the opt out occurs within the first month of being automatically enrolled. Where an employee has opted out, there is no obligation on the employer to ensure that they are a member of an alternative scheme. Jobholders who have opted out will be automatically re-enrolled every three years, and will probably have to do so during a prescribed six month window.

## Opting in

Jobholders who are not automatically enrolled (for example, because they opted out or are aged under 22), can opt in by giving their employer notice requiring the employer to arrange for them to join an automatic enrolment scheme. But they can only do this once in a 12 month period. Individuals earning less than the minimum band earnings can also opt into a pension scheme, but will not be entitled to receive any employer contributions.

## Enforcing compliance

Employers will not be allowed to induce jobholders to opt out of scheme membership or make job offers conditional upon opting out.

Employers that breach the new duties will face compliance notices and penalties that vary according to the employer's size. Large employers could be liable for escalating penalties of £10,000 a day. Criminal penalties could also apply in the case of "wilful" failure to comply.

## Next Steps

Guidance is still awaited on many aspects of the new rules but in the meantime, employers can carry out the following tasks:

- Find out your company's provisional staging date from the Pension Regulator's website;

- Find out if your existing pension scheme can be used for automatic enrolment, if not, you may need to find a new pension scheme or consider using NEST;
- Consider when to provide information to jobholders about automatic enrolment and their right to opt out of the scheme
- Look to make this part of a positive change for employees, and use this benefit and amendment to employee contracts as an opportunity to make any other changes which may be needed.

## More information

Golden Leaver will provide further information on the pension changes as the time for implementation draws near. In the meantime, if you would like to discuss how the changes are likely to affect your company, please contact Caroline Leaver on [c.leaver@goldenleaver.co.uk](mailto:c.leaver@goldenleaver.co.uk) or 020 315 5172.