

THE 2012 PENSIONS REVOLUTION

EMPLOYERS: NEW PENSION OBLIGATIONS

New pension rights are being introduced for workers aged at least 22 who earn more than £7,475pa. These apply once their employer has reached its "staging date", determined by the number of its PAYE employees:

- ◆ **Large employers** will have an early staging date, and by July 2014 all employers with 50 or more people in their largest PAYE scheme on 1 April 2012 will be affected.
- ◆ Following an announcement made by the government on 28 November 2011, the staging dates for **employers with fewer than 50 employees** have been delayed by a year. The staging dates for such employers were originally planned to commence from 1 August 2014, with the smallest employers having until 1 February 2016 to comply. It is expected that the revised staging dates for such employers will be announced by the government in January 2012.

Once the appropriate staging date has been reached, employers will have to enrol eligible employees into a suitable pension scheme automatically after a three month waiting period and make minimum contributions of up to 3 per cent of gross earnings up to prescribed levels on their behalf (provided the employee makes matching contributions). Employers must also permit certain lower paid employees to opt in if they wish: if they do then the employer is required to pay minimum contributions in the same way.

The new system will be policed by the Pensions Regulator, with fines for non compliance. It is a major shift from the current position, which only requires employers to allow access to a pension scheme, rather than to contribute to it. Many employees within the prescribed income bracket may not currently be in a pension scheme, and employers with workers in this category could therefore find the new proposals resulting in substantial additional costs. The pension is not compulsory: employees will be able to opt out. It will however be unlawful for employers to encourage workers to opt out. Instead, take up is to be encouraged by requiring employers to repeat automatic enrolment every three years for employees who have opted out.

A raft of new obligations for employers accompanies the new regime, and preparation is key to ensure that compliance is achieved as easily and cost-effectively as possible.

The legislation is detailed and extensive, and will affect employers in different ways. Employers with existing pension arrangements, for example, may be able to use

those schemes to satisfy the new requirements, provided the chosen scheme satisfies the qualifying criteria. Employers with no existing arrangements will need to make choices about an appropriate scheme and provider. All employers will have to ensure that their HR, administration and payroll systems can cope, and that they are prepared for the questions from employees which are bound to emerge. They will also need to consider and manage the cost implications for their business.

MACFARLANES BRIEFINGS

A series of Macfarlanes briefings over the next few months, before implementation begins next October, will provide detailed guidance on the various aspects of the changes for employers. Starting in January 2012, these will build up to give a complete overview of the changes and their practical effect, including the implications for companies considering corporate transactions. Meanwhile, a summary of the changes appears below. For more information at this stage please go to our website or visit the websites of the Pensions Regulator and NEST (see below).

WHAT THE CHANGES ARE

Auto-enrolment and eligibility

Eligible employees must be automatically enrolled into pension schemes that meet minimum quality requirements after a three month waiting period. To be eligible, an employee or "job-holder" must be at least 22 and not have reached state pension age, and earn over £7,475pa. Permanent and temporary employees as well as agency workers in certain circumstances can all be eligible for automatic enrolment if they fulfil the age and earnings criteria. In addition, employers must allow employees earning between £5,035 and £7,475 to join the scheme if they wish, although they are not required to be auto-enrolled.

Opting out and contributions

Once auto-enrolled (and there is a three month waiting period), employees can opt out. If they do not, the employer must pay a prescribed minimum rate of contributions on the employee's behalf, as long as the employee also makes his or her own contributions. For the first four years, employer contributions will be fixed at 1 per cent of qualifying earnings i.e. between £5,035pa and £33,540pa including bonus, overtime and any other elements of gross earnings. Employer contributions will rise to 2 per cent of qualifying earnings in year five and 3 per cent thereafter. The government's announcement expected in January 2012 will presumably confirm whether the contribution levels and timings will be amended in light of the change in staging date for smaller

employers. An employee who has chosen to opt out may change his mind later and join the scheme by giving written notice, but in any event, the auto-enrolment process must be repeated every three years to prompt workers who have opted out to revisit their decision.

Existing schemes

It will be possible for employers with existing schemes which meet qualifying conditions to use them to satisfy their new obligations and many are already considering whether to do this. A recent survey by the Association of Consulting Actuaries articulated a widespread concern that the changes in the law would inevitably mean a levelling down of existing provision in order to allow the additional cost of auto-enrolment to be absorbed.

NEST

Many employers will have no qualifying pension scheme and will not wish to take the responsibility of setting one up and running it. A number of commercial master trust products and the new government sponsored trust scheme NEST (the National Employee Savings Trust) may be worth considering by these employers. Such schemes may reduce the cost and burden of employer administration, since as much material as possible (for example prescribed information which has to be given to employees) is being standardised, and it may also be easier for employers to ensure that employees' pension savings are adequately administered after an employee moves jobs.

Compliance

It will be unlawful to induce employees to opt out in order to avoid the obligation to contribute to the new pension arrangements e.g. by offering higher salary or promotion in return for opting out. Employers with "cafeteria" benefit packages under which employees can choose which benefits they want will also need to consider whether such schemes meet the new requirements. The legislation also contains detailed requirements with regard to eligibility, opt outs and the provision of information to employees within certain timescales. Breach of the new requirements may lead to a fine imposed by the Pensions Regulator, which has responsibility for compliance.

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