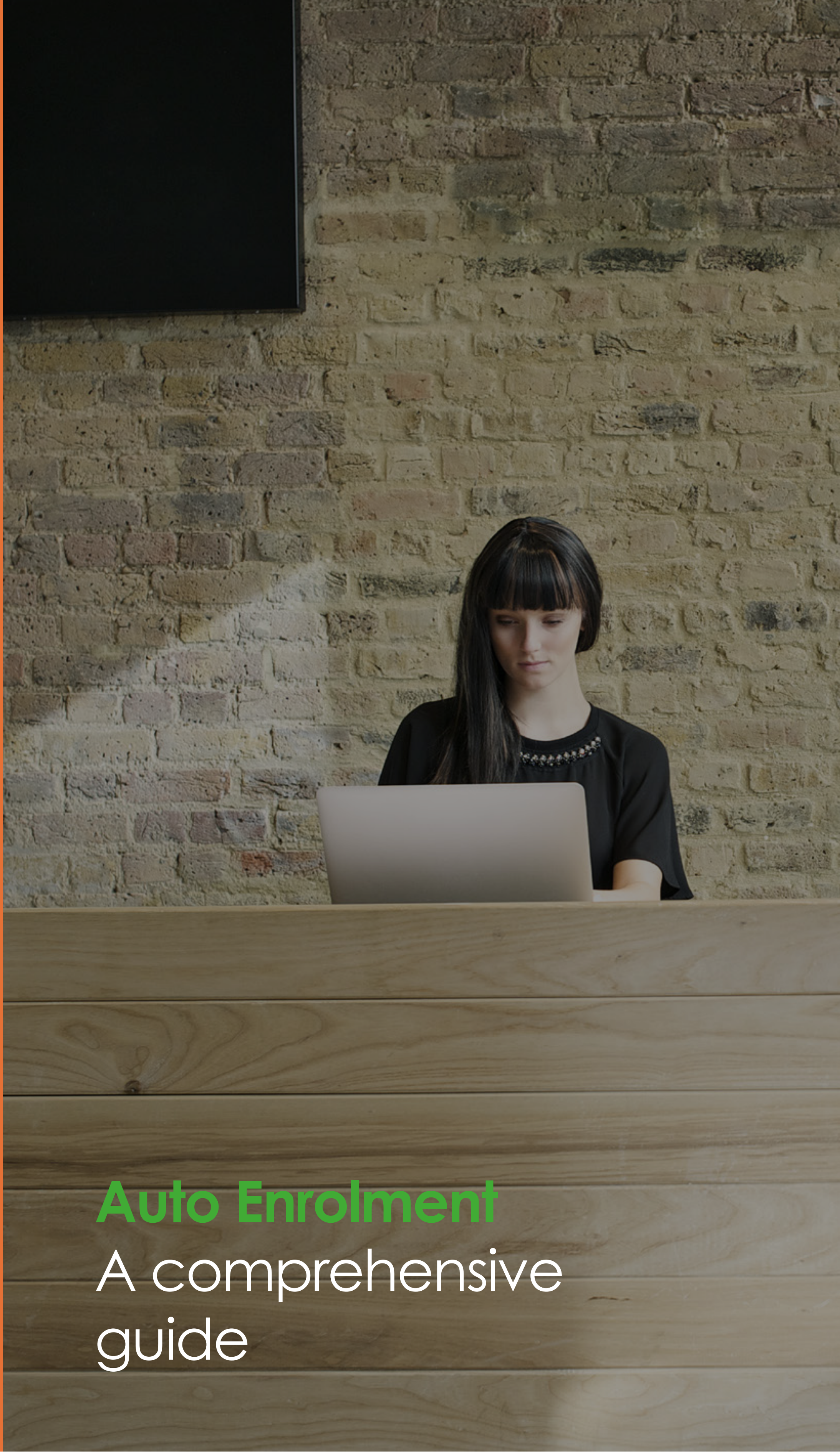
Employers



Auto Enrolment
A comprehensive guide

creative auto enrolment

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This guide outlines your responsibilities under the workplace pensions legislation

Introduction

From October 2012, changes to pension laws affect all employers – with or without existing pension arrangements and regardless of size.

Auto enrolment will bring new challenges to employers with existing pension schemes, such as: new prescribed employee information; new enrolment processes; revised eligibility criteria; enforced contribution rates or funding levels; as well as collecting, maintaining and reporting new information in respect of individual employees.

Past legislation has affected employers of differing sizes in different ways, with smaller companies typically being treated with a lighter touch. But all employers with at least one employee in the UK will have to comply with the new rules. Employers with no pension arrangements in place will have the most to do in order to comply.

Cost Estimates

Along with the complexities of the changes, the indirect and direct costs to employers of the new pension laws are likely to be very substantial. Hence why we believe auto enrolment could be the biggest pensions challenge to UK employers ever. For example, even for employers with existing pensions in place, many employees do not choose to join, thereby saving any employer contribution for these employees. Across the UK, private sector pension scheme take up is only around 40%. Auto enrolment could increase, take up to as much as 90%.

The increase in direct costs will clearly be felt the most by employers with no existing pensions in place. On the flip side, the indirect costs of compliance could be lower for these employers, as they have no existing pensions to take into consideration. Indirect costs could add up. They are difficult to quantify with the principal indirect cost being time. Management time to set and manage strategy alone could equate to a heavy cost. The actual costs to employers will vary dependent on a range of factors, including the support and expertise needed to plan and implement an effective strategy.

Why is auto enrolment happening?

The answer is simple: to increase private retirement savings.

With UK life expectancy continuing to rise, state benefits being squeezed and private retirement savings insufficient to meet the needs of future retirees, the Government has responded with a range of measures. These include auto enrolment and consultation on state retirement benefits and pensions. However, while auto enrolment is already being implemented, changes to state benefits continue to be in the spotlight. This is a cause for concern.

The Government is planning to consult on ways to change the system but it could be years before any impact is felt. In the meantime, the blanket approach of auto enrolment will be phased in for all employers. It is anticipated that many employees, possibly those most impacted by value for money concerns, will not consider whether pension saving is right for them, and simply start to save because it is the line of least resistance.

Value for Money Concerns

Pension saving is worthwhile and necessary for the majority. With the welcome support of employers and disciplined self sacrifice to set aside enough when working, pensions offer a great way to provide for the income wanted in retirement.

However, pension saving is not necessarily right for all employees.

For some, even modest contributions could tip the balance on household expenditure. For others, more pressing financial planning priorities may apply. For example, many low earners have substantial debt which many would argue should be repaid before long term savings are considered.

For some employees with expensive debts, like pay-day loans, joining the pension plan may not be appropriate.

Informed Decisions

Employers must not give employees advice and as detailed later in this guide, they must beware doing anything that might be perceived as coercing employees not to join their pension.

Creative Auto Enrolment can and does provide employee help to guide informed decisions.

This means that individual employees opt out where it is appropriate. This service helps to ensure that employers and employees all get the best possible value for money. Those who choose to save appreciate what they have got and understand how to make the most of their pension. Those who opt out do so for sound financial planning reasons.

What is auto enrolment?

It's a process where employers automatically enrol eligible employees into a qualifying pension scheme without any action on the part of the employee.

In fact, prior to them being auto enrolled, eligible employees will have no option but to wait and become members of the pension scheme.
Only once they have been auto enrolled will employees have the choice to opt out.

This is fundamental to the legislation – employees should have information about the pension before there is an opportunity to opt out.

This shift (from employees having to elect to join to becoming auto enrolled) is expected to dramatically increase pension take-up. Employer costs are consequently set to rise significantly too.

When is it happening?

Auto enrolment compliance is being phased in between October 2012 and February 2018.

Each employer will be allocated a 'staging date' from when the duties will first apply to them. The date is based on the number of people in the employer's PAYE scheme, or largest scheme for employers with multiple payroll schemes. The staging date for employers with less than 30 employees will also be dependent upon the PAYE reference. The largest employers will have the earliest staging dates with smaller and new companies all included by 2018.

Early adoption is possible but rules apply and The Pensions Regulator must be notified in advance.

Source: DWP – The dates are correct at the time of publication but may be subject to change.

Size of company (number of employees)	Staging Date
120,000+	October 2012
10,000+	By March 2013
500+	By November 2013
250+	By February 2014
50-249	By April 2015
30-49	By October 2015
Below 30	By April 2017
New employers	By February 2018

Postponement

Staging dates cannot be altered but employers can choose to use a postponement period of up to three months. Postponement periods can be very helpful in practice, e.g. to align assessments with payroll periods. Employee assessments can be delayed using a postponement period set by a Deferral Date.

Bringing Auto Enrolment Forward

Please also note that employers can choose to bring forward their adoption of auto enrolment, but rules apply, including notifying The Pensions Regulator at least one month in advance.

Employer responsibilities

At a glance summary

Employers will need to:

- Nominate a point of contact
- Determine Staging Date
- Decide whether to adopt postponement
- And if so, over what time period and for whom
- Decide whether to adopt postponement for new employees after initial staging date
- Comply with postponement communications – advance communications on top of those required at the time of auto enrolment
- Identify exact number of workers
- Classify workers into four categories (eligible, non-eligible, entitled and other)
- Review any existing pension arrangements to see if they could be used or adapted for auto enrolment
- Provide designated communications to eligible jobholders within prescribed time limits
- Provide designated communications to non-eligible jobholders within prescribed timelimits
- Provide designated communications to entitled workers within prescribed time limits
- Auto enrol eligible employees
- Deduct contributions from pay as appropriate
- Pay contributions on behalf of eligible employees
- Have a process for opt outs, including:
- Keeping auditable records
- Reporting to The Pensions Regulator
- Making repayments to employees if deductions have already been processed
- Stopping future deductions
- Re-enrolling opted out employees every 3 years
- Accept applications from non-eligible employees opting in
- Deduct contributions from pay as appropriate
- Pay contributions on behalf of non-eligible employees
- Accept applications to join from entitled workers
- Deduct contributions from pay for entitled workers opting in
- Choose which type of pension scheme to use (Defined Contribution contract-based, Defined Contribution Occupational Pension Scheme, Defined Benefit etc)
- Select the earnings definition (for Defined Contribution) – this duty may be multiplied many times for schemes with multiple categories
- Choose a pension provider or providers
- Choose a default investment
- Complete a declaration of compliance with The Pensions Regulator
- Provide information (as frequently as contributions are payable) to each pension provider
- Re-assess workers at each payroll and repeat the above

Selecting a pension scheme or schemes

Employers will need to select at least one qualifying pension scheme to use for automatic enrolment. The Creative Pension Trust, which is offered as part of our automated online solution, is a qualifying pension scheme. Our consultants can help you if you would like to review all the options available to you.

Qualifying pension schemes

To qualify, any existing or new scheme must:

1. Meet set benefit or contribution levels
Minima apply for Defined Benefit and Defined Contribution schemes.

2. Impose no barriers to joining
Examples:

- Any employee between the ages of 16 and 75 will be able to opt in to an employer's pension scheme even if they are not eligible for auto enrolment.
- Employers must not coerce employees to opt out.
- Employers can operate a 3 month waiting period, "postponement", but employees must be able to opt in or join immediately (and if eligible, receive the employer contribution immediately).

3. Not require staff to:

- Make an active choice to join
- Take action, like having to complete an application form (i.e. operate auto enrolment)
- Take action or provide information to retain active scheme membership

Wide Choice

The legislation does not prescribe the type of pension scheme employers must provide. So, providing the rules are met, there is a very wide choice, including:

- Defined Benefit (DB) Schemes
  - Final Salary, 'CARE' (Career Average Revalued Earnings) and Hybrid Schemes
  - Operating on both contracted in and contracted out terms

- Defined Contribution (DC) Schemes
  - Group Personal Pensions and Group SIPPs (Self Invested Personal Pensions)
  - Stakeholder Schemes
  - Occupational Money Purchase Schemes
  - NEST (National Employment Savings Trust)

In relation to employees

Employers will need to assess their duties for all employees, as age and earnings will dictate exact responsibilities in relation to each individual employee.

Provide information

Information will need to be provided to employees at the time of the employer's staging date and regularly, as and when new employees become eligible in the future. The information to be provided will be specified and may include all of the following:

- A statement that the employee has been or will be automatically enrolled into a pension scheme.
- The date of enrolment.
- Name, address, telephone number and electronic contact details of the scheme.
- The value of contributions payable to the scheme by the employer and employee.
- Confirmation of/that:
    - Contributions have been or will be deducted from qualifying earnings/pensionable pay.
    - How tax relief will be given (through the Relief at Source or Net Pay Arrangement).
- A statement that:
    - The employee has a right to opt-out of the scheme during the 'opt-out period'.
    - Indicates the start and end dates of the opt-out period.
- The source from which the opt-out notice can be obtained.
- Confirmation that:
    - Once opted-out, the employee will be treated for all purposes as not having become an active member of the scheme on that occasion.
    - Once a valid opt-out notice has been given to the employer, any contributions paid by the employee will be refunded.
    - After the employee has opted-out, they can opt back in.
    - After the opt-out period, the employee may stop paying contributions to the pension.
    - If they opt-out, the employee will be automatically re-enrolled into a qualifying scheme.
- Details of where the employee can obtain further information about pensions and saving for retirement.

The specified information must be provided in writing, which can be email. But, it should be provided, rather than requiring the employees to find it. So, it is not enough to rely on internet or intranet content, worksite posters or other such displays.

If the specified information requires personal or individual data to be communicated, it should not be included in a generic communication. Where the specified information does not require personal data, e.g. an employee with the right to opt in, a generic communication, such as a joining pack may suffice.

The duty is on the employer to provide the right information to the right individual at the right time. Someone acting on the employer's behalf (such as Creative Auto Enrolment) can provide the information, but it remains the employer's responsibility to make sure it is provided on time and is complete and correct. From April 2014, employers have 6 weeks (previously 4) to issue required communications.

Auto Enrol Eligible Employees (called Eligible Jobholders)

Employers must identify, communicate with and auto enrol all employees who are:

- Aged between 22 and State Pension Age
  State Pension age is currently 65 for men and 60 for some women, rising in stages to 65 for other women by 2018. Increases in state pension age, from 65 to 68, for both sexes are being phased in from 2018 to 2046.
- Working, or ordinarily working, in the UK
  An employee's nationality and the length of their stay in the UK are not relevant.
- Earning above a set amount
  This is for £10,000pa for 2014/2015.

In addition, employers will be responsible for repeating auto enrolment every 3 years for all employees who opt out (and whom continue to be eligible).

Employees who may opt in

- Eligible for employer contributions (Non-Eligible Jobholders)

Some employees may not have to be auto enrolled but will be eligible for employer contributions if they elect to join, i.e. opt in. This option applies to all employees who are:

1. Aged between 16 and 22, or over State Pension Age but below age 75.
2. Earning more than £5,772pa (this is in line with the National Insurance " lower earnings limit, primary class
3. 1" threshold for 2014/15) but below £10,000pa.

- Ineligible for employer contributions (Entitled Workers)

Employees earning less than the set minimum earnings (£5,772 for 2014/15) may elect to join the employer's pension but employers will not have to contribute for these employees (until such time as the employee becomes eligible, at which time, the employer must start to contribute).

Throughout this document we refer to employees for ease of explanation. Please note that the legislation specifies rules relating to workers, which include the three categories outlined above.

Pay contributions or benefits

Pay Reference Period

To assess and carry out their pension responsibilities, employers must calculate each employee's earnings. This is necessary to determine which category of worker each employee falls into – which itself may then impact on required employee communications and the payments to be collected/paid into the pension scheme.

For this purpose, the legislation specifies that earnings must be determined over a specified 'pay reference period'. This will normally be the same as the payroll frequency, e.g. weekly or monthly.

The calculation (of each employee's earnings) must be done every pay reference period. This places an onerous responsibility on employers. Helpfully, our systems can handle all the calculations, communications and reporting needed to ensure this employer duty is met with minimum hassle.

Qualifying Earnings

For the purposes of assessing eligibility, qualifying earnings include: salary, overtime, commission, bonuses, statutory sick pay, maternity, paternity and adoption pay. (The actual earnings taken into account in setting contribution rates or scheme benefits can be different, subject to meeting set criteria, i.e. employers can choose to exceed the minima).

* We have a tried and tested market-leading system - called our systems - which provides all the information needed to manage the logistical challenge of auto enrolment - whatever your existing or new pension arrangements.

Defined Contribution Plans

Employers can choose from a menu of earnings definitions upon which to base pension contributions. The minimum contributions payable by employers and employees are specific to each different earnings definition. Each basis is also subject to its own phasing in schedule.

Qualifying Earnings

This will be a new basis for most existing schemes. For this basis, only those earnings between a lower and upper limit will be taken into account when setting pension contributions. This band of earnings for 2014/15 is £5,772 to £41,865. So, for example, someone earning £50,000 will only have £36,091 used as pensionable earnings.

Period	Employer	Employee	Tax relief	Total
01/10/18 onwards	3.0%	4.0%	1.0%	8.0%
01/10/17 to 30/09/18	2.0%	2.4%	0.6%	5.0%
Up to 30/09/17	1.0%	0.8%	0.2%	2.0%

This is the basis used for our automated online solution.

Certification

Employers not choosing qualifying earnings must certify that their alternative definition of earnings (and the related contributions) meets set criteria. There are three Tiers:

Tier 1 Pensionable pay must be at least equal to basic pay (i.e. earnings minus commission, bonuses and overtime etc).

Tier 2 Pensionable pay is at least 85% of the total pay bill for the workers covered by the self-certification.

Tier 3 All pay is pensionable.

	Tier 1	Tier 2	Tier 3
Period	Employer/Total	Employee/Total	Tax relief/Total
01/10/18 onwards	4%/9%	3%/8%	3%/7%
01/10/17 to 30/09/18	3%/6%	2%/5%	2%/5%
Up to 30/09/17	2%/3%	1%/2%	1%/2%

Our consultants can help you decide which earnings basis is best for your business.

Records and reporting

All employers will need to keep accurate and detailed records, some of which should be retained for a minimum of 6 years.

Keeping accurate records has always been good practice, but the new rules bring new responsibilities, including declaration of compliance and regular reporting to The Pensions Regulator and specified reporting to all pension providers (i.e. all providers of pension schemes being used to meet compliance).

Employers can use electronic or paper filing systems to keep or store any records, as long as they are legible or can be produced in a legible way, should The Pensions Regulator ask to see them.

An employer must also be able to keep track of the ages and earnings of everyone who works for them at all times.

This is important to retain ongoing compliance with the requirements.

Creative Auto Enrolment provides full electronic reporting and audit trails.

Opt Outs

Employees will have the right to opt out within 1 month of being auto enrolled and receive a refund of their contributions. Employers will have to: record the employee's choice, ensuring they have the formal opt-out notice from the employee; report all opt-outs to The Pensions Regulator when completing declaration of compliance; notify the pension provider and process the refund to the employee. Employer contributions will be refunded to the employer in respect of employees who do opt out during the opt out period.

Employees can choose to cease membership at any time, although they may not be entitled to a cash refund of contributions after the end of the 1-month opt-out period.

To opt out, employees must complete a formal 'opt-out notice' and give this to their employer. These notices will usually only be available from the pension scheme provider and not the employer, so that workers do not feel pressured into opting out.

Opt Ins

As well as auto enrolling eligible employees, employers must also allow other employees to opt in. Again, detailed records will be needed to ensure that each employee has been correctly informed and treated. For some employees, an employer contribution will be required and for others not, but in all cases, the deduction of the employees' own contributions must be handled and reported by the employer.

Sanctions and Penalties

In line with the principles of the legislation, any employee's decision to opt out of a scheme, or stop saving for retirement, should be taken freely and without influence by the employer. Due to concerns that some employers might seek to reduce costs by encouraging employees to opt out, the new rules are accompanied by safeguards to protect the rights of employees to have access to pension provision.

These rules mean that employers must not take, or fail to take, any action, with the sole or main purpose to attempt to induce an employee to opt out of a pension scheme. Furthermore, an employer must not try to screen out job applicants on grounds relating to potential pension scheme membership, or suggest that a job applicant's success could depend on whether or not they opt out of a pension scheme.

Non-Compliance

In addition to the above, employers may face financial penalties for simply failing to comply with the new rules. The Pensions Regulator has the power to issue a fixed penalty of £400 to an employer, as well as escalating penalties at a daily rate. Escalating (daily) penalties are set at a level to fine an employer the cash flow benefit they are getting by not complying. Therefore, there would be no incentive for an employer simply to pay a fine and not comply. The table below illustrates the escalating penalties that might be applied to employers for breaches of their automatic enrolment duties:

Escalating daily penalties

Number of Employees	Fine (£)
1 - 4	50
5 - 49	500
50 - 249	2,500
250 +	5,000
500 +	10,000

Wilful non-compliance could lead to criminal prosecution.

Conclusion

Auto enrolment and the associated rules and regulations pose a considerable challenge to employers irrespective of existing pension arrangements and regardless of the employer's size – there is no do nothing option for employers. But, employers can exercise considerable choice in making suitable pension provision available to employees. Employer choices may reduce or increase indirect and direct costs and will influence whether the pension plan or plans are suitable for the needs of the employer and employees.

Our automated online solution is compliant and cost effective for most employers and our consultants can assist employers who would prefer to design a bespoke solution.

Q&A

Large employers have a single specific staging date, which would mean communicating, implementing and recording auto enrolment for thousands of employees at one time. Can employers implement in stages, starting early so their staging date is the final auto enrolment date?

Employers can bring forward their automatic enrolment date, subject to approval by The Pensions Regulator, but the same date must be used for all employees.

If an employee has 2 separate jobs with separate employers, which employer is responsible for Auto Enrolment?

Neither, one or both! The auto enrolment legislation is specific to each employment, so each employer must meet its own responsibilities. Both will be responsible if the employee is eligible for auto enrolment under both employments. One only, if eligibility is only applicable to one employment and neither if the eligibility criteria are not met from either employment.

(Earnings are not aggregated, so low earners with several employers will lose out compared to someone with the same total earnings from one employment).

How will The Pensions Regulator know if an employer hasn't complied?

The Pensions Regulator says it will take a graduated, proportionate and risk-based approach to enforcement. It will investigate complaints from employees, scheme members, trustees and administrators of pension schemes, making initial telephone or written contact with non-compliant employers, issuing compliance notices and, where necessary, proceeding to impose fixed and/or escalating penalties.

The Pensions Regulator has the power, where appropriate, to inspect premises and require production of documents relevant to its investigations. It can institute criminal proceedings in the case of serious and persistent noncompliance. The Pensions Regulator may also carry out pro-active checks.

Could an employer make all staff self employed or give all staff a rolling employment contract of less that 3 months and not have to do anything?

No. The action would be contrary to the intent of the legislation and a legal challenge could be expected on the grounds of unfair treatment.

Can an employer require employee contributions at higher levels than the minima? For example, would a scheme offering 5% employer and 5% employee contributions be compliant?

The legislation imposes minimum contributions but there are no specific rules on maxima. In this example, it is likely that the employer could auto enrol with 5% and 5% contributions. However, a 15% and 15% requirement (i.e. an employee contribution rate designed to make membership off-putting) is unlikely to be compliant. Providing the option for employees to pay at statutory levels removes the potential for non-compliance.

The intention of the legislation is to encourage pension savings and not to restrict flexible benefit packages that employers wish to offer their employees. Different pension schemes and or different contribution levels within the same scheme may help employers provide the most appropriate packages to all employees. Creative Auto Enrolment can help to design pension schemes to suit your total workforce.

What if an employee is still serving a probationary period – do they have to be auto enrolled?

Yes, probationary periods are irrelevant. Employers may operate a 3 month waiting period, known as postponement.

Does Salary Exchange Still Work?

Yes. Employers will adopt exactly the same procedures as now, but, some additional rules may apply to safeguard employees, i.e. to ensure that ‘true’ minimum employer contributions are being made.

What about agency workers and contractors?

Responsibility for auto enrolment rests with the person's employer. If an agency employs the person then the agency is responsible for pensions compliance, not the company the worker is placed with. Self employed contractors do not have to be auto enrolled (but they may be able to opt in).

Is auto enrolment a lawful deduction of earnings?

Yes, in as much as auto enrolment is a requirement of the Pensions Act 2008.

Auto enrolment will have to be repeated for opt out employees. Is it done on a member or scheme basis?

A scheme basis. The norm will be three year anniversaries after the employer's staging date, but with flexibility, 3 months either side.

Will re-auto enrolling apply to all Opted Out Employees?

No. Any employee who has opted out during the preceding 12 months will not have to be re-auto enrolled (until the following 3 year anniversary).

Will auto enrolment remove the requirement for employer's to designate a Stakeholder Pension?

Yes. The new requirement to provide a qualifying pension will replace the Stakeholder designation rules.

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