Pension auto-enrolment

Paul Tew, Croner, provides an update on the new pension auto-enrolment scheme.

From 1 October 2012, employers are required to auto-enrol all eligible jobholders into a qualifying workplace pension scheme or the "default scheme", the National Employment Savings Trust (NEST). Eligible jobholders are those:

- not already in a qualifying workplace pension scheme
- aged 22 or over but under current State Pension age
- working or who ordinarily work in the UK under a contract of employment
- with qualifying earnings in the relevant pay reference period above the annual "earnings trigger" of £8105 (£156 per week, £676 per month) for 2012/13.

Non-eligible jobholders, ie those UK workers outside the specified age limits but with qualifying earnings in the relevant pay reference period above the earnings trigger for automatic enrolment, or aged 16 to 74 with qualifying earnings at or below the earnings trigger for automatic enrolment, may opt into a pension scheme and receive an employer contribution.

Qualifying workplace pension schemes are those registered with HM Revenue & Customs (HMRC) that meet a minimum standard for the level of contributions made to the scheme or the level of benefit provided. Employers can check whether an existing defined contribution scheme qualifies at www.thepensionsregulator.gov.uk.

Employer duties

The Pensions Regulator (the regulator of work-based pension schemes in the UK, with objectives to protect members' benefits) will write individually to all relevant employers at around 12 months and then again as a final reminder at three months in advance of the employers auto-enrolment start date, to inform employers what action to take and the date that compliance with auto-enrolment duties must be achieved.

All employers must provide the right information to the right individual at the right time. Letter templates to use for this purpose are available at www.thepensionsregulator.gov.uk.

Staging dates

Employers have to auto-enrol employees in stages starting from October 2012 based on the size of their largest PAYE scheme on 1 April 2012. An individual employer can bring forward its given staging date, provided the date chosen is on the staging date plan (see www.thepensionsregulator.gov.uk).

Employers with 250 or more persons in their largest PAYE scheme will be staged in between 1 October 2012 and 1 February 2014. Medium-sized employers (50 to 249 persons in their largest PAYE scheme) have staging dates between 1 April 2014 and 1 April 2015. Small employers (fewer than 50 persons in their largest PAYE scheme) have staging dates between 1 June 2015 and 1 April 2017.

A transitional period up to 30 September 2017 allows employers providing defined benefit pension schemes to choose to delay auto-enrolment in respect of eligible jobholders who meet certain conditions.

Waiting period

Employers can optionally postpone auto-enrolment of their eligible jobholders for a period not exceeding three calendar months (the "waiting period"). Businesses with large numbers of seasonal short-term contract workers and employment agencies are likely to benefit, as these workers would probably opt-out or leave before the auto-enrolment procedure is complete.

The waiting period can be used by employers to ensure auto-enrolment starts from the beginning of a pay reference period, thereby avoiding calculations of part-period contributions on a pro rata basis and to prevent the auto-enrolment date falling near to the end of the tax year, which could result in opt outs and refunds of contributions being made in the next tax year.

The waiting period can commence from the day after:

- the employer's staging date
- the date on which a new employee is employed (where that falls after the employer's staging date)
- the date on which an existing employee meets all the criteria to be an eligible jobholder, after the employer's staging date.

The "deferral date" becomes the jobholder's auto-enrolment date, if all relevant conditions are still met.

Minimum contributions

A minimum percentage contribution applies on qualifying earnings over a lower limit of £5564 up to an upper limit of £42,475 for 2012/13. Qualifying earnings include salary, commission, bonuses, overtime and statutory payments. The minimum contribution level is phased in for qualifying defined contribution pension schemes (including NEST), as follows:

- 1 October 2012 to 30 September 2017: total contribution of 2% — 1% from the employer, 0.8% from the jobholder and 0.2% tax relief
- 1 October 2017 to 30 September 2018: total contribution of 5% — 2% from the employer, 2.4% from the jobholder and 0.6% tax relief; and
- 1 October 2018 onwards: total contribution of 8% — 3% from the employer, 4% from the jobholder and 1% tax relief, based on the basic tax rate of 20%.

Both the employer and employee may contribute more. If an employer chooses to pay more into the workplace pension than the minimum required, the employee can reduce their own contribution, but the total overall contribution must still meet the minimum contribution level.

Certification

An employer's pension scheme may be able to retain its own definition of pensionable earnings, rather than use the jobholder's qualifying earnings. Certification is an administrative easement by which employers offering money purchase schemes can be satisfied that their scheme meets the necessary quality requirements based on earnings from "pound one" (no lower earnings limit in the definition of pensionable pay), rather than a requirement based on qualifying earnings, subject to an annual test and self-certification process. Further guidance on certification for money purchase schemes can be found at www.dwp.gov.uk.

For certification of defined benefit schemes, a test scheme standard applies, as outlined at www.dwp.gov.uk/docs/auto-enrol-guid-emp.pdf.

Opting out

Auto-enrolment into a qualifying workplace pension scheme is compulsory, but ongoing membership is not. A jobholder has the right to opt out of pension scheme membership, but cannot opt out of auto-enrolment. An employee has to be enrolled in a pension scheme before they can elect to opt out.

A jobholder has a one-month period after the auto-enrolment date during which he or she may decide not to be a participant member of the pension scheme. The employee, in choosing to use the opt-out procedure, must give his or her employer a formal, statutory opt-out notice. An opt-out notice cannot be submitted prior to the jobholder becoming an active member of the pension scheme.

When an employer receives a valid signed opt-out notice, a refund must be made to the jobholder of any contributions that have been deducted from pay (less any tax due) by the refund date (which is one month after the date that the employer received a valid opt-out notice).

A worker can opt out but then subsequently elect to join the pension scheme. The employer has to accept such a request once in every 12-month period.

Auto re-enrolment

Individual employees retain a right to actively opt out of "pension saving" for a period of up to three years. After that time, the employee is automatically re-enrolled if still an eligible jobholder working for that same employer, though the employee may opt out again.

An employer must normally carry out the auto re-enrolment exercise three years after the employer's staging date or the previous re-enrolment date, with the option to choose a re-enrolment date up to three months on either side of the three-year anniversary of the staging date or last re-enrolment date.