



# READY FOR ACTION?

## AN EMPLOYMENT LAW UPDATE

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# LEGISLATION UPDATE (1)



- **Collective redundancy consultation**
  - For 100 or more redundancies, 90 day period reduced to 45 days where proposal is made on or after 6 April 2013
  - 20 to 99 redundancies, period remains at 30 days
  - Maximum protective award in both cases remains at 90 days pay
  
- **Cap on unfair dismissal compensatory award**
  - 25 June 2013
  - Maximum award to be whichever is the lesser of one year's pay and the statutory cap (which is currently £74,200)



# LEGISLATION UPDATE (2)



- **Whistleblowing**
  - 25 June 2013
  - Disclosures to be “in the public interest”
  - Removal of “good faith” requirement
  - Vicarious liability for employees’ actions
- **Political opinion or affiliation dismissals**
  - 25 June 2013
  - Removal of qualifying period for unfair dismissal for such dismissals (following **Redfearn v UK, ECHR**)



# LEGISLATION UPDATE (3)



- **Employee shareholder contracts**
  - 1 September 2013
  - Employee to surrender various employment rights in exchange for company shares
  - Minimum value of £2,000
  - Any gains (on shares worth up to £50,000) would be exempt from CGT
  - Optional for existing employees but could just offer these to new hires



# LEGISLATION UPDATE (4)



- Protected settlement conversations
  - Properly conducted settlement conversation carried out in relation to a possible termination of employment settlement cannot be referred to in an unfair dismissal claim
  - No need for a prior procedure to have been followed or for there to be a dispute
  - Code of practice and guidance to be issued
  - Model settlement agreement to be provided
  - Likely to come into effect October 2013 or April 2014



# LEGISLATION UPDATE (5)



- **TUPE reform**
  - Consultation on proposed reforms ended on 11 April 2013
  - Likely to take effect October 2013 (except service provision changes)
  - Proposed changes include:
    - removal of service provision change provisions
    - ETO to include change of location
    - transferee can engage in collective redundancy consultation pre-transfer
    - removal of provisions on employee liability information
    - transferor to be able to rely on transferee's ETO reason



# LEGISLATION UPDATE (6)



- **Employment Tribunal reforms**
  - Fees for bringing claims and for hearings - July 2013
  - New Tribunal procedural rules - possibly summer 2013, but no date set
  - Financial penalties for employers - 2014
- **ACAS early conciliation scheme**
  - April 2014
  - All claims to be referred to ACAS for possible conciliation before being allowed to proceed in Tribunal
  - Effect on limitation period



# LEGISLATION UPDATE (7)



- **Health Assessment & Advisory Service**
  - State-funded occupational health service
  - Available to all employers for employees with >4 weeks sick leave
  - Expected 2014





# LEGISLATION UPDATE (8)



- **Extension of right to request flexible working**
  - Right to be extended to all employees with 26 weeks' service from 2014
  - Current statutory procedure for considering requests to be removed
  - Employers to consider all requests in a reasonable manner and to refuse on reasonable grounds. ACAS draft Code of Practice:  
[http://www.acas.org.uk/media/pdf/2/r/Consultation\\_draft\\_COP\\_FW.pdf](http://www.acas.org.uk/media/pdf/2/r/Consultation_draft_COP_FW.pdf)
- **Increased flexibility in parental leave**
  - Mothers to be able to share 50 weeks maternity leave with the other parent from 2015
  - Right to unpaid time off for fathers to attend two ante-natal appointments
  - Right for adoptive parents to take time off to have contact with the child



# LEGISLATION UPDATE (9)



- **Extension of unpaid parental leave**
  - From 13 weeks to 18 weeks per child (under the age of 5 years) from 8 March 2013
  - Parents to have the right to 18 weeks parental leave for every child up to age 18 years from 2015



# LEGISLATION UPDATE (10)



- **Amendments to Equality Act**
  - Abolition of statutory questionnaires in discrimination claims
  - Abolition of third party harassment provisions
  - Abolition of Tribunal power to make recommendations in discrimination complaints that apply to the wider workforce



# LEGISLATION UPDATE



## Disclaimer:

The laws in relation to the matters discussed in this presentation are complex. Neither the presentation itself nor any accompanying slides and handouts constitute legal advice and full legal advice should always be taken before acting.



# **Automatic Enrolment Planning**

Dacre Staines, 22<sup>nd</sup> May 2013



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# Who we are

- Established August 2007, over 40 years financial services experience,
- Provide holistic financial planning and asset management services.
- Focus on high net worth individuals, professional athletes and business owners.
- Provide advice for those clients at the start, during and at the end of their career.
- Business has evolved on a referral basis.
- Flexible remuneration strategies ensure that the recommendations provided are in our clients' best interest.
- Client base is throughout the UK, Europe and as far as Australia.



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# Agenda

- What is Automatic Enrolment?
- Why has it been introduced?
- When do you have to act?
- Who will it affect?
- How to prepare?
- What schemes can be used for Automatic Enrolment?
- Implications for existing pension schemes
- What are 'safeguarding rules'?
- What records need to be kept?
- Where can I get help!



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# What is Automatic Enrolment?

- The Pensions Act 2008
- Put employees into a qualifying workplace pension scheme (QWPS) **without** their consent.
- You **cannot** ask employees to:-
  - Apply to join
  - Choose how much to pay in
  - Decide where to invest their payments



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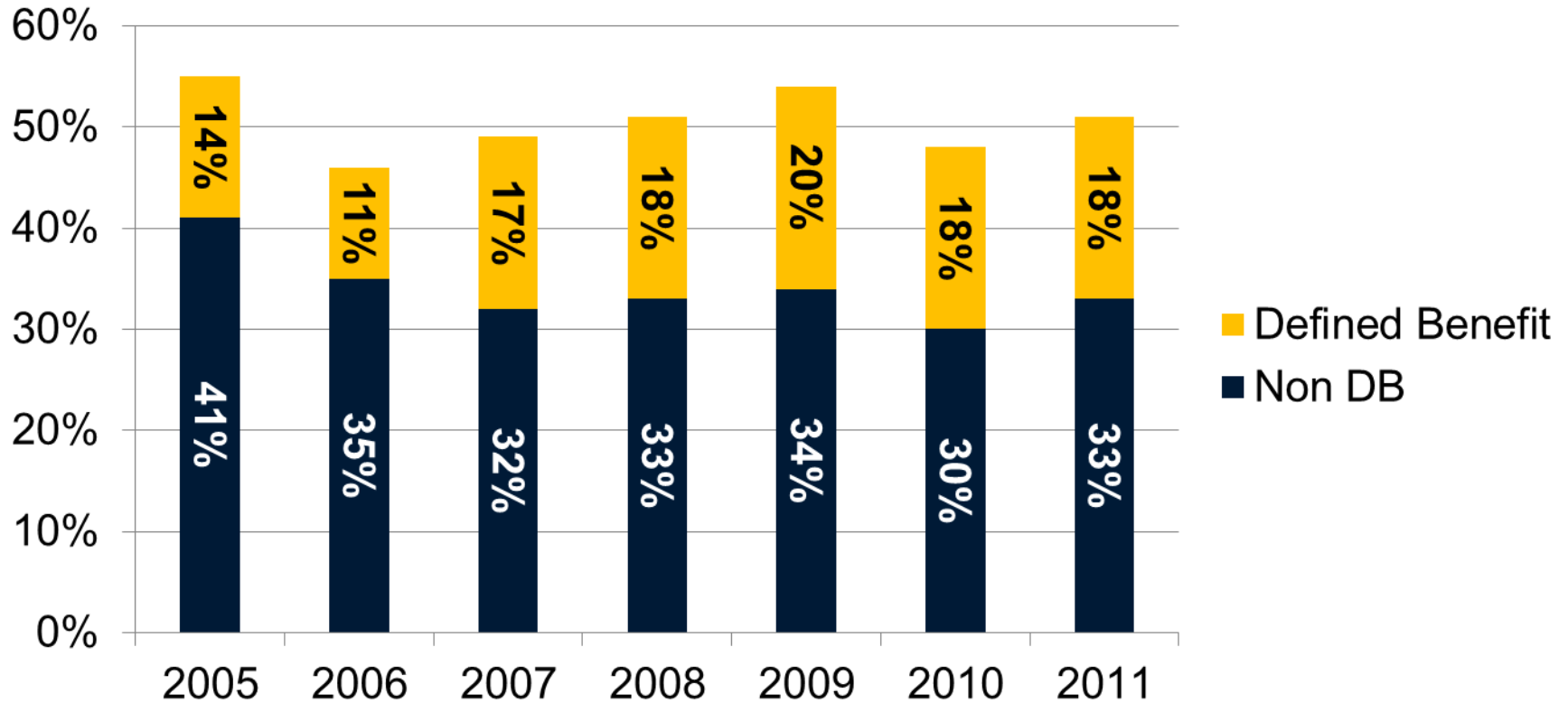
# Why has it been introduced?

- Stakeholder pensions did not work!
- Declining rate of retirement saving
- Many workers have been missing out on valuable pension benefits
- Encourage greater private pension saving
- About 7 million people in the UK are not saving enough for retirement



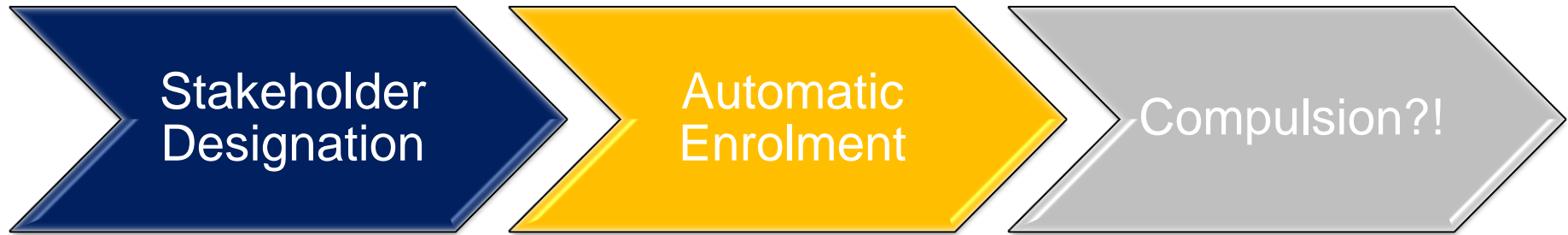
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# % Preparing adequately for retirement



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Where are we now and where are we going .....



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# When do you have to act?

- **Staging Date**
- Largest employers from October 2012
- All employers by February 2018.
- The Pensions Regulator (TPR)
- Based on PAYE data at 1 April 2012.



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# Who will it affect?

- All employers!
- All employees but it depends on their category:-
  - Eligible Jobholder
  - Non Eligible Jobholder
  - Entitled Worker



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# How to Prepare?

## 1. Identify Workers

- A worker is someone who has a contract of employment, which does not have to be in writing.
- Will contracts of employment need to be reviewed?
- Problem areas:
  - Contracts for services/ Self Employed
  - Agency Workers
  - Company Directors
  - Office Holders – Trustees/Non exec/Board Members
  - Overseas placements and secondments
  - Dual Status workers



# Example 1

- Jane is from Poland and works for a Polish employer.
- Seconded to the UK for two years and expects to return to Poland at the end of that time.
- Contract of employment is still with the Polish company.
- UK company pays her salary with UK tax and National Insurance deducted on behalf of her employer.



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## Example 2

- Kevin's employer is a UK IT company, the subsidiary of an Indian firm.
- He is halfway through a four year placement at the holding company's Indian headquarters.
- Before he left, he lived and worked in the UK and was paid in sterling with deductions for tax and National Insurance.
- His contract of employment is still with the UK company and he's expected to return to work for it at the end of the placement.



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## Workers

Jobholder  
Eligible

Jobholder  
Non Eli.

Entitled  
Workers



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# What is a Jobholder?

- A worker
- is aged between 16 and 74
- is working or ordinarily works in the UK under his/her contract
- has **Qualifying Earnings**

**Qualifying Earnings for the 2013/14 Tax Year = £5,668 - £41,450**



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# Eligible Jobholder

- is aged between 22 and State Pension Age (SPA)
- has **Qualifying Earnings** above the **Earnings Trigger** for automatic enrolment

## Employer Duties

- Action opt-out, if requested
- Re-enrol every **three** years



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# Non-Eligible Jobholder

- is aged between 16 and 21 or SPA and 74
  - has qualifying earnings **above** the trigger for automatic enrolment
- or
- is aged between 16 and 74
  - has qualifying earnings **below** the trigger for automatic enrolment

## Employer Duties

- Action opt-in, if requested



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# Entitled Worker

- Not a Jobholder
- is aged between 16 and 74
- is working or ordinarily works in the UK under his/her contract
- does **not** have qualifying earnings

## Employer Duties

- Action joining scheme, if requested
- Employer contributions are optional



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# Category Summary

- An eligible jobholder is **'eligible'** for automatic enrolment, **opt-out**.
- A non-eligible jobholder is **'non-eligible'** for automatic enrolment, **opt-in**.
- An entitled worker is **'entitled'** to join a scheme.

	16-21	22 - SPA	SPA-74
No QE	-	Entitled worker	-
QE below earnings trigger	-	Non-Eligible Jobholder	-
QE above earnings trigger	Non-Eligible Jobholder	Eligible Jobholder	Non-Eligible Jobholder



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# How to Prepare?

## 2. Identify Legal Employer

- “Groups” of companies
- Subsidiary/Associate firms

Why do employers need to do this now?

- Could take time to be resolved
- Ensure clarity going forward, particularly in the case of take-overs/mergers/sales
- Ensure each legal identity of employer is aware of requirements



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# How to Prepare?

## 3. Identify PAYE Schemes

- Multiple PAYE schemes or “Workers” not in PAYE scheme
- Impacts on the **Staging Date**
  - The same for all employees
  - Gives the maximum preparation time to those employers who need it most
  - Anomalies.



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# What will it cost?

Staging Date	PP		85		TP		QE	
	Er	Ee	Er	Ee	Er	Ee	Er	Ee
Up to Sept 2017	2%	1%	1%	1%	1%	1%	1%	1%
Oct 2017 - Sept 2018	3%	3%	2%	3%	2%	3%	2%	3%
Oct 2018 onwards	4%	5%	3%	5%	3%	4%	3%	5%

- PP - Pensionable Pay
- 85 - At least 85% of total pay is pensionable
- TP - Total pay is pensionable
- QE - Qualifying Earnings



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# Example

- Tasty Foods Ltd. contributes 2% of basic pay into the pension scheme.
- Their workers also contribute 2% of basic pay.
- They're thinking of changing their scheme to base contributions on QEs.
- They will contribute 2% and workers will contribute 2% of QEs.



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# Example

	Basic pay	Current	New	Difference
<b>Adam</b>	£8,000	£13.33	£13.33	£0.00
<b>Joyce</b>	£12,000	£20.00	£20.00	£0.00
<b>James</b>	£20,000	£33.33	£33.33	£0.00
<b>Edith</b>	£45,000	£75.00	£59.64	-£15.36
<b>Mary</b>	£75,000	£125.00	£59.64	-£65.36



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# What scheme can be used?

- Employer must choose
- Mix and match
- May be driven by a range of criteria
- Must not be discriminatory
- Employer will need to be able to justify the decision!



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# What scheme can be used?

- New and Existing group schemes as long as they meet certain qualifying criteria:-
  - auto-enrolment
  - suitable default fund
  - Minimum contribution levels met
- Mass Market solutions e.g. B & CE's "The People's Pension".



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# What scheme can be used?

- National Employment Savings Trust, NEST:-
  - Public service obligation to take any and all auto enrolment scenarios if employers wish.
  - Maximum total contribution per member £4400 per annum
  - No transfers in or out before 2017



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# Opting Out

- Jobholders have opt out rights
- One month from the later of membership starting and receiving enrolment information
- Opt out notice sent by pension scheme
- Refunds to the employer and to jobholder
- No right to refund outside one month except under occupational scheme rules
- Eligible jobholders who opt out are re-enrolled every three years



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# What are 'safeguarding rules'?

- No action to induce members to opt-out of scheme or discriminate against staff who are scheme members.
- Dismiss or treat unfairly employee on grounds of scheme membership including promotion.
- Legal sanctions for doing this incorrectly
- Review recruitment procedures
- Ensure all management are aware



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# Record Keeping

- New legal requirements on record keeping covering compliance with automatic enrolment duties
- Available to TPR on demand
- Records cover individual jobholders and workers and the pension scheme(s) used
- Must be kept for six years
- Employers should ensure they have robust record keeping procedures
- Provider software to help employers meet the requirements



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# Help!

- Ask DBL Asset Management and Berg Legal!
- The Pensions Regulator:
  - <http://www.thepensionsregulator.gov.uk/automatic-enrolment.aspx>
  - <http://www.thepensionsregulator.gov.uk/employers/detailed-guidance.aspx>



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# Important Information

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Spring Employment Law Seminar - 22 May 2013



# THANK YOU

## ANY QUESTIONS?

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