Guide: Automatic enrolment and the employer duties

31 October 2012

Introduction

The Government estimates* that around seven million people in the UK are currently not saving enough for their retirement. So from October 2012 they are introducing new legislation to get more people saving for their future. This will mean that every employer in the UK will have to automatically enrol certain employees into a pension scheme and make contributions on their behalf.

Exactly what you will need to do is dependent on whether your employees are classified as a 'worker' under the new legislation. There are three different categories of worker, determined by their age and how much they earn. You will have different responsibilities for each category, known as your employer duties.

We want to help you understand and prepare for the changes you will have to make. This guide summarises the main changes and what they mean for you. It is based on our current understanding of legislation and regulations which could change

* Department for Work & Pensions, Mind the gap, 31 August 2011.

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The new employer duties will be introduced in stages starting in October 2012. The date your duties apply is known as your staging date and it is based on the number of people in your largest Pay As You Earn (PAYE) scheme on 1 April 2012.

What is the effect on my workforce?

You will need to assess your workforce to determine whether your employees are classified as a 'worker' under the new legislation. There are three different categories of worker, determined by their age and how much they earn.

What are my employer duties?

Your employer duties will depend on the types of worker you employ. You will need to automatically enrol some workers into a pension scheme and arrange membership for others. You are also responsible for the ongoing maintenance of the scheme and have an obligation to keep certain records.

What is the effect on pension schemes?

You must register that you have an automatic enrolment scheme in place with The Pensions Regulator (TPR) by at least four months after your staging date. You will also have to re-register every three years. The good news is if you have an existing pension scheme, you can use this to meet your employer duties as long as it meets certain criteria.

What happens if I do nothing?

The new employer duties are not optional. The Pensions Regulator (TPR) will be responsible for ensuring that you comply with the new employer duties. Although their approach will be to educate and encourage compliance, you will face substantial fines or even imprisonment if you do not comply.

What is NEST?

You may have heard about NEST, the National Employment Savings Trust. NEST is a pension scheme that is primarily aimed at low to medium earners and small employers that do not have access to a company pension scheme.

When is it happening?

The new employer duties will be introduced in stages starting in October 2012. The date your duties apply is known as your staging date and it is based on the number of people in your largest Pay As You Earn (PAYE) scheme on 1 April 2012. Larger employers will generally have their staging date earlier than smaller employers.

Identifying your staging date

Full details of the proposed staging dates can be found below. TPR intends to confirm your staging date at least twelve months in advance. It also intends to send you a reminder at least three months before your staging date.

Bringing forward the staging date

You can choose to bring your staging date forward to coincide with other key company dates such as your end of year accounting. You will have to contact TPR in writing to confirm the new staging date you have chosen. This should be done at least one month before the new staging date.

Staging dates

PAYE scheme size or reference	Staging date
120,000 or more	01-Oct-12
50,000-119,999	01-Nov-12
30,000-49,999	01-Jan-13
20,000-29,999	01-Feb-13
10,000-19,999	01-Mar-13
6,000-9,999	01-Apr-13
4,100-5,999	01-May-13
4,000-4,099	01-Jun-13
3,000-3,999	01-Jul-13
2,000-2,999	01-Aug-13
1,250-1,999	01-Sep-13
800-1,249	01-Oct-13
500-799	01-Nov-13
350-499	01-Jan-14
250-349	01-Feb-14
160-249	01-Apr-14
90-159	01-May-14
62-89	01-Jul-14
61	01-Aug-14
60	01-Oct-14
59	01-Nov-14
58	01-Jan-15

54-57	01-Mar-15
50-53	01-Apr-15
Fewer than 30 with the last 2 characters in their PAYE reference numbers 92, A1-A9, B1-B9, AA-AZ, BA-BW, M1-M9, MA-MZ, Z1-Z9, ZA-ZZ , 0A-0Z, 1A-1Z or 2A-2Z	01-Jun-15
Fewer than 30 with the last 2 characters in their PAYE reference number BX	01-Jul-15
40-49	01-Aug-15
Fewer than 30 with the last 2 characters in their PAYE reference number BY	01-Sep-15
30-39	01-Oct-15
Fewer than 30 with the last 2 characters in their PAYE reference number BZ	01-Nov-15
Fewer than 30 with the last 2 characters in their PAYE reference numbers 02-04, C1-C9, D1-D9, CA-CZ or DA-DZ	01-Jan-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 00 05-07, E1-E9 or EA-EZ	01-Feb-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 01, 08-11, F1-F9, G1-G9, FA-FZ or GA-GZ	01-Mar-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 12-16, 3A-3Z, H1-H9 or HA-HZ	01-Apr-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers I1-I9 or IA-IZ	01-May-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 17-22, 4A-4Z, J1-J9 or JA-JZ	01-Jun-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 23-29, 5A-5Z, K1-K9 or KA-KZ	01-Jul-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 30-37, 6A-6Z, L1-L9 or LA-LZ	01-Aug-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers N1-N9 or NA-NZ	01-Sep-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 38-46, 7A-7Z, O1-O9 or OA-OZ	01-Oct-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 47-57, 8A-8Z, Q1-Q9, R1-R9, S1-S9, T1-T9, QA-QZ, RA-RZ, SA-SZ or TA-TZ	01-Nov-16
Fewer than 30 with the last 2 characters in their PAYE reference numbers 58-69, 9A-9Z, U1-U9, V1-V9, W1-W9, UA-UZ, VA-VZ or WA-WZ	01-Jan-17
Fewer than 30 with the last 2 characters in their PAYE reference numbers 70-83, X1-X9, Y1-Y9, XA-XZ or YA-YZ	01-Feb-17
Fewer than 30 with the last 2 characters in their PAYE reference numbers P1-P9 or PA-PZ	01-Mar-17
Fewer than 30 with the last 2 characters in their PAYE reference numbers 84-91, 93-99	01-Apr-17
Fewer than 30 unless otherwise described	01-Apr-17
Employer who does not have a PAYE scheme	01-Apr-17
New employer (PAYE income first payable between 1 April 2012 and 31 March 2013)	01-May-17
New employer (PAYE income first payable between 1 April 2013 and 31 March 2014)	01-Jul-17
New employer (PAYE income first payable between 1 April 2014 and 31 March 2015)	01-Aug-17
New employer (PAYE income first payable between 1 April 2015 and 31 December 2015)	01-Oct-17
New employer (PAYE income first payable between 1 January 2016 and 30 September 2016)	01-Nov-17
New employer (PAYE income first payable between 1 October 2016 and 30 June 2017)	01-Jan-18
New employer (PAYE income first payable between 1 July 2017 and 30 September 2017)	01-Feb-18

What is the effect on my workforce?

You will need to assess your workforce to determine whether your employees are classified as a 'worker' under the new legislation. The term worker does not just relate to employees as it can include contractors and/or agency workers.

There are three different categories of worker, determined by their age and how much they earn. These categories are referred to as eligible jobholders, non-eligible jobholders and entitled workers and there are different requirements for each.

Eligible jobholder

- must be automatically enrolled into an automatic enrolment scheme
- are aged between 22 and State pension age
- work or ordinarily work in Great Britain and earn above £8,105.

Non-eligible jobholder

- has the right to opt in to an automatic enrolment scheme
- is aged at least 16 and under 75
- works or ordinarily works in Great Britain and
- earns over £5,564 up to £8,105 or
- earns above £8,105 and is under 22 or
- earns above £8,105 and is over State pension age.

Entitled worker

- has the right to join a pension scheme
- is aged at least 16 and under 75
- works or ordinarily works in Great Britain and
- earn £5,564 or less.

Exclusions to the employer duties

People who are treated as workers

The following people are treated as workers but are not covered by the employer duties:-

- those who do not work or ordinarily work in Great Britain
- those under age 16 and those aged 75 and over.

- People who are not treated as workers

People who are not treated as workers

The following people are not treated as workers so the employer duties do not apply to them:-

- the self employed
- members of the armed forces
- and directors of companies unless they have a contract of employment to work for that company and there is someone else employed by the company under a contract of employment.

Postponement

You can choose to operate a waiting period of up to three months. This means you can postpone the assessment of worker type and your employer duties until the end of the waiting period. If you choose to use postponement you must tell the worker that:-

- a waiting period applies
- he/she has the right to opt in/join before the end of the waiting period.

You must give this information within one month of the day after the worker starts his/her employment. Similarly if you receive an opt-in or joining notice during this period you must assess the worker on the day you receive it.

What are my employer duties?

Employer duties for each worker type

The table below summarises your employer duties for each type of worker.

Category of worker	An overview of your employer duties
Eligible jobholder	▪ Automatically enrol him/her into an automatic enrolment scheme. ▪ Make contributions on his/her behalf. ▪ Process any opt-out notices and refund contributions paid. ▪ Re-assess worker type roughly every three years and re-enrol those who have previously opted out. ▪ Keep records of the automatic enrolment process and provide to TPR if requested.
Non-eligible jobholder	▪ Provide information about his/her right to opt in to an automatic enrolment scheme. ▪ Arrange pension scheme membership and make contributions on his/her behalf. ▪ Process any opt-out notices and refund contributions paid. ▪ Continually assess his/her age and/or earnings. ▪ Keep records of the enrolment process and provide to TPR if requested.
Entitled worker	▪ Provide information about his/her right to join a pension scheme. ▪ Arrange pension scheme membership. ▪ Deduct contributions from his/her salary and pay these into the scheme. You are not required to make contributions although you can choose to do so. ▪ Continually assess his/her age and/or earnings. ▪ Keep records of the joining process and provide to TPR if requested.

What is the effect on pension schemes?

You must register that you have an automatic enrolment scheme in place with The Pensions Regulator (TPR) by at least four months after your staging date. You will also have to re-register roughly every three years. The good news is if you have an existing pension scheme, you can use this to meet your employer duties so long as it meets certain criteria.

There are three sets of criteria, namely, automatic enrolment criteria, qualifying criteria and quality requirements. The following information relates specifically to contributions under the quality requirements.

Minimum requirements

The minimum contribution level required for an automatic enrolment scheme is based on qualifying earnings. Qualifying earnings are a band of earnings of more than £5,564 and £42,475 or less. These figures are for the 2012/13 tax year and are expected to increase each year. Qualifying earnings include salary, wages, overtime, bonuses, commissions, statutory sick pay, statutory maternity pay, ordinary/statutory paternity pay and statutory adoption pay. To allow you to spread the cost of your new employer duties you can phase in the minimum contributions as shown in the table below.

<table>
<tr><th colspan="4">Contribution rates required to meet the contribution quality requirement as a percentage of qualifying earnings</th></tr>
<tr><th>Date</th><th>Total must be at least</th><th>Employer must contribute</th><td rowspan="4">Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.</td></tr>
<tr><td>October 2012 to September 2017</td><td>2%</td><td>1%</td></tr>
<tr><td>October 2017 to September 2018</td><td>5%</td><td>2%</td></tr>
<tr><td>October 2018 onwards</td><td>8%</td><td>3%</td></tr>
</table>

Certification

As an alternative to using the qualifying earnings definition, you can choose to use certification. A certificate can cover all workers or groups of workers. For example, you might want to use the qualifying earnings basis for one group of workers and certification for another group of workers. You can also use different certification levels for different groups of workers.

The contribution levels for certification can be phased in over six years from October 2012 and there are three options available:-

9% **8%** **7%**

If you choose the 9% or 8% certification options then you must use a scheme definition of pensionable salary and contributions must be based on the first pound of pensionable salary.

Pensionable salary must be at least basic pay. Basic pay must include earnings before deductions such as tax and National Insurance, holiday pay and certain statutory benefits but does not have to include variable pay such as bonuses, overtime and commission.

If you choose the 7% certification option, all earnings must be pensionable and contributions must be based on the first pound of earnings. You can certify for up to 18 months using the payroll data that is available at the time you certify. You must re-certify at least every 18 months or sooner if there is a 'significant change' such as:

- changes to the scheme contribution rate or
- a company takeover/merger.

Certification options

The tables below show the three certification options and how they may be phased in:-

9% of pensionable salary			
Date	**Total must be at least**	**Employer must contribute**	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
October 2012 to September 2017	3%	2%	
October 2017 to September 2018	6%	3%	
October 2018 onwards	9%	4%	

8% of pensionable salary, provided 85% of total payroll is pensionable			
Date	**Total must be at least**	**Employer must contribute**	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
October 2012 to September 2017	2%	1%	
October 2017 to September 2018	5%	2%	
October 2018 onwards	8%	3%	

7% of all earnings*			
Date	**Total must be at least**	**Employer must contribute**	Agreement must be in place for jobholder to make up at least any difference between the total and the employer amount.
October 2012 to September 2017	2%	1%	
October 2017 to September 2018	5%	2%	
October 2018 onwards	7%	3%	

* Earnings must include everything that is included in the definition of qualifying earnings.

What happens if I do nothing?

The new employer duties are not optional. The Pensions Regulator (TPR) will be responsible for ensuring that you comply with the new employer duties. Although its approach will be to educate and encourage compliance, you will face substantial fines or even imprisonment if you do not comply.

Penalties

TPR has the power to issue compliance notices and impose penalties if you do not comply with the automatic enrolment duties for example, failing to automatically enrol eligible jobholders or failing to refund contributions to those who have opted out. Similarly you cannot encourage jobholders to opt out of the pension scheme or encourage candidates to do so during the recruitment process.

Appealing against a penalty

You have a right to appeal against any penalties imposed by TPR and must do so in writing. If TPR decides to review a penalty, it will be suspended from the date it begins a review until the date the review is completed. It can then confirm, vary or revoke the penalty or substitute it for a different penalty.

You can find out more about automatic enrolment and the role of TPR on their website at: www.thepensionsregulator.gov.uk/pensions-reform

What is NEST?

You may have heard about NEST, the National Employment Savings Trust. NEST is a pension scheme that you can use to meet your employer duties and it is primarily aimed at low to medium earners and small employers that do not have access to a company pension scheme. It is designed to be a simple, low cost option and there are certain restrictions that apply.

- There is currently a general ban on transfers in or out.
- There is an upper contribution limit of £4,400* each tax year.
- There are limited options at retirement, which will result in less choice and flexibility for workers.
- There are limited investment options. Workers will be automatically invested in a default fund based on time to retirement.
- This will not take into account an individual's attitude to risk.
- The death benefits paid from NEST are potentially subject to inheritance tax.

* This is the limit for the 2012/13 tax year but this figure will be adjusted annually.

How can DBL Asset Management help?

We are pensions specialists and have a proven track record in designing solutions to meet your and your employees' needs. We recognise that automatic enrolment poses a considerable challenge to your business. You will need to introduce a range of new processes, record keeping and reporting requirements, to comply with your employer duties, so advanced planning is vital. The quicker you act the more time you will have to consider your options and adopt the most appropriate strategy for your business. While it is likely your operational costs will rise, the decisions you make now will help you to manage these costs.

We want to work with you to help you understand and prepare for the changes you will have to make.

Contact Us

We hope that you found the information in this document useful and informative.

If any of the points are of interest, or you would like to discuss your own situation in more detail, please call us on the number opposite.

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