

Every employer with at least one member of staff now has a duty to put those who meet certain criteria into a workplace pension scheme and to contribute towards it.

Each employer had a date by which they needed to comply with the law called their "Staging Date". To find this out visit www.thepensionsregulator.gov.uk and follow the on-screen instructions. You will be required to submit your PAYE reference number. If you don't pay staff through a PAYE scheme, your staging date was 1 April, 2017. If you fail to comply with your duties, you will face enforcement action in line with a risk-based approach. Enforcement action begins with statutory notices and is followed by penalty notices. Further non-compliance may result in court action.

As an employer, you will need to assess your workforce to establish who is eligible for automatic enrolment by identifying whether a person is a worker. To do this, you need to understand your contractual relationships.

Different Categories of Worker

| CATEGORY OF WORKER | DESCRIPTION OF WORKER |
|-------------------------------|---|
| Worker | An employee or someone who has a contract to perform work or services personally, that is, not undertaking the work as part of their own business. |
| Jobholder | A worker who: <ul style="list-style-type: none"> • is aged between 16 and 74 • is working or ordinarily works in the UK under their contract • has qualifying earnings * |
| Eligible jobholder | A jobholder who: <ul style="list-style-type: none"> • is aged between 22 and state pension age • has qualifying earnings above the earnings trigger for automatic enrolment * |
| Non-eligible jobholder | A jobholder who: <ul style="list-style-type: none"> • is aged between 16 and 21 or state pension age and 74 • has qualifying earnings above the earnings trigger for automatic enrolment * or <ul style="list-style-type: none"> • is aged between 16 and 74 • has qualifying earnings equal to or below the earnings trigger for automatic enrolment * |
| Entitled worker | A worker who: <ul style="list-style-type: none"> • is aged between 16 and 74 • is working or ordinarily works in the UK under their contract • does not have qualifying earnings * |

Eligible jobholders

An employer must automatically enrol an eligible jobholder into an automatic enrolment scheme on the eligible jobholder's automatic enrolment date (or deferral date, where postponement has been used).

Part of the automatic enrolment process also requires an employer to give the eligible jobholder information telling them:

- they have been, or will be, automatically enrolled and what this means for them
- their right to opt out, how to do so and their right to opt back in.

The employer will also have to give information about the eligible jobholder to the scheme. The eligible jobholder may choose to opt out of scheme membership once they have been automatically enrolled. 'Opting out' has a specific meaning in the new employer duties. It refers to the provision of a mechanism under the law which has the effect of undoing active membership, as if the worker had never been a member of a scheme on that occasion. It can only happen within a specific time period known as the 'opt-out period'. An employer will continue to have responsibilities towards the individual who has opted out. One of these is to automatically re-enrol them every three years, if they are still an eligible jobholder working for that employer. The employer must pay employer contributions to the scheme (unless the worker opts out or ceases membership).

Non-eligible jobholders

Non-eligible jobholders do not meet the additional criteria to be eligible jobholders, so do not need to be automatically enrolled. However, they have a right to opt in to an automatic enrolment scheme, if they choose, so an employer still has duties in relation to them.

An employer must give their non-eligible jobholders certain information about both the right of a jobholder to opt in to an automatic enrolment scheme and the right of an entitled worker to join a pension scheme. The employer must give this information to the non-eligible jobholder within six weeks of the earlier of the date on which they become a non-eligible jobholder or the date they become an entitled worker, eg the employer's staging date or, if after staging, the non-eligible jobholder's first day of employment.

This requirement does not apply if the employer has previously given this information, for example because the employer chose to use postponement in respect of the non-eligible jobholder and gave them a postponement notice.

If a non-eligible jobholder chooses to opt in to a pension scheme, they must do so by giving the employer an 'opt-in notice' in the form of a letter or email. On receipt of a valid opt-in notice, the employer must enrol the non-eligible jobholder into an automatic enrolment scheme by following the automatic enrolment process. The employer must pay employer contributions to the scheme.

Entitled workers

Entitled workers do not need to be automatically enrolled. However, they do have a right to join a pension scheme. The pension scheme the employer chooses to use can be a different scheme to the one they may be using for automatic enrolment.

An employer must give their entitled workers certain information about both the right of a jobholder to opt in to an automatic enrolment scheme and the right of an entitled worker to join a pension scheme.

The employer must give this information to the entitled worker within six weeks of either the date on which they become a non-eligible jobholder or the date they become an entitled worker, eg the employer's staging date or, if after staging, the entitled worker's first day of employment.

This requirement does not apply if the employer has previously given this information for example because the employer chose to use postponement in respect of the entitled worker and gave them a postponement notice. If an entitled worker chooses to join a pension scheme, they must do so by giving the employer a 'joining notice' in the form of a letter or email.

The employer must then arrange membership of a scheme for them. The employer will have to deduct contributions on behalf of the entitled worker and pay these into the scheme. However, the employer does not have to pay into the scheme themselves, unless they choose to do so, or have chosen a scheme that requires an employer contribution.

| CATEGORY OF WORKER | WHAT EMPLOYER HAS TO DO | RELATED GUIDANCE |
|---------------------------|--|---|
| Eligible jobholder | <ul style="list-style-type: none"> Automatically enrol Make ongoing employer contributions to the scheme | Detailed guidance no. 5 – Automatic enrolment |
| | Process any opt-out notice | Detailed guidance no. 7 – Opting out |
| | Automatically re-enrol approximately every three years or immediately if specific events caused active membership to cease. | Detailed guidance no. 11 – Automatic re-enrolment |
| | Keep records of the automatic enrolment process | Detailed guidance no. 9 – Keeping records |
| | If using postponement, give a notification to the eligible jobholder | Detailed guidance no. 3a – Postponement |

| CATEGORY OF WORKER | WHAT EMPLOYER HAS TO DO | RELATED GUIDANCE |
|-------------------------------|---|--|
| Non-Eligible jobholder | Give information about the right of a jobholder and an entitled worker to opt in and join in one single communication. | Detailed guidance no. 10 – Information to workers |
| | If the non-eligible jobholder decides to opt in: <ul style="list-style-type: none"> • Arrange pension scheme membership • Make ongoing employer contributions to the scheme | Detailed guidance no. 6 – Opting in, joining and contractual enrolment |
| | Process any opt-out notice | Detailed guidance no. 7 – Opting out |
| | Keep records of the automatic enrolment process | Detailed guidance no. 9 – Keeping records |
| | Automatically re-enrol if specific events caused active membership to cease | Detailed guidance no.11 – Automatic re-enrolment |
| Entitled worker | Give information about the right of a jobholder and an entitled worker to opt in and join in one single communication. | Detailed guidance no. 10 – Information to workers |
| | If the entitled worker decides to join, arrange pension scheme membership | Detailed guidance no. 6 – Opting in, joining and contractual Enrolment |
| Worker | Keep records of the joining process | Detailed guidance no. 9 – Keeping records |
| | If using postponement at their staging date or the worker’s first day of employment, give a notification to the worker. | Detailed guidance no. 3a – Postponement |

Personal Services Workers

- The employer needs to judge whether or not an individual (who is not a director) with a contract to perform work or services personally, ie they cannot freely send a substitute or sub-contract the work, unless they are unable to perform the work themselves (eg due to sickness) is undertaking the work as part of their own business.
- Does the employer:
 - have control over an individual’s method of work (eg hours worked)?
 - provide any employee benefits?
 - bear all the significant financial risks in carrying out the work (eg the worker is not financially responsible for their faulty work)?
 - consider the individual to be part of their own organisation?
 - ➔ – provide what is required for the individual to carry out the work (eg tools)?

If most or all of the above are true, then it would be reasonable to consider that they are **not** undertaking the work as part of their own business and they **are** a **personal services worker**.
- The list above is not exhaustive and an employer must take into account all relevant considerations and make a reasonable judgement.

Who is excluded?

Exclusions from automatic enrolment duties include:

- some office-holders who are not considered workers, (eg non-executive director, trustee or elected member), but they are only excluded for the activities they carry out as an office holder
- serving members of the military are not workers
- a company with only one director and no employees. It should be noted that a company with more than one director and no other employees, where only one director has a contract of employment, would also be exempted.

From 1 April 2015, new exceptions were introduced covering workers*:

- in their notice period
- who have previously ceased active membership of a qualifying pension
- with HMRC tax protected status for their pension savings
- who have received a pension winding-up lump sum payment.

Workers and Qualifying Earnings (2017/18 Rates):

| QUALIFYING EARNINGS | AGE RANGE | | |
|--|------------------------|---------------------------|------------------------|
| | 16-21 | 22-SPA* | SPA*-74 |
| Up to £5,876** pa | Entitled worker | | |
| Over £5,876** pa and up to £10,000** pa | Non-eligible jobholder | | |
| More than £10,000** pa | Non-eligible jobholder | Eligible jobholder | Non-eligible jobholder |

- Pensionable earnings can be based on qualifying earnings OR another definition (eg basic pay).
- When qualifying earnings are used to determine pensionable pay:
 - pension contributions are determined by the rules of the scheme, and
 - will be based on banded earnings between the lower earnings threshold and upper earnings limit (currently £5,876*pa and £45,000*pa).
- If pensionable earnings are not based on qualifying earnings, the employer can self certify if the scheme meets certain minimum criteria. The minimum contribution rates will be different for each set, details of which can be found on The Pensions Regulator website at <http://www.thepensionsregulator.gov.uk/docs/dg-4-appendix-b.pdf>

* Pro-rata of annual amount used in each Pay Reference Period. These figures are for 2017-2018. The Secretary of State will review this amount each tax year.

Keep track of age and earnings

Changes in age and earnings may see a worker move between the different categories of worker. The employer duties in relation to that worker will therefore change. For this reason, it is important to monitor age and earnings – this is especially important for workers who earn below the qualifying earnings threshold, or who are under 22 years old. An employer will need to put procedures in place to monitor when their workers move from one category of worker to another, and alert them as to what this means in practice.

Can Employers use an existing pension scheme?

If clients have an existing scheme, it may not be suitable for automatic enrolment.

To be a qualifying scheme:

- the contributions due must be at or above the minimum criteria
- if it is a personal or GPP contract-based scheme, it is likely to need a jobholder agreement for each active member.

If it is not a qualifying scheme, it may be possible to change the scheme rules to make it qualifying.

Active members of a pension which is not qualifying would need to be assessed and, if eligible, automatically enrolled into another pension. If they want to use a qualifying scheme to automatically enrol their workers:

- the pension must have no barrier to automatic enrolment (eg default fund).

The existing pension provider may not allow it to be made a qualifying scheme or an automatic enrolment scheme - check with the pension provider.

Choosing a new pension scheme – factors to consider

It is the employer's responsibility to choose a pension scheme for their workers. Employers should consider what features are important for their workers, for example:

- charges (there is an annual 0.75% charge cap on the default fund)
- choice of funds other than the default strategy (eg Sharia,ethical)
- options at retirement and/or from age 55 (eg drawdown options)
- whether they provide 'one pot per member' and rules on transfers
- how tax relief is applied (eg through payroll or by the pension provider)
- online member services
- member communications (may be available in multiple languages)

For help on how to select a good qualifying pension, please see: www.thepensionsregulator.gov.uk/choosing-a-pension-scheme

Opting in and Joining

Entitled workers can request to join a scheme at any time, including during postponement. Jobholders can Opt-in at any time, including during postponement. However, workers will not necessarily know whether they are jobholders or entitled workers and this could vary over time. All requests (whether an Opt-in or join request) are treated the same way.

On receipt of any request to Opt-in or join a pension from a worker, employers need to:

- assess the worker, to see if they are a jobholder or entitled worker, then
- enrol jobholders into an automatic enrolment scheme, and
- enrol entitled workers into a scheme of the employer's choice.

A jobholder must not be required to carry out any further action to achieve active membership (eg the pension scheme should have a default fund).

Opting Out

Workers automatically enrolled (or who have opted in) may 'Opt-out'.

Employer must inform staff of their right to Opt-out and how to do so.

The employer must not give out or send out 'Opt-out' forms:

- requests to 'Opt-out' must be handled by the scheme provider and completed forms would normally be sent to the employer.

A one calendar month Opt-out window starts on the later of two dates:

- once the worker is an active member of the pension scheme, or
- when the employer gives a notice of enrolment letter/email to the worker.

The worker and employer will get a full refund of all contributions. Early Opt-outs (before the Opt-out window starts) are not allowed. After the Opt-out window has closed, the worker may still request to cease membership of the pension scheme (under the scheme rules). A worker who has opted out does not need to be assessed again until the employer's next re-enrolment date (occurs approx every 3 years).

Worker information requirements

There are three occasions when communications are needed:

1. enrolment
2. postponement (one letter)
3. worker's right to opt-in/join a scheme

You no longer need to distinguish between an entitled worker and a non eligible jobholder for communication purposes - or know that they have changed category if they are not an eligible jobholder.

The following letters are no longer required:

- the entitled worker and non eligible jobholder tailored letters
- the 'already member of qualifying pension scheme' letter.

Note: Employers can still use the 'old' template letters if they wish to.

Record Keeping

- Employers must keep records about their workers and the pension scheme used to comply with the employer duties (pension providers and trustees will also have duties to keep records).
- An employer can use electronic or paper filing systems to keep or store any records, as long as these records can be produced in a legible way.
- Most records must be kept for six years. Those that relate to opting-out must be kept for four years.
- The records must be provided to The Pensions Regulator, on request.
- The Pensions Regulator can conduct an inspection if they have reasonable grounds to do so (for example, this may be as a result of a whistleblower alert).

Declaration of Compliance

All employers are required to complete and submit a declaration of compliance (registration) to the regulator within 5 months of their staging date – even if you have no duties. A Declaration of Compliance checklist can be found at www.thepensionsregulator.gov.uk

Overview of Legal Duties and Safeguards

Automatic enrolment legislation gives employers a duty to:

- ✓ automatically enrol all eligible jobholders
- ✓ communicate to workers providing timely and appropriate information
- ✓ allow non-eligible jobholders to opt-in and entitled workers to join
- ✓ manage opt-outs within the opt-out period and promptly refund contributions
- ✓ automatically re-enrol eligible jobholders every three years
- ✓ complete declaration of compliance with the Regulator
- ✓ keep records
- ✓ maintain payments of contributions

The employee safeguards state that employers:

- x** must not induce workers to opt-out or cease membership of a scheme
- x** must not indicate to a potential jobholder that their decision to opt-out will affect the outcome of the recruitment process

Please note that this is an overview of the procedures you should follow. Detailed Guidance is available to download or view at: <http://www.thepensionsregulator.gov.uk>