

Workplace pensions law is changing...



A brief overview about the new duties for employers

From 2012, changes to pensions law will affect all employers with at least one worker in the UK. This document is a summary of these changes, including what employers must do and how they might set about getting ready.

We have published a series of guidance that explains the new employer duties in detail and how they should be implemented. The guidance is available for download from our website: www.tpr.gov.uk/pensions-reform

The changes in a nutshell

Employers will need to:

- Automatically enrol certain workers into a pension scheme
- Make contributions on their workers' behalf
- Register with The Pensions Regulator ('the regulator')
- Provide workers with certain information about the changes and how they will affect them.

When are the changes happening?

The new employer duties will be introduced in stages starting from October 2012. Each employer will be allocated a date from when the duties will first apply to them, known as their 'staging date.'

This date is based on the number of people in an employer's PAYE scheme. Employers with the largest numbers of workers in their PAYE schemes will have the earliest staging date.

Employers can check their provisional staging date on our website: www.tpr.gov.uk/staging

To allow some flexibility, employers can choose to bring forward their staging date, provided the regulator is informed. However, employers cannot choose a later date than the one they are allocated.

Finding out when the staging date is likely to be is the first thing an employer should do, so they can plan what they need to do to be ready in good time.

What will employers need to do?

Assess their workforce

Employers will need to assess their workforce to see what their duties will be in relation to each of their workers. Employers will need to provide their workers with certain information, which will be identified by this assessment. In particular, they should find out whether they are likely to have an automatic enrolment duty, as this will require preparation.

Identify who to automatically enrol

Workers who need to be automatically enrolled are called 'eligible jobholders.'

An eligible jobholder is:

- Aged between 22 and state pension age
- Working, or ordinarily working, in the UK
- Earning above a certain amount (currently proposed to be £7,475).

The location of the employer is not relevant when considering if a worker is an eligible jobholder. Neither is the worker's nationality or the length of their stay in the UK. What is relevant is whether the worker is working, or ordinarily working, in the UK.

When considering whether a worker's earnings are above or below the lower earnings limit, an employer needs to look at what is known as the worker's 'qualifying earnings.' This will include earnings in salary, overtime, commission, bonuses, sick pay, maternity, paternity and adoption pay.

It is important for employers to formally assess their workforce and understand what duties might apply. It may be possible for employers to defer this assessment – by allowing a 'waiting period' of up to 3 months. More information on waiting periods will be available on our website and in the guides published later this year.

Choose a pension scheme

Employers with an automatic enrolment duty will need to choose a pension scheme they can use for automatic enrolment. Information from the regulator will be available to help inform this decision later in the year.

Employers might use an existing scheme or set up a new one with a pension provider.

In addition, there is the National Employment Savings Trust (NEST). NEST is a pension scheme with the following characteristics:

- It has a public service obligation, meaning it must accept all employers who apply
- It has been established by Government to ensure that employers, including those that employ low to medium earners, can access pension saving and comply with their automatic enrolment duties.

Whether the scheme an employer uses for automatic enrolment is new or not, it must meet certain, specific criteria set out in legislation.

The scheme cannot:

- Impose barriers, such as probationary periods or age limits for members
- Require staff to make an active choice to join or take other action, eg having to sign a form or provide extra information to the scheme themselves, either prior to joining or to retain active membership of the scheme.

Each pension scheme will have its own rules, but all employers will need to provide their scheme with certain information about the person who is being automatically enrolled.

Register with the regulator

All employers will need to register with the regulator. This will be an online process. We will provide more information on registration later in the year.

Make contributions

Many employers offer a defined contribution scheme to staff. The rules of these schemes must require the employer to pay an overall minimum contribution of at least 8% of the worker's qualifying earnings, of which at least 3% of this contribution must be from the employer.

In most cases, Government tax relief will account for 1% of the total 8%.

Employers who already have a pension scheme can confirm that it is suitable for automatic enrolment by a process called 'certification.' More information on certification will be available on our website.

We have issued technical guidance to payroll system providers to help them get ready for the changes. 'A guide to workplace pensions reform for software developers' can be downloaded from our website: www.tpr.gov.uk/pensoftware

Process any opt-out notices

Workers who have been automatically enrolled have the right to opt out of the employer's pension scheme. There is an opt-out period of 1 month, where any deductions made from their salary will be refunded. The worker 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, workers must give notice via a document called an 'opt-out notice' to the 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.

When employers receive a valid opt-out notice within the 1-month period, they must pay back any contributions deducted from the worker's pay. Equally, any contributions the employer has made must be refunded to the employer by the pension scheme.

Process opt-in or joining requests

As well as automatically-enrolling eligible jobholders, employers must also put certain other workers into a pension scheme, if these individuals ask. What the employer will need to do depends on the type of worker.

Certain workers have a right to 'opt in' to an automatic enrolment scheme and the employer is required to arrange this and make employer contributions.

Other workers have a right to 'join' any scheme but there is no requirement on the employer to make employer contributions in respect of these workers; although the employer must set up the deduction of the worker's contributions from pay. More information will be available on our website.

Avoid inducements and prohibited activity

It is important that any worker's decision to opt out of a scheme, or stop saving for retirement altogether, should be taken freely and without influence by the employer.

There are safeguards in place from 2012 intended to protect the rights of individuals to have access to pension provision. These safeguards mean that employers must not take, or fail to take, any action, with the sole or main purpose to attempt to induce a jobholder to opt out of a pension scheme. Equally, 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.

Keep accurate records

Along with the requirements described previously, employers must keep specific records about their workers and their pension scheme(s). Most of these records must be kept for a minimum of 6 years.

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 if the regulator asks to see them.

Keeping accurate records about workers and the pension scheme helps avoid or resolve potential disputes with workers, as well as aide reconciliation of pension contributions.

Employers have a great deal of flexibility to use their existing business documentation (eg payroll records) as evidence of keeping a particular record.

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.

Provide workers with information about the changes

Employers will need to inform their workers about the changes and how those workers are affected by them.

The specified information must be provided in writing, which can include being sent by email. However, it is not enough just to point individuals to an internet or intranet site, or display a poster in the workplace.

If the specified information requires personal or individual data to be communicated, it should not be included in a generic communication. In these circumstances, the employer is likely to have to write to, or email, each worker individually.

Where the specified information does not require individual data (eg the information to a jobholder about their right to opt in), it may be possible to provide the information in a generic communication, such as a joining pack.

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 an Independent Financial Adviser (IFA), provider or benefit consultant) can provide the information, but it remains the employer's responsibility to make sure it is provided on time and is complete and correct.

What should employers do now?

Employers should:

- Look up their provisional staging date at: www.tpr.gov.uk/staging
- Plan for when they might need their pension scheme in place and take action if necessary – including planning when and how they will assess their workforce
- Budget for these changes
- Look out for further information and guidance from the regulator. This can be done by signing up to the regulator's free news-by-email service: www.tpr.gov.uk/news

How to contact us

Napier House
Trafalgar Place
Brighton
BN1 4DW

T 0870 606 3636

F 0870 241 1144

E customersupport@thepensionsregulator.gov.uk

www.thepensionsregulator.gov.uk

www.trusteetoolkit.com

Workplace pensions law is changing

© The Pensions Regulator November 2011

You can reproduce the text in this publication as long as you quote The Pensions Regulator's name and title of the publication. Please contact us if you have any questions about this publication. We can produce it in Braille, large print or on audio tape. We can also produce it in other languages.

The Pensions
Regulator