Regulation changes update

for automatic enrolment, effective 1 April 2015

Following consultation, the Department for Work and Pensions (DWP) have laid new regulations which will come into force on 1 April 2015. They aim to reduce the administrative overhead, especially for small and micro employers, for assessment and issuing worker information. The changes are 'permissive', ie they are not mandatory, so employers can continue to follow the 'old' rules indefinitely. As these are brand new regulations and not yet effective there may be some changes to their interpretation.

The new regulations cover:

- worker exceptions
- worker information requirements
- DB scheme quality requirements

The new regulations introduce new exceptions for workers:

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

If a worker has received or given notice to leave employment before, or up to six weeks after, the automatic enrolment (or re-enrolment) date – and before enrolment arrangements are complete – then the employer may choose whether to enrol them into a scheme. The worker may not opt in or join. If the notice is withdrawn, the automatic enrolment (or re-enrolment) duty starts again from the date of the notice withdrawal.

automatic enrolment

The Pensions Regulator

For workers:

- who contractually joined a qualifying pension scheme and then ceased membership of that scheme, or
- who have previously been automatically enrolled into a qualifying pension scheme and opted out or ceased membership of that scheme, and
- had ceased membership up to 12 months before the automatic enrolment (or re-enrolment) date

the employer may choose whether or not to automatically enrol them if they are an eligible jobholder on their automatic enrolment (or re-enrolment) date.

If the employer chooses not to automatically enrol/re-enrol them, the employer will have no duty to re-enrol them until the next cyclical re-enrolment date.

Note that the two exceptions set out above can work together, so that if a worker has ceased membership of a scheme up to 12 months prior to the date their notice is withdrawn, the employer will get the choice whether to enrol into a scheme. However, if their notice is withdrawn more than 12 months after ceasing membership, there is no automatic enrolment because the law turns the duty off until re-enrolment.

Where an employer has 'reasonable grounds' (eg the jobholder shows them documentary evidence) to believe that a jobholder has HMRC tax protected status for their pension savings (for example enhanced or fixed protection), the employer may choose not to enrol them on their automatic enrolment (or re-enrolment) date. If not enrolled, the jobholder has a right to opt in. This exception has been created because the worker could lose their protected status (and so may incur a tax charge), if they are automatically enrolled or re-enrolled and do not opt out in time.

For jobholders who have taken a winding-up lump sum (WULS), having ceased membership of a defined contribution (DC) scheme, ceased employment and are then re-employed by the employer, the employer may choose whether to enrol them if they have an automatic enrolment date which falls up to 12 months after the payment of the WULS. Otherwise, they can be left until re-enrolment. Note: a DC scheme may pay out a lump sum to a member where the accrued 'pot' is too small to purchase an annuity. If the jobholder is automatically enrolled in these circumstances, there may be a tax charge on both the employer and the worker.

Information to workers

The regulations allow employers who have already developed a set of communications based on the old requirements to continue to use them. This is important for employers and service providers who have established worker communication processes in place.

The number of letters required has been reduced and the information they contain simplified. From 1 April 2015, there are only four occasions when communications are needed. These are:

- when enrolling workers
- when using postponement (one letter)
- when workers have a right to opt in/join a scheme
- when applying the transitional period

The requirement to give separate opt-in and joining information when the worker changes category is removed, so the employer may now combine this information. The practical effect of this is that the employer no longer needs to monitor workers to identify when they change category from entitled worker to jobholder (or vice versa), as the relevant information on both opt-in and joining is given up front. This simplifies the assessment process, so the employer only needs to identify two subsets of their workforce; those who must be automatically enrolled and those who do not.

The entitled worker and non-eligible jobholder tailored letters are no longer required. If a worker is already a member of a qualifying scheme at staging, there is no longer a requirement to inform them.

The Pensions Regulator's letter templates are being amended to take account of these changes. This will include a new template which allows employers to provide all information just once, for example, at staging.

The new letter templates will be made available on The Pensions Regulator's website from 1 April 2015 and the old templates will no longer be available to download.

DB quality requirements

As contracting out is being abolished in April 2016, new quality requirements for defined benefit (DB) schemes are needed. So, from April 2015, in addition to the existing Test Scheme Standard in the Pensions Act 2008 (basically a test that the accrual rate is at least 1/120th), as an alternative a DB scheme will be able to meet new 'simpler' alternative requirements set out in the new regulations. The new requirements are contribution rate tests, based on the cost of providing benefits for the members. The basic test is 10% of qualifying earnings, but because no DB schemes use qualifying earnings as their definition of pensionable pay, there are four alternative sets of test an employer may use:

1. 11% of pensionable earnings, where pensionable earnings are not less than basic pay.
2. 10% of basic pay, so long as basic pay is at least 85% of total earnings on average.
3. 9% of total pay, so long as total pay is pensionable.
4. 13% of basic pay above the NI lower earnings limit or basic state pension (the latter is to cover schemes which have a state pension offset).

It is expected that an actuary would do this calculation as part of the normal funding valuation of the scheme. DWP will be providing further guidance on this early in the new financial year.

Detailed guidance

The regulations will come into force on 1 April 2015 and we will be updating the detailed guidance to reflect these changes. These will be available from April on our website.

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