MAYER • BROWN

Legal Update
October 2012

Automatic enrolment - what should employers be doing?

This note sets out some practical steps that employers can take now in anticipation of the introduction of automatic enrolment to their businesses. We have also produced a guide summarising the main features of the automatic enrolment regime which is available on our website.

1. Confirm staging date and consider bringing it forward

Confirm the staging date and consider whether to accelerate that date (for example, to ensure a consistent approach amongst a group with different employers). The Pensions Regulator has published a staging date timeline on its website.

2. Assess the workforce

Determine which employees are eligible jobholders, non-eligible jobholders or entitled workers. Eligible jobholders must be automatically enrolled into an automatic enrolment scheme, whilst non-eligible jobholders can opt into automatic enrolment. Entitled workers can also opt into enrolment but the employer need not pay contributions in respect of such employees. The Pensions Regulator has published guidance on this and a summary diagram which may be helpful.

3. Looking at existing pension arrangements

- Consider whether to adapt existing pension schemes for (a) existing employees, (b) new employees and (c) any entitled workers who choose to opt into automatic enrolment.
- For occupational pension schemes, liaise with the trustees regarding any changes which are needed.
- Some employers will be considering alternative arrangements. The governmental scheme, NEST, may be an appropriate alternative vehicle, whilst a number of private sector pension providers are offering trust and contract-based vehicles specifically designed for automatic enrolment.
- Particular complications may arise for temporary or seasonal workers, or workers whose salaries are likely to fluctuate above and below the minimum level of qualifying earnings. Any agency workers need to be considered carefully.

4. Plan the implementation process

- Assess the cost of implementing and sustaining automatic enrolment, including the anticipated number of employees who will opt out. Employers may need to consider reducing salaries or other benefits (pensions or otherwise) to compensate for the increased cost.
- A 60 day consultation process would be needed where pension benefits are reduced. Longer consultation is likely to be needed to change other employment terms.
- Where employers have a defined benefit or hybrid scheme open to accrual, consider the benefit of the five-year transitional period to delay implementing automatic enrolment for relevant staff.
- Consider the benefit of postponing automatic enrolment for new joiners. This is likely to be important for employers that currently operate a waiting period to join a pension arrangement, or other employers who have a high turnover of staff.
- Where a personal pension scheme is to be used, liaise with the provider to ensure that the additional requirements are met. These requirements are that the scheme is FSA-regulated; that it provides only money purchase benefits; and that there be agreements in place between the provider and (a) the employer that the minimum employer contribution will be made and (b) the employee that any shortfall in the total minimum contribution will be met.

5. Review employment documentation and practices

- Review employment documentation to ensure that the statutory requirements are met. This may include facilitating automatic enrolment or amending rates of employee and employer contributions.

- Salary sacrifice and flexible benefits arrangements will need to be reviewed and potentially restructured in light of automatic enrolment to ensure that they are operated in a way which is consistent with the automatic enrolment legislation.
- Recruitment practices will need to be reviewed to ensure no inadvertent breaches of the employer duties occur.
- Data about employees must be provided to the scheme. Employers will be concerned about data protection issues where information is passed on to scheme administrators, and may wish, if not already included, to put explicit consent to the use of personal data in the employment contract.
- Defined contribution and hybrid schemes must select an appropriate default investment option for the scheme/defined contribution section. The DWP has produced guidance on choosing the default investment option which is available on its website. Consideration should also be given to whether any changes will be needed to the range of investment options in light of the post-automatic enrolment membership profile.

6. Plan the ongoing administration process

- Appropriate systems are needed for record-keeping and to ensure compliance with the obligations to register with and report to the Pensions Regulator and to provide information to the scheme.
- Monitoring systems may need to be put in place for employees with fluctuating earnings.
- Where the administration of benefits is carried out in-house, consider amending the scheme's trust deed and rules to explicitly provide that administration is carried out by the employer e.g. to enable the employer rather than the scheme to manage opt-outs.
- Employers and high-earners will want to ensure that the automatic enrolment requirement does not result in any employees with enhanced or fixed protection inadvertently losing the benefit of such protection.
- Looking further ahead, the opt-out and automatic enrolment processes are likely to be complicated. Employers will want to consider the changes to administration systems needed to be made to ensure that the timescales are met and contributions are paid.

7. Prepare employee communications

The timing and content of employee communications about automatic enrolment will be crucial for a successful programme. The Pensions Regulator has published a quick reference guide to the information which must be provided to employees which employers may find helpful.

The Pensions Regulator has published a range of guidance on automatic enrolment which employers may find helpful. This guidance can be found on the Pensions Regulator's website.

If you have a question in relation to automatic enrolment, please contact:

Martin Scott
Partner
Tel: 020 3130 3847
Email: mscott@mayerbrown.com

Richard Goldstein
Partner
Tel: 020 3130 3250
Email: rgoldstein@mayerbrown.com

Sally MacCormick
Senior Associate
Tel: 020 3130 3261
Email: smaccormick@mayerbrown.com

0299pen
February 2012