ADDLESHAW GODDARD

AUTO-ENROLMENT

The legal perspective

Auto-enrolment is not just about increased pension costs. It is also an opportunity to strategically assess how pensions fits into your overall reward strategy, and ensure that your pension arrangements remain fit for purpose and appropriate for your workforce.

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Auto-enrolment: The basics

Auto-enrolment is the new duty on all UK employers to automatically enrol all employees who meet age and earnings criteria into a pension scheme that meets specific requirements and to make a minimum level of contributions to that scheme.

Who does this apply to?

All UK workers you employ. These fall into three categories: Entitled Workers; Non-eligible Jobholders and Eligible Jobholders. Which category an employee falls into will depend on their age and level of earnings which will change over time. Different duties apply to each category. A key preliminary step will be to assess your workforce to establish which category each employee falls into.

Age Earnings	16-21	22 - State Pension Age	State Pension Age - 74
Under lower earnings threshold (£5,668)*	Entitled worker	Entitled worker	Entitled worker
£5,668 to £9,440*	Non-eligible jobholder	Non-eligible jobholder	Non-eligible jobholder
Over earnings trigger for auto-enrolment (£9,440*)	Non-eligible jobholder	Eligible jobholder	Non-eligible jobholder

What are the key obligations?

What are the minimum contribution rates?

ALL WORKERS

- Provide with specific information
- Keep records for at least 6 years

ENTITLED WORKERS

- Allow to join a qualifying scheme
- No contributions required

JOBHOLDERS

Eligible Jobholders

- Auto-enrol into qualifying scheme
- Pay minimum contributions
- Allow to opt-out
- Re-enrol every 3 years

Non-eligible Jobholders

- Allow to opt-in to qualifying scheme
- Pay minimum contributions
- Allow to opt-out

For a defined contribution (DC) scheme these are 8% of a band of pay between £5,668 and £41,450*. At least 3% of which must come from the employer. These rates are to be phased in.

Most existing DC schemes do not use this band of earnings for pensionable pay purposes. There are three alternative quality tests you can use to certify an existing DC scheme meets the requirements based on different definitions of pensionable pay. This may mean the total minimum contributions required are higher (9% where only basic pay is pensionable) or lower (7% where all earnings are pensionable).

When does this apply?

The requirements start to apply from 1 October 2012. They apply to different employers from different dates (your "Staging Date"), depending on the size of your PAYE scheme. By 1 July 2013 all employers with a PAYE scheme of 3000+ must comply.

Where can I provide these benefits?

The key strategic decision is what pension scheme or schemes to use for auto-enrolment. Do you use an existing scheme or move to a new arrangement? See the table on page 4 for further information on the options.

You must use a "qualifying scheme". If this is DC it must have a default investment option and have an appropriate charging structure.

**Figures are expressed in 2013 / 2014 terms.*

Auto-enrolment: Key legal issues

Below is a sample of some of the questions you will consider as part of your auto-enrolment project planning and implementation and some of the related legal issues arising. If any of these affect your business and you are interested in more detailed information please contact us.

Question	Issues
When will auto-enrolment apply to my business?	There are prescribed dates from which the requirements apply but be aware of the impact of: ► group PAYE arrangements ► the effect of paying pensioners through PAYE These may mean the requirements apply to you earlier than you think Consider the options for deferral of the obligations if you have an open defined benefit (DB) scheme in the group
Which employees will be covered?	► All "eligible jobholders", even high earners with enhanced / fixed protection ► Consider the position of consultants, agency workers and secondees ► Be aware of mobile and overseas employees who may still be covered ► Identify "problem" employees e.g. those on zero hours contracts and high earners and agree how these are to be dealt with ► Consider employees with fluctuating earnings and when the duty will arise
What scheme(s) should I use?	► See the table overleaf for more detailed comparison of the types of scheme that may be used ► In terms of whether to use a single scheme i.e. "One size fits all" approach or different schemes consider ◦ Low paid vs higher paid employees ◦ Harmonisation opportunities and risks ◦ Discrimination issues- e.g. potential age discrimination risks if different contribution rates are to be provided ◦ Need for changes to contractual terms?
To avoid the complexities of the different categories of employee can we just auto enrol everyone?	Issues include: ► Unlawful deduction from wages- the exemption which allows for this only applies where there is a legal requirement to auto-enrol ► Complexity in relation to refund of contributions if an employee for whom there is no legal duty to auto enrol wishes to opt out
How might the ban on inducements to opt out of an auto enrolment scheme impact on the business?	► If you have high earners who are offered the option of cash in lieu of pension ► If you have employees in individual arrangements ► If you have a flexible benefit structure in place

Don't get caught out by a legal issue when implementing the new auto-enrolment requirements. Build in time at the planning stages to consider these so that your arrangements meet your overall strategic and reward objectives in a way you can be confident does not give rise to additional legal risk or compliance issues for your business.

Can I just use an existing scheme for auto-enrolment purposes?	This is possible but the following would need to be considered: ▶ Does it require amendment? ▶ Is trustee consent to amend required and what documentation will be necessary to make the amendment legally effective? ▶ Is there a need for employee consultation? ▶ Are there any contractual risks with the changes proposed? - undertake a review of employees' contracts, particularly if there is to be a "levelling down" of benefits ▶ Will the proposed structure create any future debt on employer risks e.g. where a DC section is to be added on to an existing DB scheme
What things do I need to consider if I want to use an existing DC scheme for auto-enrolment?	▶ The definition of pensionable pay ▶ The eligibility criteria, enrolment and opt out provisions ▶ Whether the current charging structure is compliant ▶ Do the rules allow for the use of the 3 month waiting period ▶ The default investment option ▶ If salary sacrifice is currently operated is this in a way that is compliant with auto-enrolment obligations
What are the cost implications for my business?	An assessment and review of the increase in pension contribution costs and other costs associated with implementation will need to be carried out. As part of this it will be necessary to consider the cost impact of different take up levels. This analysis will feed into the decisions taken as to the contribution structure for the auto enrolment scheme and any changes required. This in turn may lead to a broader review of the overall reward package
Is there any impact if we acquire employees via a TUPE transfer?	Yes, consideration needs to be given to the separate requirements that apply to provide a minimum 6% matching contribution in a DC scheme for certain employees on a TUPE transfer. ▶ The contribution structure should be "TUPE - proofed" as much as possible ▶ Transfers to and from employers with different "staging dates" should be addressed
Are there any legal issues when I am looking at my payroll capability?	A detailed review of your payroll system will be required to assess whether it can cope with the new requirements and what changes are required to the system. Legal / contractual protections need to be considered where payroll is outsourced given the increased risk of errors or breaches occurring

Choosing your scheme: the key decision

	Occupational Scheme	Contract-based DC scheme	Multi-employer Master Trusts	
			NEST	Other Master Trust e.g. insurer or other provider
Scheme governance	Trustee board. Highest standard of governance and legal responsibility	Voluntary governance structure. Low legal risk and responsibility	Trustee board. Highest standard of governance and legal responsibility	Trustee board. Highest standard of governance and legal responsibility
Annual contribution limit?	No but accrual / contributions over £50,000* not tax efficient	No but accrual / contributions over £50,000* not tax efficient	Annual contribution limit of £4400 per member for tax year 2012/13**	No but accrual / contributions over £50,000* not tax efficient
Transfers in and out?	Yes but usually at the trustee's discretion	Yes	No but to be reviewed**	Yes but usually at the trustee's discretion
Investment Options	Trustee discretion. Can be tailored to your workforce / employer covenant	Insurer's funds. Normally wide range but less ability to bespoke	Very limited choice. Low risk approach and target date funds only	Normally wide range but less ability to bespoke
Selection of Default Fund	Trustee discretion. Can be tailored to your workforce. Best practice guidance for DC trustee boards	Insurer's default choice. May have some ability to tailor. Best practice guidance for governance boards	Default fund is cautious. Limited range	Provider's default choice. May have some ability to tailor. Best practice guidance for governance boards
Short Service Refunds?	Currently yes but almost certain to change	No	No	Currently yes but almost certain to change
Charges	As negotiated but usually paid by the employer	As negotiated but may be subject to a cap depending on type of scheme	0.3% AMC plus 1.8% initial charge on contributions	As negotiated but possibly as low as 0.3% for the largest employers
Tailored communications	Can bespoke	Limited ability to bespoke – depends on provider	Variable ability to bespoke – depends on size of employer	Variable ability to bespoke – depends on size of employer
Lump sum death benefits subject to IHT?	No	No	Yes	No
Retirement option flexibility	Scheme pension or lifetime annuity (income drawdown rare but possible)	Lifetime annuity or income drawdown	Lifetime annuity only	Lifetime annuity only

** £50,000 is the annual allowance figure applicable until tax year 2014/15, at which point the annual allowance will be reduced to £40,000.   ** The NEST contribution limit and prohibition on transfers are under review as at January 2013.*

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