LEWIS SILKIN

Ius Laboris UK Global HR Lawyers
LEWIS SILKIN

Pension auto-enrolment

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All employers are required to automatically enrol eligible jobholders into a suitable pension scheme and fund a minimum level of pension savings (without reducing pay or benefits elsewhere). At least 8% of qualifying earnings must be paid into the pension scheme, with a minimum employer contribution of 3%.

In this Inbrief we explain the rules, exceptions and employer duties.

What is auto-enrolment?

Auto-enrolment is a requirement for employers to automatically enrol all "eligible jobholders" in a suitable pension scheme (imposed under the Pensions Act 2008). Provided certain "quality" conditions are satisfied, the employer's existing occupational pension scheme (or a personal pension scheme into which the employer makes contributions on behalf of the jobholder) may be a suitable pension for this purpose. Otherwise, employers will have to enrol eligible jobholders in an alternative qualifying pension scheme.

Which jobholders must be auto-enrolled?

Eligible jobholders must be automatically enrolled into a suitable pension scheme.

An eligible jobholder is someone who:

- is a "worker" (see below);
- is at least age 22 but below state pension age;
- is paid qualifying earnings of more than £10,000 gross per year (for the tax year 2024/25) - earnings include wages, commission, bonuses and overtime and certain statutory payments such as statutory maternity or paternity pay and statutory sick pay; and
- normally works in the UK (including workers who are based in the UK but travel abroad for work).

A "worker" includes not only an employee but also any individual who personally performs work for the "employer" unless the "employer" is a customer of a business undertaking carried on by that individual. This can include technicians, IT contractors and a whole host of other people who are not genuinely carrying on a self-employed business. Indeed, individuals who contract to provide personal services to an "employer" and who are not carrying on a business on their own account may be a worker even if they are self-employed for tax purposes.

Employers should therefore review the status of contractors (such as salespeople working on a commission basis) to determine whether they are workers for these purposes.

Note: agencies are responsible for auto-enrolment in respect of agency workers who are paid by an agency. Non-executive directors and personal services companies are normally excluded from auto-enrolment.

Are there any exceptions?

Yes. Employers have discretion not to apply the auto-enrolment duty in some circumstances. The most common are where:

- The worker is in their notice period.
- The employer has reasonable grounds to believe the worker has claimed certain forms of tax protection over their pension savings.
- The worker is a member of an LLP and is not treated for income tax purposes as being employed by that LLP.

When will auto-enrolment apply?

All employers in the UK are subject to auto-enrolment obligations.

Employers must ensure that all eligible jobholders are auto-enrolled in a suitable pension scheme from the date they satisfy the eligibility requirements (the "Auto Enrolment Date" or AED). For most jobholders the AED will be their start date with the employer.

Employers will be allowed to defer the AED by up to three months by giving the jobholder notice of the postponement. This may be a useful tool to deal with situations such as short-term seasonal workers or a qualification period under an occupational pension scheme. Employers must notify workers of the deferment period within six weeks of the AED. However, jobholders can choose to opt into the pension scheme during the deferment period and, if they do so, they will be entitled to full contributions from their employer during the deferment period.

What is the position for workers who are not eligible jobholders?

Jobholders who are aged 16 to 21 or who are over the state pension age but under 75 and who have qualifying earnings of at least £10,000 a year (for the tax year 2024/25) (known as Non-Eligible Jobholders) may opt-in to the pension scheme. If they do so, the employer will be obliged to fund pension savings on their behalf. Jobholders who are aged between 22 and state pension age who earn at least £6,240 a year but less than £10,000 a year (for the tax year 2024/25) are also Non-Eligible Jobholders and can opt-in to the pension scheme and oblige the employer to fund their pension savings.

Jobholders who have qualifying earnings of less than £6,240 a year (for the tax year 2024/25) (known as Entitled Workers) may also join the pension scheme but the employer will not be obliged to fund pension savings on their behalf.

Can a jobholder opt-out of the pension scheme?

Yes. Jobholders who have been automatically enrolled will have a right to opt-out of the pension scheme by giving their employer written notice within one month of the later of their AED or the date on which the employer provides them with enrolment information.

Can jobholders who have opted out of the pension scheme opt back in?

Yes. Jobholders who have opted out will be able to change their minds and join the pension scheme at a later date by giving their employer written notice. However, they will only be able to do this once in a 12 month period. Jobholders who have opted out will be automatically re-enrolled every three years (see below) if eligible.

What is the re-enrolment process?

Employers will be required to automatically re-enrol eligible jobholders in a qualifying pension scheme every three years. Re-enrolment is discretionary if the jobholder has decided in the previous 12 months to leave a qualifying scheme. The same processes and information requirements will apply to re-enrolment.

What contributions must be paid?

Table 1 (see last page) sets out the minimum contribution levels from April 2019 onwards.

The minimum contribution levels are calculated by reference to the jobholder’s “qualifying earnings”. This is a band of earnings between £6,240 and £50,270 per year (for the tax year 2024/25).

Employers may operate a pension scheme which calculates contributions in a different way, for example the scheme may base contributions on the employee’s entire earnings rather than a band of their earnings. This may still be compliant as long as the scheme meets certain requirements (see below).

Any contributions which have been deducted from the jobholder’s pay must generally be paid into the pension scheme by the 22nd day of the next month (or 19th if by cheque).

Using an existing pension scheme

Employers may be able to use their existing scheme for auto-enrolment purposes, provided it meets minimum criteria. One of the key criteria in relation to defined contribution schemes is the percentage of the employer contribution.

A defined contribution scheme may be compliant with auto-enrolment requirements if the employer makes the minimum contributions set out in Table 2 (see last page). There are three sets of requirements, depending on how contributions are calculated under the scheme, which are explained in the table.

Employers who are setting up new pension arrangements

Employers must pay at least 3% of the employee’s qualifying earnings into the employee’s pension scheme. The total contribution by the employer and the employee including tax relief must be at least 8%. Employers may choose to pay greater contributions.

A list of pension providers can be found on the [Pensions Regulator’s website.]

What is the jobholder's tax position?

Generally, the total pension savings made by the employer and jobholder will be eligible for income tax relief up to the amount of the Annual Allowance (£60,000 for 2024/25). In certain circumstances the Annual Allowance is reduced. For example, the Annual Allowance is tapered for jobholders with an annual adjusted income of more than £260,000 so that the jobholder loses £1 of the Annual Allowance for each £2 worth of income above £260,000, subject to a minimum Annual Allowance of £10,000. In broad terms annual adjusted income is taxable income and all pension savings less certain allowances and reliefs. Jobholders whose annual threshold income is £200,000 or less are not subject to the tapered Annual Allowance - threshold income is taxable income less certain allowances and reliefs and excludes employer pension contributions (except those made under a salary sacrifice arrangement which was entered into on or after 9 July 2015).

Basic rate tax relief on jobholders' contributions will count towards the minimum total contribution requirement.

For example, the total minimum contribution is 8% of the jobholder's qualifying earnings. The employer must contribute a minimum of 3%. If the employer contributes the minimum, the jobholder is required to contribute a further 5%. However, this would be made up of a 4% contribution funded by the employee and a 1% contribution funded by the government in the form of basic rate tax relief (assuming basic rate tax remains at 20%). Jobholders who pay tax at 40% and/or 45% will be able to claim higher and additional rate relief through self-assessment.

What are the other employer duties?

The employer also has duties to keep various records and provide information to jobholders, the scheme administrators and the Pensions Regulator (the Regulator). The reporting duties are detailed and must be complied with within specific deadlines.

The Regulator's website includes helpful guidance on an employer's compliance duties.

What information must be supplied to the jobholder?

The employer must provide the jobholder with enrolment information in writing within six weeks from AED (or deferred AED). Jobholders must be given information about opting in/ joining within six weeks of the AED.

What information must be supplied to the Regulator?

Employers are obliged to re-register with the Regulator every three years and provide updated information.

How are jobholders' rights protected?

There are a number of measures designed to protect the rights of jobholders (and prospective jobholders) to be automatically enrolled in a suitable pension scheme and to prevent noncompliance by employers.

Any provision in an agreement under which an employer seeks to contract out of, limit or exclude any of its duties is void (unless agreed under a settlement agreement).

Employers are prohibited from recruiting workers on the understanding that the worker will opt out of auto-enrolment (for example by suggesting that a job offer depends on an applicant opting out or asking applicants at interview or pre-selection whether they intend to opt out). The employer may be liable to a fine of between £1,000 and £5,000 (depending on its payroll size) for contravening this requirement.

In addition, the employer must not offer a financial inducement (for example higher salaries or a one-off bonus) to jobholders to encourage them to opt-out of auto-enrolment. Care will be required with flexible benefit schemes under which an employee can select benefits from a range of options with an equivalent value. To be on the safe side, employers may want to ensure that the minimum employer contribution is available whichever options an employee chooses.

Jobholders also have the right not to suffer any detriment in their employment in relation to auto-enrolment and will be able to bring proceedings in the Employment Tribunal to enforce this. In addition, any dismissal arising from an employer's breach of the auto-enrolment requirements will be unfair.

Jobholders may also be entitled to make complaints to the Pensions Ombudsman who may then investigate the facts of the complaint and make legally binding decisions which are enforceable in court.

What are the penalties for failing to comply with the employer duties?

The Regulator has responsibility for ensuring employers comply with their duties.

If an employer or a third party connected with the employer fails to comply with their duties or cooperate with the Regulator, the employer and/or third party may face enforcement action.

The Regulator may issue:

- A Compliance Notice either to the employer or a third party. A compliance notice issued to the employer will set out the steps the employer must take to remedy the non-compliance together with a timetable. A compliance notice issued to a third party will direct the third party to take action to remedy or prevent a recurrence of any failure by that third party to enable the employer to comply with their duties.
- An Unpaid Contribution Notice to the employer if the employer has not paid the pension contributions required or has paid them late. Generally, contributions must be paid by the 22nd of the month following the one in which the jobholders contributions were deducted or the employer's contributions were due. The Regulator also has the power to add interest at a rate equal to the rise in the retail prices index for the payment period plus 4.2%.
- An Improvement Notice requiring a specific individual or company to take specific actions.

If a breach is not remedied by a specified date, the Regulator has the power to issue either a fixed or escalating penalty notice.

- A fixed penalty notice is issued for minor breaches of duty. The fixed penalty is £400.
- An escalating penalty notice (charging a daily rate) will be issued where an employer or a third party has failed to comply with a Compliance Notice or Unpaid Contribution Notice by a specified date. For third parties the daily rate is currently £200. For employers the daily rate is based on the number of jobholders affected (or if this is unclear, the payroll size) and ranges from £50 a day for employers with one to four workers to £10,000 a day for employers with 500 or more workers.

If an employer wilfully fails to comply with its key duties, the employer could face a fine of up to £50,000 or a prison sentence of up to two years.

Practical steps

Practical steps to ensure compliance include:

- Budgeting for the minimum employer contributions.
- Assessing "workers" who are "working or ordinarily working in the UK".
- Identifying eligible jobholders (including separately identifying those high earners who may have applied for tax protection for their pensions savings).
- Considering how to communicate the arrangements to jobholders including opting out/opting in procedures.
- Reviewing (and if necessary amending) flexible benefit schemes.
- Setting up new pension arrangements where required.
- If an existing scheme is to be used, reviewing the rules of the scheme to ensure the pension remains suitable (particularly in respect of contribution levels) and, if necessary, amending the rules (for example eligibility criteria or requirements to provide information or make a choice of investment).
- In the case of an existing defined benefits scheme employers will need to obtain a certificate of compliance from the scheme actuary.

How can Lewis Silkin help?

We have a team of specialist employment and reward lawyers who can guide you through the rules.

Table 1: Minimum Contributions for defined contribution, personal pension and some hybrid pension schemes, where contributions are based on qualifying earnings between £6,240 and £50,270 (2024/25 tax year)

Period	Minimum Employer Contribution	Total Minimum Contribution (including tax relief)
6 April 2019 onwards	3%	8%

Table 2: Minimum Contributions for defined contribution schemes which may still be certified as compliant

Set	Period	Minimum Employer Contribution	Total Minimum Contribution (including tax relief)
1 (where contributions are based on pensionable pay that is equal to or more than basic pay)	6 April 2019 onwards	4%	9%
2 (where contributions are based on pensionable pay and pensionable pay is at least 85% of earnings)	6 April 2019 onwards	3%	8%
3 (where contributions are based on all earnings)	6 April 2019 onwards	3%	7%

For more information on this subject please contact:

Anna Sella
Managing Associate

+44 (0)20 7074 8458
anna.sella@lewissilkin.com

Kerry Salisbury
Associate

+44 (0)20 7074 8433
kerry.salisbury@lewissilkin.com

Arbor – 255 Blackfriars Road
London SE1 9AX

DX 182 Chancery Lane
T +44 (0)20 7074 8000 | F +44 (0)20 7864 1200

www.lewissilkin.com