Employment and pensions - A guide to Auto-enrolment

This note was updated in December 2014.

Auto-enrolment is intended to force 11 million UK employees to join a pension scheme. The implications need to be understood by all business proprietors.

Do you need to read this?

If you run your business without any employees, then you don't need to know any more. If you employ someone – even your spouse – then you are likely to need a pension scheme.

If you already have a pension scheme for employees, then you need to be talking to the broker or insurance company that provides it. Even so, these notes will introduce you to the rules and terminology, so you might enter into that conversation on a more informed basis.

What's it about?

This major reform means that every employer with at least one employee must:

- Automatically enrol eligible employees into a pension scheme;
- Make a contribution towards that pension.

As you would expect, there are lots of rules – and quite a lot of terminology to take on board. This note attempts to summarise them briefly.

Important thresholds

Annual amounts:	2013-14	2014-15
Lower level of qualifying earnings	£5,668	£5,772
Earnings trigger for automatic enrolment	£9,440	£10,000
Upper level of qualifying earnings	£41,450	£41,865

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When does the process start?

The number of new schemes required is so enormous that there would be chaos if it applied to everybody on the same date. Every employer has a fixed staging date, depending largely on the number of employees. Employers with more than 3,000 employees are already participating, while those with about 50 will join on 1 April 2015. The staging date for employees with 30 or fewer employees varies from 1 June 2015 to 1 April 2017, depending on letters in the PAYE reference. If in doubt, ask us when your staging date is.

The Pensions Regulator is writing to give employers a year's notice of their staging date, but it might not be a good idea to rely on that. When you receive that letter, hang on to it, since there is an important reference number on it. If we are looking after your payroll, let us have a copy!

Who is eligible?

To begin with, the law applies to workers. A worker is an employee working under a contract of employment, or someone who has a contract to perform work or services personally – so this is likely to include agency workers.

Then we have to consider workers in three categories:

- Jobholders, divided into:
    - Eligible jobholders
    - Non-eligible jobholders
- Entitled workers

Eligible jobholders are 'eligible' for Automatic Enrolment. They must be aged between 22 and state pension age, be working in the UK, and earn more than the trigger for automatic enrolment (£10,000 for 2014-15). The employer must automatically enrol eligible jobholders into their pension scheme and pay minimum contributions to the scheme.

Non-eligible jobholders are called this because they are not eligible for automatic enrolment but have a right to opt in to the pension scheme. These include people aged 16-74 (thus a wider age band), earning more than a lower earnings level (currently £5,772 but see the table on page 1).

So the non-eligible jobholders will be people either too old or too young to be eligible, at any earnings level above £5,772, but will also include people between 22 and state pension age with earnings between £5,772 and £10,000.

If these non-eligible jobholders opt in to a pension scheme, the employer must contribute, even though they were not automatically enrolled.

Entitled workers also includes people aged 16 - 74, but with earnings below the lower earnings level of £5,772. These people can also opt in, but the employer is not required to contribute.

Earnings include most ordinary pay components including bonuses and overtime, as well as statutory sick pay, maternity pay, paternity pay and adoption pay.

The auto-enrolment date is the date when the criteria for an eligible jobholder are first met. Common sense would suggest that this is the starting date for most employees, but an employer will still have to identify that date for record keeping purposes.

The Joining Window is a period of one month from an eligible jobholder's auto-enrolment date, during which the employer must:

- give information about the pension scheme to the eligible jobholder, including:
    - that they have been, or will be, automatically enrolled and what this means to them
    - of their right to opt-out and their right to opt back in
    - where to find further information about pensions and saving for retirement
- give enrolment information to the eligible jobholder;
- make arrangements to achieve active membership for the eligible jobholder, effective from their auto enrolment date.

Once enrolled into the scheme, an eligible jobholder can decide to opt out of it. Records must be kept, and the employee will automatically be opted back in every three years (and can then choose to opt out again).

Postponement is an option available to employers who commonly use casual or temporary employees. It gives the employer a three month window before automatic enrolment is required. An employer opting postponement must notify eligible jobholders immediately but enrol them at the end of the three months window.

Employers can also use the three month window to delay telling non-eligible jobholders or entitled workers about their right to opt in.

Assessment dates: Workers will need to be assessed on:

- the employer's staging date, for workers at that date
- the first day of employment, for new workers
- the worker's 16th and 22nd birthdays, if after the staging date

What are the minimum pension contributions?

The minimum contributions will be phased in as follows:

Minimum contributions:	Total	Employer
Staging date to 30 September 2017	2%	1%
1 October 2017 to 30 September 2018	5%	2%
1 October 2018 onwards	8%	3%

These percentages are applied to a band of earnings known as Qualifying Earnings. For 2014/15 this band runs from £5,772 to £41,865. Thereafter, the limits will be reviewed annually.

Those who join at an earlier stage have to increase contributions on 1 October 2017 and 1 October 2018, so the minimum contribution becomes 8% for everybody.

If an employer wants to stick to the minimum 3%, then the employees are required to contribute 5%. Of course a generous employer might choose to contribute the whole 8%, or more.

Salary sacrifice is another possibility; the qualifying earnings used to meet the minimum requirement will be the post-sacrifice level of salary.

What about bonuses and overtime?

Qualifying earnings include all variable amounts of pay, so bonuses and overtime are included. However, it is possible for an employer to certify that their scheme meets the alternative quality requirement. To do this it is necessary to meet one of the three sets of criteria below. It is possible to use more than one set in order to meet the requirements of different groups of jobholders:

Set 1 – Total contributions of at least 9% of the jobholder's pensionable earnings (including an employer contribution of at least 4%) for each relevant jobholder in the scheme. The pensionable earnings of the jobholder must be equal to or more than that jobholder's 'basic pay' - which means Gross pay other than commission, bonuses, overtime, or similar payments, shift premium pay, certain job related allowances.

Set 2 – Total contributions of at least 8% of the jobholder's pensionable earnings (including an employer contribution of at least 3%) for each relevant jobholder in the scheme, provided that the total pensionable earnings of all relevant jobholders (taken in aggregate) to whom this set applies constitutes at least 85% of their total earnings. The pensionable earnings of the jobholder must be equal to or more than that jobholder's basic pay.

Set 3 – Total contributions of at least 7% of the jobholder's earnings (including an employer contribution of at least 3%) for each relevant jobholder in the scheme.

What all three of these sets have in common is that the calculations make no reference to the thresholds set out in the table on page 1.

The minimum contribution rates set out above are reduced during the transitional period (before 1 October 2018) to enable employers offering money purchase schemes to phase in their contributions gradually; we can advise you of those rates on request.

What pension schemes meet the requirements?

There are numerous reasons why an existing scheme might not meet the new requirements as it stands. In some cases it can be amended; in others a new scheme will be required. It is essential that you discuss this with your present scheme provider.

There are restrictions on charges for financial advice that can be met from within scheme funds, so employers can expect a separate bill from their financial adviser for assistance with setting up a scheme.

Some smaller employers may want to use NEST – the National Employment Savings Trust, a pension provider which has been set up by the government to produce Auto-enrolment pension schemes. See www.nestpensions.org.uk. A very basic information sheet about NEST is available on our firm's website.

Whether you set up a new scheme or adapt an older one, it is best not to leave this too long. We at LFF do not handle investment business, so we cannot sell you a pension scheme! But we know people who can, so talk to us.

Registration: Every employer with at least one worker is required to register with the Pensions Regulator. This must be done within four months of the staging date (see above). This applies to all employers with at least one worker, regardless of age or earnings.

Registration is online at: www.tpr.gov.uk/registration

You need a Government Gateway account if you don't already have one, and you will need a code that the Regulator will have sent you in a letter.

Safeguards: There are rules known as Safeguards designed to protect the rights of individuals to have access to pension saving. For instance, you may not offer an employee an inducement to opt out, and you may not ask questions about the intention to opt out during a recruitment interview.

What about small companies?

The payrolls that we look after at LFF range in size from about 400 employees to just one. Inevitably, it is the very smallest businesses and payrolls that raise the most questions.

One-person companies: If an individual is a director of a company and the company has no other employees, then the individual is not a worker for the purposes of these rules. This does not follow obviously from the definitions given above, but is a specific exemption set out in Section 90 of the Pensions Act 2008.

However, if that small company takes on another employee, with a contract of employment, then the director automatically becomes a worker, and the company has responsibilities towards both of them.

Companies with directors but no other employees: Section 90 applies to these companies as well, so long as there are no contracts of employment and no other employees.

Non-executive directors: Office-holders are not normally considered as workers, so non-executive directors and company secretaries do not fall within these rules. The Pensions Regulator warns that sometimes a person who appears to be an office-holder may also have a contract of service for part of their duties and will therefore be a worker in respect of those duties. So contracts need to be looked at very carefully.

Employees all over state pension age: These people are workers, so you need to have a scheme available, and register with the Regulator – even if none of them decide to opt in.

Record Keeping

You can see from all this that careful record-keeping is going to be required. You need tools to determine when employees become eligible, when they reach a key birthday, or when they have to re-enrol after opting out.

LFF's payroll services

We handle a great many payrolls at LFF; if we are already managing your payroll, you can be assured that our software provider (Star) has made the changes required to deal fully with all the Auto-enrolment requirements.

If you are managing your own payroll, then we are happy to help with any auto-enrolment problems. If you are looking for a payroll services provider, we can offer:

- A nominated team member to serve as your point of contact;
- Tailor made reporting;
- Agreed working procedures and deadlines;
- Support on any payroll related question throughout the year.

As always, come and talk to any member of the LFF team for further information and explanations.