Sackers

Auto-enrolment update

Alert | 20 July 2017

Introduction

It is almost five years since the first employers began automatically enrolling eligible workers into qualifying pension savings. This Alert is intended to get you up to speed with recent developments in auto-enrolment ("AE").

Key points

- Technical changes aimed at simplifying the AE process and reducing burdens on new employers becoming subject to the AE duties on / after 1 April 2017 came into force on that date.
- With effect from 6 March 2017, the exception to the employer duty to auto-enrol in respect of individuals with tax protected status was extended to cover those with IP16 or FP16 (for details of these tax protections, please see our Alert).
- The minimum employer and overall contribution rates for DC qualifying schemes are set to rise from 6 April 2018 and again from 6 April 2019, not 1 October 2017 and 1 October 2018 as originally planned. Schemes may need to amend their rules to take account of these changes.
- If an employer intends to introduce or increase member contributions, either as a result of the statutory timetable or otherwise, it must consult with affected members before doing so.

Changes for new employers

AE trigger

Since October 2012, existing employers have been phased in to AE gradually, with each employer knowing in advance when its AE duties would commence (known as the employer's "staging date"). With the staging timetable (which ran from 2012 until 2017) reaching its end, it was not clear when a newly created employer (ie one not subject to the staging timetable) would first become subject to the AE duty.

The Government has therefore amended the legislation so that, with effect from 1 April 2017, a new employer's AE duties will be triggered on the date on which its first worker starts work.

Deferral of AE

Existing employers can defer the AE of new workers by up to three months. This ability to postpone was intended to alleviate employers' concerns that the AE duties could lead to significant costs where large numbers of employees only remain with an employer for a short period of time.

With effect from 1 April 2017, this ability to defer was extended to new employers.

Extension of exception to AE duty

The AE legislation divides "workers" into three distinct categories for the purpose of determining an employer's obligations towards them, with the duty to auto-enrol into a qualifying scheme (a scheme which meets the quality standards for auto-enrolment) applying to individuals who are "eligible jobholders".

The Secretary of State has power to make exceptions to the employer duty in respect of certain groups of individuals, broadly those who are not considered to be part of the AE target group.

Where an exception is introduced, the employer's duty is reduced to a discretionary power. However, if an employer chooses to go ahead with AE, the legislation is then read as if the employer was discharging a duty. This allows enforcement action to be taken, if necessary.

With effect from 6 March 2017, the exception to the employer duty to auto-enrol in respect of individuals with tax protected status was extended to cover those with IP16 or FP16.

Mandatory increases to DC contribution rates

Background

In his 2015 Spending Review and Autumn Statement, George Osborne, the then Chancellor of the Exchequer, announced that the planned increases in minimum contributions to DC qualifying schemes would be delayed from 1 October 2017 and 1 October 2018 to 6 April 2018 and 6 April 2019 respectively. The purposes for this delay were to align such increases with the tax year and to ease the administrative burden (particularly for smaller employers). These changes were brought into force on 1 October 2016.

The table below sets out how the increases will take effect when qualifying band earnings (£5,876 - £45,000 for 2017/18) are used to calculate contributions.

Phasing period	Employer minimum contribution	Total minimum contribution
Before 5 April 2018	1%	2%
6 April 2018 to 5 April 2019	2%	5%
6 April 2019 onwards	3%	8%

The actual percentage increase which will apply to a particular scheme will be dictated by the elements of income which are pensionable in that scheme.

Action for DC qualifying schemes

Rule amendment?

Schemes may have "hardwired" the dates on which minimum contributions were due to rise into their governing documentation. In such circumstances, a rule amendment will be needed for the sponsoring employer(s) to take advantage of the delay, although it is open for them to continue with the original timetable.

Requirement to consult?

Where an employer is seeking to make a change to contributions, it will need to consider whether there is a requirement for it to consult with affected members. Subject to certain exceptions (including, where a change is being made for the purposes of complying with a statutory provision), a consultation must take place where an employer:

- reduces its contributions

- introduces or increases member contributions

to a DC scheme.

It is worth bearing in mind that the AE legislation does not require members to contribute as such, so any proposal to increase member contributions will need to be consulted on beforehand.

TPR has said that an employer need not consult with members where it intends to delay the increase in its and / or their contributions to take account of the change to the statutory timetable.

Unsurprisingly, TPR's view is that a consultation will be required where the employer wishes to increase contributions to a different rate, or at a different date, to that specified by legislation, where this has not been the subject of prior consultation.

Of course, whether it will be necessary to consult or to simply communicate with members concerning any delay, may depend, to a large extent on what (if any) amendments are required to the scheme rules and what has been said previously to members. An employer considering delaying a planned increase in contributions should therefore discuss what steps to take with its legal advisers.

If you have any questions on any of the above, please speak to your usual Sackers' contact.

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