

WORKPLACE PENSION REFORM (AUTOMATIC ENROLMENT): WHAT EMPLOYERS NEED TO THINK ABOUT WHEN PREPARING FOR STEADY STATE

14 November 2018

Employers need to ensure that the pension schemes they use to discharge their workplace pension reform (automatic enrolment) obligations will be ready for the second and final increase in minimum contributions in April 2019, otherwise known as steady state.

Our pension and employment experts consider what employers need to think about in the lead up to steady state, including considering whether scheme rule changes are needed, and how to communicate the changes with staff.

With all employers now obliged to assess and automatically enrol their workers into a qualifying workplace pension, pensions saving has finally become a norm rather than an exception. Currently, more than 78% of UK employees contribute to a workplace pension scheme.

The final piece of the automatic enrolment jigsaw is 'steady state', 6 April 2019. This is the date when overall minimum contributions for automatic enrolment made by defined contribution (DC) pension schemes must increase to an overall 8% of qualifying earnings, of which a minimum of 3% must come from the employer.

For employers relying on certification, the percentages are different but there will still be a corresponding increase to contribution rates from 6 April 2019.

Employers with DC schemes or sections should now be considering whether everything is in place to comply with increased minimum level contributions ahead of steady state on 6 April 2019.

Key action points for employers

Employers who are using their DC occupational pension scheme to comply with auto-enrolment requirements, or have an existing DC scheme which is being used as a 'qualifying scheme' to satisfy employer duties under the Pensions Act 2008 should act now to:

1. check that scheme rules reflect the increase to contributions and consider whether rule amendments may be needed; and
2. review their communication strategy with the workforce to inform/remind them of the change.

Employers who use a personal pension scheme to satisfy their duties under workplace pension reform (automatic enrolment) will need to check with the provider that the increases will be automatically implemented, as well as reviewing the communication strategy to inform/remind workers of the change.

Why should employers be considering this now?

If employers don't get their houses in order, they might find that their systems are not in place to move to the full minimum level of contributions in time for the 6 April 2019 deadline.

Many pension schemes have sufficient flexibility to allow for the increase in contributions to happen automatically. However, some pension scheme rules, particularly employers' own occupational pension schemes with a DC section, might have contribution levels 'hard-wired' into the scheme rules. This means that an automatic increase in contributions will not happen unless the rules are formally amended.

If employers don't comply with the new minimum contribution levels from April 2019, there is a risk of Pensions Regulator intervention. This can range from a compliance notice or fixed penalty notice to, at the other end of the spectrum, unpaid contribution notices or escalating penalty notices.

In more detail

Check whether your pension scheme rules are flexible

enough to allow for the overall pension contributions to reach the minimum required 8% of qualifying earnings

If the pension scheme rules are not flexible enough, consider whether there is an employee discretion to determine different levels of contributions. If there is not, a rule amendment may be needed. For occupational pension schemes, this is likely to require trustee agreement to the rule amendment, and so this should be agreed well in advance of 6 April 2019, where possible.

Consider whether your workforce needs to be consulted with, or at least communicated with, about the final increase in contributions in April 2019

In some cases there may be a legal duty to communicate the change in contribution levels to the workforce. This will particularly be the case if an employer is intending to introduce employee contributions for the first time from April 2019. This is likely to require pension consultation for a minimum 60 day period (unless the workforce has previously been told that they would be expected to contribute in future).

- Where workers are already making contributions but their minimum levels of contributions are expected to increase to meet the minimum requirements, advance warning should (at the very least) be given. This may require little more than a short reminder being sent (where it's previously been made clear to staff that their contributions would increase over time).
- Where the contribution change is more radical, or where there has previously been no prior warning of the change, a 60 day pensions consultation may, in some cases, also be needed.
- From an employee relations perspective, it's always preferable to give advance notice of an increase in employee pension contributions being made next spring, to avoid an unexpected shock when the April pay packet is less than expected.

Is there anything else employers need to think about when changing contribution structures?

Employers should be cautious around changing or restructuring contributions in a manner which does not follow the statutory minimum contribution levels required by automatic

enrolment. This is particularly the case where contributions are based on age-related bands.

It is possible that age related bands could give rise to age discrimination claims where, for example, workers employed by the same employer of a different age might receive, or be required to make, greater/lesser contributions than workers in another age bracket.

There is an exemption contained in Equality Act (Age Exceptions for Pension Schemes) Order 2010 which (broadly) allows different contribution rates based on age where the aim is to equalise the pension benefits for members of the scheme over time.

However, this exemption remains, as yet, untested. As such, it remains unclear how strictly a court or tribunal would interpret it. Our view is that large 'cliff-edge' jumps in contributions are likely to be more problematic for employers in age-discrimination claims terms than more gradual, age-related contribution bandings.

If an employer is satisfied that any current age-band structure they have falls within the exemption mentioned above will also need to consider whether, if they change that structure (e.g. by increasing contribution levels for some bands but not others), they could be opening themselves up to the risk of a new age-discrimination claim by taking themselves outside of the exemption.

Finally, some workers may have a contractual entitlement to a particular level of contributions, or to participate in a non-contributory pension scheme. Any such contractual rights will need to be considered in the context of the proposed change the employer is making to comply with statutory requirements.

If you would like us to review your scheme's rules, or if you have any other questions about the coming changes, please contact Liz, Ruth or Hannah or your usual Gowling WLG pensions team contact.

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