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HR Strategy

preparing for auto-enrolment

A significant change in the pensions landscape is on the horizon – but employers need to start considering their strategy now. From October 2012 the largest employers will be required to auto-enrol their jobholders into a contributory workplace pension scheme. The auto-enrolment requirement will then apply in monthly stages according to employer size.

Our making it easier guide sets out the procedures and requirements of auto-enrolment. However, compliance is only part of the picture.

Given significant cost implications, it is important that employers think about auto-enrolment in terms of wider HR strategy. To guide you on strategy, some key issues are set out below.

Jobholders

Auto-enrolment obligations relate to an employer's "jobholders". Your jobholders will effectively include all those but the truly self employed. Any jobholders not already in a suitable workplace pension scheme will need to be auto-enrolled.

The status of some jobholders may be unclear. For tax reasons some high paid individuals will be categorised as "consultants". The reality of the relationship may be that such individuals are technically jobholders entitled to be auto-enrolled into a contributory pension scheme. Care should be taken when categorising such individuals to avoid later claims and complaints.

Agency Workers

In October 2011, the Agency Workers Regulations come into force with the likely effect of making it more expensive to employ agency workers. Auto-enrolment will exacerbate this. Even if the agency is required to provide the contributory pension scheme, the cost of doing so is likely to be passed on to employers. You should consider these extra costs in relation to the retention and recruitment of staff.

Administration

Administration and payroll systems will need to be able to cope with a whole host of new requirements and processes for auto-enrolment purposes. To avoid duplication of expenditure, any employer considering changes or revisions to its payroll system should consider building in auto-enrolment requirements and procedures at the same time as any other changes.

Background

In 2002 the Pensions Commission identified that more people need to be saving for retirement through a workplace pension scheme.

This has led to the policy of auto-enrolment, a policy aimed primarily at those low to moderate earners not currently saving through a workplace scheme.

To ensure employers help to achieve the policy objective there are a whole host of duties and restrictions on employers as well as a potentially severe enforcement regime policed by the Pensions Regulator.

The Pensions Act 2008 gives scope for fines of up to £50,000 and further escalating daily fines of up to £10,000.

In addition, employers could face employment tribunal claims and even criminal sanctions for breaches and non-compliance.

Recruitment and Retention of Staff

At the recruitment stage, employers risk fines and penalties if they give applicants the impression that they will be successful if they opt-out of pension scheme membership.

In terms of retention of staff, it is anticipated that auto-enrolment will result in redundancies as employers find ways to fund the additional costs associated with the new employer duties. As ever, such exercises need to be handled very carefully but especially so given that claims for detrimental treatment and unfair dismissal can be brought if the dismissal is for auto-enrolment related reasons.

Discrimination

When considering their future pensions offering, many employers will want to offer a more basic benefits package to staff not currently saving for retirement through a workplace scheme. However, these people are likely to comprise a disproportionate number of minority groups. To reduce the risk of future discrimination claims, employers should bear this aspect in mind.

Traditional pensions investment does not necessarily sit well with certain religious beliefs. For this reason, NEST has elected to offer a Shariah law compliant investment option to enable Muslims to participate. Employers should consider following NEST's lead and offering a Shariah law compliant investment option through their own schemes.

Should you have any questions please contact Tom Barton, Ed Goodwyn or your usual Pinsent Masons adviser who will be able to assist you further.

The National Employment Savings Trust (NEST)

Not all employers will have a scheme which is suitable for auto-enrolment. Such employers have the option of participating in the NEST which has been set up by government to help employers meet their auto-enrolment duties.

NEST is a non-departmental public body that operates at arm's length from government and is accountable to Parliament through the Department of Work and Pensions.

The Independent Review of auto-enrolment in 2011 identified that it would not be profitable for the private sector to provide pensions for the low to moderate earners not currently saving for retirement through a workplace scheme.