

UK PENSIONS AUTO-ENROLMENT OBLIGATIONS

On 1 October 2012, new pension rules were introduced in the UK to require employers to automatically enrol 'eligible jobholders' into a qualifying pension plan and to make certain minimum employer contributions into that pension plan.

The rules are being phased in over a six-year period, targeting larger employers first. The obligations will apply to employers from their 'staging date'. Employers have been separated into bands according to payroll size, and the staging date is calculated by reference to the size of an employer's largest payroll ('PAYE Scheme') as at 1 April 2012.

Automatic enrolment means that eligible employees must automatically be put into a qualifying pension plan, and they then have the right to opt-out if they wish.

Staging dates

Staging dates are between now and 1 February 2018. As a guide, the following employers will reach their staging dates between 1 October 2017 and 1 February 2018:

There are separate provisions for employers who did not employ anybody in the UK on 1 April 2012, but who have subsequently (or at some stage in the future) set up a business and employed individuals through the payroll in the UK. The first staging date for an entity which has become a new employer in the UK after 1 April 2012 was 1 May 2017.

To be 100% certain, employers should check the staging date on The Pensions Regulator's website: www.thepensionsregulator.gov.uk/employers/staging-date.aspx

In reality, planning for auto-enrolment must start several months before the staging date. In our experience, we typically find that employers only begin to realise the scope of the challenge once they have considered the pension plan selection, carried out a workforce eligibility assessment, considered postponement, revised the payroll process, and made provisions for record keeping and also the associated ongoing compliance reporting.

Staging Date	PAYE Scheme Size
1 October 2017	New employer (PAYE income first payable between 1 April 2015 and 31 December 2015)
1 November 2017	New employer (PAYE income first payable between 1 January 2016 and 30 September 2016)
1 January 2018	New employer (PAYE income first payable between 1 October 2016 and 30 June 2017)
1 February 2018	New employer (PAYE income first payable between 1 July 2017 and 30 September 2017)

Employer contributions

From the employer's staging date the employer must make mandatory minimum pension contributions. The legislation requires a minimum level of contribution based on an employee's "qualifying earnings". 'Qualifying earnings' does not necessarily mean the whole of an employee's basic salary. Employers may, however, choose to base contributions on basic salary (or some other definition of 'pensionable pay'), for example if the rules of the pension plan require calculations to be made on a different basis.

There is a required minimum level of total contribution, and a required minimum level of employer contribution. If the employer does not make the required minimum level of total contribution, then the employee will be asked to make up the difference (taking into account tax relief on the employee's contribution). The level of required minimum contribution depends on whether the employer (or the pension plan) requires contributions to be made on the basis of 'qualifying earnings' or some other measure of earnings (for example, to include overtime or commissions).

As a guide, if the employer or the pension plan uses 'qualifying earnings' as its basis for calculating pension contributions, then the mandatory minimum contribution will initially be 2% (of which the employer's minimum contribution must be 1%), rising to an 8% total minimum contribution from April 2019 (of which the employer's minimum contribution must be 3%).

If the employer/the pension plan uses another measure of calculating pension contributions, then the required minimum contributions will be higher. For example, the mandatory minimum contribution where contributions are based on basic salary only will initially be 3% (of which the employer's minimum contribution must be 2%), rising to a 9% total minimum contribution from April 2019 (of which the employer's minimum contribution must be 4%).

Which employees do the rules apply to?

The employer only needs to automatically enrol 'eligible jobholders'. These are employees who earn over a particular earnings threshold and are within the eligible jobholder age bracket. If employees do not

meet these criteria but meet other earnings and age criteria ('non-eligible jobholders'), they may nonetheless be eligible to join the pension plan if they wish to (they just won't automatically be enrolled), and if they do then the employer will need to make mandatory employer contributions in respect of them. Employees who do not satisfy the eligibility criteria to be an 'eligible jobholder' or a 'non-eligible jobholder' (for example, because they have a low income) ('entitled workers') will still be entitled to join the pension plan if they wish, but the employer will not need to make mandatory employer contributions in respect of them.

How we can help with auto-enrolment

We regularly assist clients with their auto-enrolment obligations including advising on the following topics:

- Employee eligibility
- The basis of pensionable pay and required contributions
- Contractual documentation or changes to existing terms and conditions of employment
- Auto-enrolment versus contractual enrolment
- Pension plan provision
- Employee consultation, if required
- Communication to employees
- Reporting obligations and general compliance

How Katten can help

We advise on the full range of contentious and non-contentious UK employment law matters – from advising on senior executive employment, to partnership and investment documentation, managing disputes and exits as well as team moves, advising businesses on restructurings involving TUPE, and advising on all the employment issues associated with a corporate transaction or outsourcing, as well as managing the above in an international context.

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