AUTOMATIC ENROLMENT - CHANGES TO REGULATIONS.

IN SUMMARY

Legislation was laid before Parliament on 11th October. The following changes will be introduced.

FROM 1 NOVEMBER

Employers can choose to use alternative definitions of pay reference periods for both assessing jobholder status and determining whether a scheme is a qualifying scheme.

The extended deadline for passing worker contributions to a pension scheme applies to all new joiners (including contract joiners).

The opt-out notice provisions make clear that schemes can customise notices.

There is greater clarity and consistency concerning the requirements for defined benefit test schemes in relation to the appropriate age, service limits and revaluation that apply in those schemes.

FROM 1 APRIL 2014

The automatic enrolment joining window is extended from one month to six weeks.

The deadline for employers to provide information to individuals on their opt in and joining rights is extended to six weeks.

The deadlines for registration and postponement notices fit with the extended joining window.

DEFINING PAY REFERENCE PERIODS

It is acknowledged that the original regulations have not been easy to implement. They require employer, pension provider and payroll provider to liaise and resolve; no one party owns the exercise and this has led to complication.

The DWP are introducing an alternative method of using pay reference periods at the point of testing eligibility. This does not replace the existing method; it is just an alternative. Employers that have already gone through auto enrolment can continue to assess as they have always done; they do not have to adopt the new alternative method.

The new method allows the assessment to be conducted using a pay reference period in-line with tax month or tax week. The DWP are also allowing the scheme rules to dictate when the first contribution is due under the scheme rules. The easiest way to explain this is to use an example.

The Widget Company has a staging date of 1 April 2014. They propose to assess eligibility using a pay reference period of tax months (6 March to 5 April and so on). The company pays salary on 28th of each month.

The pay reference period that contains the staging date is the one running 6 March to 5 April. The salary for this pay reference period was paid on 28th March. The Widget Company can now look at what was paid on 28th March and assess eligibility. Note that the enrolment date is still 1st April – the new regulations do not change the enrolment dates in any way.

A separate amendment has been made to deal with the complicated payroll structure of those paid monthly in respect of the number of weeks worked – 4/4/5 basis. Instead of working out the weekly equivalent of the appropriate threshold and multiplying this by the number of weeks worked an employer can now use the monthly threshold figure based on either calendar or tax months.

PART-PAY PERIOD CONTRIBUTIONS

The DWP believe that the scheme rules can help eliminate part-pay period contributions.

Having conducted the assessment we must now consider when the first contribution is paid and how much this will be. Returning to the example, the Widget Company is using a pay reference period running from 6th to the 5th. The scheme rules require a contribution to be made in respect of the first day of membership (1 April – the staging date). This means the first contribution will be taken from salary paid on 28th April. This method allows eligibility to be made against an earlier pay reference period than that from which the first contribution is taken. The Widget Company can issue enrolment letters to eligible jobholders before the first contribution has been deducted from their pay. If the employee submits a valid opt-out request before the payroll cut off date no contribution will ever be taken.

Many schemes/products expect a pension contribution in respect of a whole pay period. For example, if an employee started or turned 22 on the 15th of the month and the pay period ran from the 1st to the last day of the month the employee's first pension contribution would not be collected until the beginning of the next full pay period. There would be no contribution during the part-month (15th to the last day of the month).

This easement will now make it possible to start contributions from the start of a pay period. It is recognized that many schemes use postponement to achieve the same result. We have our own solution, the scheme announcement followed by the eligible jobholder auto waiting period notice; we can continue to operate our tried, tested and proved model.

MODIFYING THE SCHEME QUALITY CHECK

The way the regulations work in respect of employers paying contributions in line with the minimum statutory requirements (ultimately 8% of the qualifying earnings band) can give rise to a shortfall in contributions if measured over a 12 month period. For example, Bob is paid £3,000 a month but in July receives a bonus of £3,000. His total annual income is £39,000 meaning 8% of £39,000 should be paid into his pension pot; the upper tier of the qualifying band is £41,450. However, a problem arises because his pay in July of £6,000 (£3,000 salary and £3,000 bonus) breaches the monthly upper threshold of £3,454 (£41,450/12). His pension contribution in July is capped at 8% of £3,454. As the regulations currently stand there has been a shortfall when judged over the 12-month period.

Regulations have been introduced to allow employers to calculate contributions against each pay period (in the example for Bob this would be monthly) rather than have to reconcile over a 12-month period.

An employer can choose to continue to reconcile over a 12-month period if they wish or adopt the measure against each pay reference period.

PASSING ACROSS THE FIRST CONTRIBUTIONS

With auto enrolment the regulations allow employers to hold onto contributions in respect of eligible and non-eligible jobholders until the end of he second month. This allows an employer the opportunity to refund any contributions deducted during the opt-out period should the employee opt out.

This easement was not permitted for entitled workers or where the employer had decided to use a method of contractual enrolment.

The regulations will now provide that contributions deducted within the first 3 months of membership can be held back; they must reach the scheme by the 22nd of the fourth month. This easement applies to all new joiners and not just those eligible and non-eligible jobholders. Again this easement is optional as not all employers will wish to use it, many prefer to pass across contributions straight away.

OPTING OUT BEFORE BEING AUTO ENROLLED

This is a particularly relevant issue for employers that wish to use contractual enrolment. Some employers wish to contractually enrol their employees rather than follow the auto enrolment route. The problem arises if the employee declines the contractual enrolment before the staging date. The auto enrolment regulations then required the employer to auto enrol despite the employee having just declined membership. There was a request to amend the regulations to eliminate this anomaly.

An example of the problem: The Widget company contractual enrols Emma, she is 21 years and 10 months old at this point. She subsequently decides, in the next month, she does not want to join. The following month she turns 22 and The Widget Company must auto enrol Emma as she is now deemed an eligible jobholder for the first time.

Clearly this is very bureaucratic and serves no good to any party. An easement was proposed to allow an employer to waive the auto enrolment event if an employee had ceased active membership in the 12 months before the auto enrolment event. The DWP consider that this would, especially at the staging date, increase the burden of monitoring and thus make the enrolment process more complicated. The DWP have decided to take this issue away for further scrutiny and will consult in the future.

THE JOINING WINDOW

There is currently a one-month deadline for an employer to issue a joining letter or a waiting period notice. Given that many employers will not make an eligibility assessment until late in the month when their payroll run is conducted there is a very short period left in which to send out the appropriate letter. Failure to meet the one-month timeframe will give rise to a technical breach.

Regulations will now extend this timeframe from 1 month to 6 weeks. The employee will still have 1 month from receipt of their enrolment information to opt out and the additional 2 weeks if they submit an incorrect opt-out notice.

REGISTRATION OF A SCHEME

This is extended from 4 to 5 months. Re-registration will be extended from 1 to 2 months. This is a consequence of extending the joining window.

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