

THE 2012 PENSIONS REVOLUTION

AUTO-ENROLMENT: ASSESSING YOUR WORKFORCE

To comply with auto-enrolment, an employer must review its workforce and identify those who must be auto-enrolled and those who have other rights. The regime introduces a new category of staff referred to as “jobholders”.

Jobholders are all workers (i.e. not just your employees) whose total annualised earnings are at least £5,564 (previously £5,035) and who are between the ages of 16 and 75.

Workers are any individuals who are contracted to provide services personally and who are not undertaking the work as part of their own business.

Earnings for these purposes are gross earnings including basic salary, commission, bonus, overtime and statutory payments. Whether a worker has earnings in excess of the annualised £5,564 and £8,105 thresholds (previously £5,035 and £7,475) is to be determined by reference to the applicable pay period (weekly or monthly). This may have an impact on when low earners with variable earnings qualify as jobholders.

For employees or workers with low basic earnings and variable hours or commission, it may be necessary to monitor their earnings carefully. For all workers who are not already eligible jobholders, it is necessary **to monitor age and earnings** to ensure they are auto-enrolled or notified of their right to opt-in as non-eligible jobholders as soon as they do qualify. This is so even when using an auto-enrolment scheme under which contributions are not based on band earnings but on basic salary (more detail on acceptable scheme designs will be provided in a later briefing).

Those who opt-out and may need to be re-enrolled after three years also need to be monitored.

THE POOL OF JOBHOLDERS

To determine the pool of jobholders, an employer should:

- ◆ **include:** employees; casual workers, including those on flexible or zero-hours contracts; freelance workers; out-going secondees (normally); agency workers if paid or contracted to be paid by the employer not the agency; LLP members; and
- ◆ **exclude:** the genuinely self-employed; non-executive directors; trustees; volunteers and independent consultants; those aged less than 16 and more than 75; and those who earn less than £5,564 based on the relevant pay period.

ELIGIBLE JOBHOLDERS, NON-ELIGIBLE JOBHOLDERS AND ENTITLED WORKERS

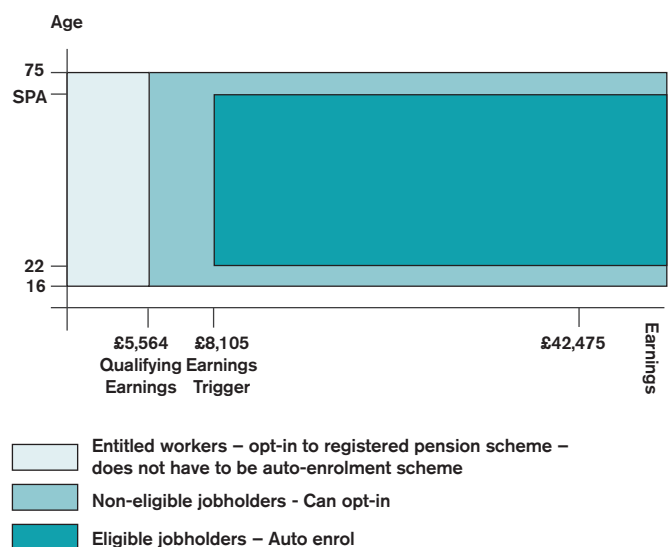
Within the pool of jobholders there are two further sub-categories:

- ◆ **Eligible jobholders** are entitled to be automatically enrolled but may opt-out of the auto-enrolment scheme. They are jobholders whose total earnings exceed £8,105 (based on the relevant period) and are aged between 22 and state pension age.
- ◆ **Non-eligible jobholders** have no automatic entitlement but may opt-in to the auto-enrolment scheme. They do not qualify as eligible jobholders because they fall outside either or both of the relevant age and earnings ranges. If they opt-in they are entitled to employer contributions in the scheme in the same way as eligible jobholders.

Some workers, who do not qualify as jobholders, also have entitlements under the auto-enrolment regime. **Entitled workers** have no automatic entitlement but may elect to join a registered pension scheme, though it will not be necessary for this scheme to satisfy the same requirements as an auto-enrolment scheme. They are workers between the ages of 16 and 75 whose total earnings are less than the qualifying earnings level (£5,564). Even if they join the scheme, they are not entitled to any employer contributions under legislation.

Members of a qualifying scheme are not subject to auto-enrolment unless their scheme terminates, ceases to qualify or they opt-out. However, specific information obligations apply.

Assessing your workforce



EMPLOYEE COMMUNICATIONS

Eligible jobholders need to be given enrolment information in writing. This includes a statement that they have been or will be automatically enrolled into a scheme, the details of that scheme and of the contributions paid by the employer and those deducted from their pay, a statement that the employer cannot terminate its participation and a statement that the employee may opt-out and opt back in and explaining how, when and the implications of opting-out.

Non-eligible jobholders must receive written information about their right to opt-in, explaining how to do so and the value of employer contributions in the relevant auto-enrolment scheme.

Entitled workers must be given written information about their right to become a member of a pension scheme and pay contributions to it.

Current active members of a qualifying scheme do not need to be auto-enrolled. However, the employer is required to give them a notice, within two months of what would otherwise be their auto-enrolment date. This notice should confirm their membership, provide the contact details of the scheme and include a statement that the employer cannot terminate their membership or allow the scheme to cease being a qualifying scheme.

The information requirements are very prescriptive.

There is a prescribed form for the opt-out notice for eligible jobholders. This is required to be provided by the scheme trustees or managers rather than the employer.

EASIER TO AUTO-ENROL EVERYONE?

Faced with the challenges of separate communication and monitoring employees on flexible hours or commission, auto-enrolling everyone may be tempting.

There are however traps for the “over-compliant”:

- ♦ The different communication requirements still apply
- ♦ Employee contributions can only be deducted without consent for eligible jobholders
- ♦ Opting out and refunds of employee contributions paid over to the auto-enrolment scheme are only available to eligible jobholders and not those who join by another process; refunds may in some cases, be available under general law
- ♦ For employees with enhanced protection or fixed protection for tax purposes, the protection is lost even if they opt-out and request a refund unless they were auto-enrolled as eligible jobholders

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JUNE 2012

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