

HEWITSONS

PENSIONS AUTO ENROLMENT



Q. How will auto-enrolment be dealt with in employment contracts?

A. There is an obligation in section 1 of the Employment Rights Act 1996 to include information about pensions in the employment particulars to be given to employees. Often this will be done simply by referring to a separate document containing information such as the type of pension scheme, eligibility criteria and the level of any employer and employee contributions. Employment contracts need to be checked to see whether any changes need to be made to those documents. The employer's handbook will also have to be checked and possibly amended.

Q. Can employers use Compromise Agreements to circumvent their obligations?

A. Compromise agreements can not be used to contract out of the auto-enrolment duties. This will be of particular importance where the employer is seeking a waiver of all potential claims when negotiating a severance package. There might be a potential dispute over the level of employer contributions which were made or over whether the scheme was a qualifying scheme. This is not currently a potential dispute the employer and employee can settle in a compromise agreement, as it is something for which the Regulator will still retain the power to investigate and penalise the employer. The prohibition on contracting out will also be an issue in the recruitment process. Employers will not be able to ask job applicants at interview whether they plan to opt out of auto-enrolment or make job offers conditional on the employee opting out.

Q. What if the employer wants to offer an enhanced package in return for opting out?

A. Employers will not be able to offer job holders

any financial inducements to opt out of membership of work place pension schemes after the auto-enrolment requirements have come into force. Examples of inducements include offering a one off payment or increase in salary or promotion of some sort in return for the employee agreeing to opt out of pension saving, or withholding such a promotion or enhancement or any form of benefit unless the employee opts out.

Q. Will job holders have new employment protection rights?

A. The Pensions Act 2008 has created various new employment protection rights which apply to all workers but not currently to job applicants. Workers will have the right not to be subjected to any detriment in their employment because of their employer's breaches of the regime, and they will be able to bring proceedings in the Employment Tribunal. There will also be automatic unfair dismissal rights on the same grounds. There will be no qualifying period of employment, although the upper limit on the compensatory award will still apply. Also, a complaint made by a worker in good faith either to the employer or to the Regulator is going to count as a protected disclosure under whistle blowing law.



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