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Essential Employer Update

Are you NESTing?

In the current economic climate and with people living longer the Government is keen to ensure that we all have some pension provision. Measures have been introduced that place duties on employers to automatically enrol employees into a work based pension scheme.

Employers can either make use of the National Employment Savings Trust (NEST) or they can set up a new or use an existing qualifying pension scheme if they prefer.

Under the Pensions Act 2008 employers must 'auto-enrol' eligible jobholders into a pension scheme.

When?

The start date varies depending on the size of the employer and their PAYE reference number. Recently, the Government has announced a change to the timetable for introduction. The earliest start date of October 2012 remains but this will only impact on the largest employers. Medium sized employers (50-249 employees) will now be allocated start dates between 1 April 2014 and 1 April 2015. Small employers will be allocated start dates between 1 June 2015 and 1 April 2017.

The Pensions Regulator will write to all employers around six to twelve months before their 'staging date' (start date) so that they know when to automatically enrol their eligible jobholders. There will be a further reminder issued three months prior to the start date.

What are the costs involved?

The minimum contribution level is still set to be 8% of 'qualifying earnings' but not until October 2018 of which the employer minimum contribution is 3%. Where the employer pays at this minimum level the following breakdown applies:

| | |
|----------------------|----|
| Minimum contribution | 8% |
| Employee pays | 4% |
| Tax relief | 1% |
| Employer pays | 3% |

Until October 2018 the minimum contribution levels are set to be:

- October 2012 to September 2017 – minimum overall of 2% with 1% minimum from the employer
- October 2017 to September 2018 – minimum overall of 5% with 2% minimum from the employer.

Where an employer contributes more than the minimum level then an employee may be able to reduce their contributions. In any case employees, but not the employer, will be able to opt out of the scheme if they so wish.

Qualifying earnings

Minimum level contributions are based on qualifying earnings.

Qualifying earnings consist of basic salary, commissions, bonuses, overtime and statutory pay entitlement such as Statutory Sick Pay.

However, only qualifying earnings between a lower and an upper limit to be known as the 'qualifying earnings band' will be taken into account. The most recent consultation proposals suggest that:

- the lower limit will be aligned with the National Insurance Contributions (NIC) Class 1 lower earnings limit which is set at £5,564 for 2012/13 and

- the upper limit will be linked to the rise in average annual earnings using the earnings value in the Pensions Act 2008 as the base. This would currently mean a cap for 2012/13 of around £39,853.

So who is an eligible jobholder?

Eligible jobholders are those who:

- are aged between 22 and State Pension age
- are working or ordinarily working in the UK
- have qualifying earnings payable by the employer above the earnings trigger for automatic enrolment (currently proposed to be £8,105 for 2012/13).

Employers may enrol other employees outside these criteria in a pension scheme but they are not obliged to do so.

Employers will need to put procedures in place to identify eligible jobholders on a timely basis. For example, they must be able to identify when younger employees reach 22 and where lower paid employees breach the qualifying earnings trigger for automatic enrolment.

NEST

The Government is making available a simple low cost pension scheme known as NEST. This scheme is designed to offer a low cost solution so that employers can comply with the legislation. The scheme is aimed primarily at lower paid employees. NEST offers some benefits but has its limitations:

• Low charges

A 1.8% charge is to apply on funds going in and a 0.3% charge annually on the value of the NEST fund.

• Maximum contributions

The maximum amount of contributions which may be made by or in respect of a scheme member is limited. The 2012/13 limit (including tax relief) is set to be £4,400. There are rules to deal with the situation where excess contributions are received into a NEST fund.

• Fund investment choice

The fund choices are currently limited to five plus the default NEST Retirement Date Fund. The current choices include Lower Growth, Higher Risk, Sharia, Ethical and Pre-retirement Funds.



• **Portable**

Employees who change jobs will be able to take their NEST with them when they change jobs.

Checklist

| | |
|---|------------------------------------------------|
| 1 | When is your auto-enrolment (staging) date? |
| 2 | Do your existing pension arrangements qualify? |
| 3 | Have you budgeted for the extra costs? |
| 4 | How will you communicate with employees? |
| 5 | What scheme or schemes do you intend to use? |

The introduction of auto-enrolment will involve more costs for the majority of employers. If you would like more details of auto-enrolment or want help setting up a scheme or liaising with employees please do get in touch.

Employing Pensioners?

The State Pension age (SPa) is the earliest age you can draw your State Pension. It is also the date from which employees no longer have to pay Class 1 NIC. With people working longer it is important that employers are aware of the date and the implications. In particular, employers' NIC continues to be payable even when SPa is reached and always at the main rate of 13.8%.

So do you know your own or your employees SPa? Well, under current rules:

| Who? | Born | SPa |
|-------|-----------------------------------|------------------------------------------|
| Men | Before 6 December 1953 | 65 |
| Women | Before 6 April 1950 | 60 |
| Women | 6 April 1950 to 5 December 1953 | Between 60 and 65 |
| Both | 6 December 1953 to 5 October 1954 | Between 65 and 68 |
| Both | 6 October 1954 to 5 April 1968* | 66* |
| Both | 6 April 1968 onwards* | Increasing from 66 to 67 and then to 68* |

*However, the Government announced towards the end of 2011 that the increase from 66 to 67 will be bought forward from 2034 to 2026. For those born on or after 6 April 1960 but before 6 April 1961, a SPa between 66 and 67 will be set. People born on or after 6 April 1961 will have a SPa of 67 or higher.

This proposed change is not expected to be finalised until the end of 2012 or beginning of 2013. We will keep you updated on developments but meanwhile it is important to check the latest position.

Targeted increase in the personal allowance

The personal allowance increases to £8,105 for 2012/13 from the current £7,475. However, the point at which individuals start to pay the higher rate of tax of 40% will decrease from £35,000 to £34,370. The overall effect being that a higher rate taxpayer will only receive the same tax savings as a basic rate taxpayer.

Pay up and file on time - or face a penalty shoot out

HMRC have received some bad press and lost several tribunal cases regarding penalties issued for late filing of end of year PAYE returns. However, getting penalties reduced or waived cannot be relied upon so it is important to ensure the returns are submitted on time. The 'week's grace' which used to allow time for postal delays was removed in 2011 so do not expect any leeway. The following example illustrates how the penalties can soon mount up!

Example

Tardy and Co only has two employees and fails to submit the P35 and P14s to HMRC by the due date of 19 May 2012. The returns are eventually filed on 30 September 2012 (over 4 months late). The penalty is £100 for each month or part month late and is therefore £500!

Penalties as well as interest arise when PAYE liabilities are paid late. The first late payment is ignored but subsequent late payments incur a penalty. The penalties are:

- 1% for up to three late payments
- 2% for defaults four to six
- 3% for defaults seven to nine, and
- 4% for ten or more defaults.

Example

Dave After pays his business' PAYE payments each month one day late. The average amount due is £2,500 per month. After the end of the tax year the business receives a penalty notice for £1,100 (11 x £2,500 x 4% as the first late payment is ignored).

The future of PAYE - Real Time Information (RTI)

RTI represents a radical change to the way and time frame under which information is reported to HMRC in respect of employee pay and deductions. Under the proposals:

- information will be submitted to HMRC each payday detailing net pay and the computations behind the net payment for each employee
- when the employer pays the deductions over to HMRC on a monthly basis the employer will also provide further details including such items as any adjustments required for Statutory Maternity Pay or previous errors
- once RTI is fully up and running, the end of year form P35 will no longer be required as HMRC will have received all the information throughout the tax year.

From April 2012, volunteer employers and software developers will start a pilot of RTI with HMRC.

Subject to a successful completion of the pilot, the largest employers will be required to start using the RTI system from April 2013. However, it is envisaged that all employers will be using the scheme from October 2013.

HMRC are therefore urging employers to ensure that their employee information is up to date before the introduction of RTI. This follows HMRC's review of PAYE information submitted for 2009/10 which showed:

| No of employees | Issue |
|-----------------|--------------------------------------------------------------------------------------|
| 507 | named 'A N Other' |
| 128 | entered as Mr, Ms or Mrs 'Dummy' |
| 572 | whose surnames only included the letter X, ranging from Mr X to Mrs XXXXXX |
| 75 | surname 'Casual', 11 'Cleaners', 9 'Workers' and 6 'Students' |
| 824 | with the surname 'Unknown' |
| 40 | were apparently 200 years old or more after incorrect dates of birth were submitted! |

Coding out 'debts' - up to £3,000

From April 2012 HMRC will be able to collect debts up to the value of £3,000 by amending the tax code of individuals in PAYE employment or receiving a UK pension. HMRC are able to use this method to recover both income tax debts and tax credit overpayments from April 2012.

The coding notice adjustment will be described as an 'Outstanding debt' with a note to say whether this relates to a tax underpayment or a tax credits overpayment or both. Tax codes will not be changed in-year to recover these debts or overpayments as they will be included in the code issued for the start of a tax year.

Employees who are to have their debts recovered in this way should have been advised by HMRC of the procedure to be adopted. HMRC should have previously written to these individuals at least once asking for payment. A further letter will advise them that their debts or overpayments may be collected by a tax code adjustment from April 2012 and they should then be given a final chance to either pay in full or to contact HMRC to discuss other payment options.

Where employees believe that repaying the debt this way will cause financial hardship then they should visit the Business Link website which offers guidance on how to set up a voluntary arrangement to repay the debt over three years.

Employment law round up

Although there are few changes from April 2012, there are several issues which are the subject of consultation:

Unfair dismissal - the qualifying period for unfair dismissal increases from one to two years from 6 April 2012.

Consultation - on up-front fees for employees wishing to take their case to an Employment Tribunal. This consultation closes in March 2012 and proposes the introduction of fees, generally payable by the party bringing the claim. We will update you on future developments.

Consultation - on introducing compensated no fault dismissal for micro firms up to ten employees.

Call for evidence - on the consultation rules for collective redundancies.

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