

TECHNICAL BRIEFING NOTE

Workplace pension reform – regulation & compliance

This information is intended for HR professionals, pension trustees and individuals responsible for decision making on corporate pension schemes, and must not be relied upon by anyone else.

Who will check that employers meet their obligations under workplace pension reform?

The Pensions Regulator is responsible for regulating compliance with the workplace pension reform regime.

- The Regulator will write to employers approximately 12 months and 3 months before their staging date to tell them about their duties and how to comply with them.
- It will then police compliance by requiring employers to register information periodically and cross-checking this against records held by HMRC and pension scheme providers.

The Regulator has a range of powers to deal with employers who don't meet their obligations.

What must employers do to prove compliance with their duties under workplace pension reform?

To prove they are meeting their obligations under workplace pension reform, employers must:

- Keep certain records about their company and employees (generally for six years); and
- Periodically register information about the company, the employees and their pension provision with the Pensions Regulator.

Employers must initially register their compliance information with the Regulator within two months of their staging date (or, where an employer does not start paying PAYE income to any worker until after 1 September 2016, within three months of setting up that new PAYE

scheme). They must then re-register every three years, within two months of their re-enrolment date.

Can employers influence employees to opt out of a qualifying pension scheme?

A key aim of the government's workplace pension reforms is to stimulate increased private pension provision, to help address the pension crisis and reduce the burden on the State.

To support this, there are penalties if an employer:

- Encourages workers to leave, or opt-out of joining, a qualifying pension scheme (known as **inducements**); or
- When recruiting, gives any indication that applicants have more chance of success if they will opt-out (known as **prohibited recruitment conduct**).

Employers can't even give opt-out forms to employees if they want them: only the scheme administrator can do this.

Employees can appeal to an employment tribunal if their employer treats them unfavourably because they won't opt-out (for example, by not considering them for promotion). Dismissal on the grounds of not opting-out is automatically deemed unfair.

Are there any penalties if employers do not meet their obligations under workplace pension reform?

If employers (or third parties acting for them) do not meet their obligations under workplace pension reform, the Pensions Regulator can issue them with:

- A compliance notice requiring them to put matters right within a set timescale; or
- An unpaid contribution notice requiring them to make good arrears of contributions (possibly with interest).

If these notices are not complied with, the Regulator can levy:

- A £400 fixed penalty; plus
- Escalating penalties ranging from £50 a day (for employers with less than 5 workers) to £10,000 a day (for employers with at least 500 workers). If the compliance failure is by a third party rather than an employer, the escalating penalty is £200 a day.

The Regulator can apply the same penalties if an employer encourages workers to leave, or opt-out of joining, a qualifying pension scheme (known as **inducements**).

If employers break the rules against prohibited recruitment conduct, they face a fixed penalty ranging from £1,000 (for employers with less than 5 workers) to £5,000 (for employers with at least 250 workers).

Employers (or third parties) can ask the Regulator to review any notice or penalty. If they are still not satisfied after the review, appeals can be made to the Pensions Regulator Tribunal.

Senior office-bearers of the employer (such as company directors or partners in a partnership) can also be jailed for up to two years for wilfully failing to comply with the requirements to include employees in a qualifying pension scheme.

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Tel: 0845 054 6656;

Email: info@hfsmilbourne.co.uk

www.hfsmilbourne.co.uk