

Record Keeping

You can use electronic or paper filing systems to keep or store any records, as long as these records are legible. Most records must be kept for six years; those that relate to opting out must be kept for four years. The records must be provided to The Pensions Regulator if requested.

You must ensure that you cleanse and update your worker records in preparation for your employer duties. You'll need to have up to date earnings and age information to enable you to assess what duty you have in relation to each of your workers. You'll have to provide correct worker details to the pension provider to achieve active membership in the scheme for those that need to be enrolled and you'll need current contact details to be able to write to all of your workers.

You must also keep certain records in support of the employer duties that will enable you to demonstrate your ongoing compliance. You'll need to build these record-keeping requirements into your existing processes.

By law, there are two different types of records that you must keep. These are:

- Records about jobholders and workers – e.g. name, NI number, opt-in notice and joining notice.
- Records about the pension scheme – e.g. employer pension scheme reference and scheme name and address

Safeguards for Workers

Safeguards have been put in place to protect individuals under the workplace pension's reform. These apply to jobholders, entitled workers and also extend to job applicants.

Warning

An employer must not take, or fail to take, any action that results in a jobholder ceasing active membership of a qualifying pension scheme, or which results in such a scheme ceasing to be a qualifying scheme. Therefore it is important that any jobholder's or entitled worker's decision to opt out of, or leave, their pension scheme without joining another should be taken freely and without influence by the employer

An employer must not try to screen job applicants on grounds relating to potential pension scheme membership – this is known as prohibited recruitment conduct.

The employer must not treat a worker unfairly or dismiss the worker on grounds related to the employer duties. For example, an employer cannot deny a worker a promotion or other training opportunities because the worker has decided not to opt out of pension scheme membership. If an employer does so, the worker can enforce their rights in an employment tribunal.

There are specific rules which forbid an employer from encouraging, either by threats or incentives, members of their scheme to opt out. Abnormally high rates of opting out will probably trigger further investigations by The Pensions Regulator – and the consequences of wrong doing could be serious.

You must not give financial advice about the scheme, so any information must be simply factual.

Equal Treatment

You'll be well aware of how legislation affects you in general employment terms. However, automatic enrolment raises some possible additional challenges, especially as now all affected workers need to join a scheme and historically the uptake of scheme membership amongst certain groups, women particularly, could be lower.

To protect yourself, make sure that you document your decisions with regard to any self-employed contractors and if employing agency staff, ensure that you understand whether the agency accepts the responsibility for pension payments or not – and act accordingly.

Maternity, Paternity & Long Term Sickness

Workers who are on maternity or paternity leave should be treated no differently than those at work. Auto enrolment is triggered by received pay, not potential pay, so if they are on reduced pay, then they may not need to be automatically enrolled. Remember that Statutory Maternity Pay and Paternity Pay is considered as earnings for these purposes so if you are topping up their minimum pay then automatic enrolment could be triggered.

Even if they are not in receipt of any pay at all, workers on leave remain workers so should be given the right to join the scheme, though no contributions would be due until they returned to work.

The same principles apply to workers on long term sick leave. If sick leave is insured and the policy is paying out then it will be classed as earnings if payments are being made by the employer.

Triennial Review

At the triennial review you have a duty to assess employees who have opted out or ended their qualifying membership in the three years since your staging date (or since your last triennial review), except for people who opted out in the last 12 months. These people do not need reassessment at this review, but they will do at the following one.

You can select the date that you do this to fit in with your business processes, but it must be within three months before or the three months after the 3rd anniversary of your staging date. You will then have to carry this out every three years after that.



David Perry
Head of Employee Benefits
01603 218388
07760 162340
dperry@alanboswell.com

ifa@alanboswell.com
alanboswellgroup.com