

Update on Pension Personal Accounts - Employer duties and fines

This article covers fines and penalties on employers under the 2008 Pensions Act which is now in force and which will have implications for all employers and their employees. Last month's Chamber News carried an article on staging the implementation of employer duties, phasing minimum contribution levels and the automatic enrolment processes from 2012. The full article is on our website www.soton-chamber.co.uk under Chamber Viewpoint.

The current Stakeholder legislation is being replaced in 2012 with the new National Pensions Savings Scheme (NPSS). All employers in the UK, whether they have one member of staff or 10,000, will need to take action to comply with their new responsibilities under this new pension reform.

Employer fines

Fixed penalty notice

Gives the Pensions Regulator power to issue a fixed penalty notice for failing to comply with:

- a previously issued compliance notice
- a previously issued unpaid contribution notice
- a previously issued provision of information notice
- the requirements under any of the automatic enrolment Regulations.

The amount of the penalty will be determined by Regulations and must not exceed £50,000. The general idea as we understand it is that the amount of the fine will largely be determined by the size of the employer. Note that the draft auto-enrolment Regulations include various things which the employer must do (e.g. provide specific information, make refunds) within specific timescales so a breach of any of those requirements may result in a fine under this section.

Escalating penalty notice

Gives the Pensions Regulator the power to issue escalating penalty notices in the same circumstances as above, with the exception of the last bullet point (auto-enrolment/re enrolment).

The amount will increase at a daily rate to be prescribed and must not exceed £10,000 per day. Again, the amount may differ by size of employer.

Offences for failing to comply

Where an employer wilfully fails to comply with the auto-enrolment/re enrolment or jobholder right to opt-in requirements, it's a criminal offence. In this case the penalties are:

- on conviction on indictment (Crown Court/High Court), they can be imprisoned for up to 2 years and/or face an unlimited fine
- on summary conviction (Magistrates Court/Sheriff Court) they can be fined up to £5,000 (level 5, Statutory scale).

Penalty notice

Allows the Pensions Regulator to issue a penalty notice where an employer has failed to comply with 'prohibited recruitment conduct'. This basically means that employers cannot in any way, shape or form, expressly or implicitly, frame any question or statement to the effect employment is dependent on whether or not the prospective employee will opt-out of automatic enrolment. The amount will be determined by Regulations and cannot exceed £50,000. Again, larger employers are likely to face higher fines than smaller ones.

Inducements

Gives the Pensions Regulator the power to fine employers who 'induce' employees to opt-out of a qualifying scheme or 'induce' employees to opt-out during the opt-out period.

Requirement to keep records

Allows the Secretary Of State to make Regulations about record keeping in respect of auto-enrolment etc. requiring 'any person' to:

- keep prescribed records in prescribed forms
- preserve those records for a prescribed period, not exceeding 6 years
- provide the records to the Regulator on request.

Failure to comply results in penalties under section 10, Pensions Act 1995 – a fine up to £5,000 for individuals and £50,000 for corporate bodies.

Please note there could be some further amendments before the regulations are issued. Even then, the regulations will be in draft format, so further change is possible. However, these changes reflect the Government's current views, so are likely to be taken forward largely in this format.

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