Automatic enrolment

Compliance and enforcement

Quarterly bulletin
1 April – 30 June 2014

automatic enrolment

The Pensions Regulator

This quarterly update provides information about our cases and the powers we have used relating to automatic enrolment and associated employer duties.

It is designed to help employers; their advisers and the pensions industry as a whole understand the type of compliance and enforcement interventions that follow our educative and enabling communications and support.

Automatic enrolment cases closed in the period

Cases closed in this quarter:	217
Cases closed to date[1]:	917

1
This covers the period from the outset of automatic enrolment on 1 July 2012 to the end of this reporting period (30 June 2014).

Selected powers used in the period[2]

Power	Description	Number issued in period	Number issued to June 2014
Information Notice	The power to demand information and documents under section 72 of the Pensions Act 2004	1	2
Inspection	The power to inspect premises under section 74 of the Pensions Act 2004	1	3
Warrant	The power to search premises and take possession of content under section 78 of the Pensions Act 2004	0	0
Compliance Notice	A Compliance Notice to remedy a contravention of one or more automatic enrolment employer duties	3	17
Unpaid Contributions Notice	An Unpaid Contributions Notice to remedy a late or non-payment due to a qualifying pension scheme	0	1
Fixed Penalty Notice	A fixed penalty of £400 for failure to comply with an Unpaid Contributions Notice or a Compliance Notice	0	0
Escalating Penalty Notice	An escalating penalty of between £50 and £10,000 per day (depending on employer size) for failure to comply with a statutory notice	0	0
	Total	5	23

2
This report provides data on the powers that we anticipate using most frequently. Our annual commentary and analysis publication on automatic enrolment provides data on any other powers we have used over the period, and can be found at **www.tpr.gov.uk/research**

Preventing non-compliance

Notifications

The purpose of this section is to highlight recent developments we think employers and/or the industry needs to be aware of, as it directly impacts compliance with the employer duties.

Partners of Limited Liability Partnerships (LLP) – definition of a 'worker'

On 22 May 2014 the Supreme Court ruled in Clyde & Co LLP v Bates van Winklehof that a partner of a Limited Liability Partnership was a 'worker' under the Employment Rights Act 1996 (the ERA). Prior to this ruling, previous case law under the ERA said that a partner of an LLP was not considered a worker.

Whilst this case and subsequent ruling concerns the definition of a worker under the ERA, the definition is very similar to that of a worker in the Pensions Act 2008 for the purposes of automatic enrolment. Our view is that an LLP should assume that the Supreme Court's decision is equally applicable and as such, members of an LLP could be considered workers for automatic enrolment.

LLPs will need to assess each of their partners to ascertain whether they are a worker or self-employed. Assessment should be against the definition of worker in the Pensions Act 2008 taking account of the factors highlighted in the judgement by the Supreme Court. These are:

- integration within the organisation
- dependence/subordination, and
- exclusivity (ie could the individual provide services to anyone else).

If an LLP determines that a partner is a worker, the employer duties would apply in the same way that they would for any other worker. This includes assessing whether qualifying earnings are payable, with reference to the LLP's particular remuneration arrangements and the kinds of payments that count as earnings under the Act.

This ruling applies retrospectively. Any LLPs that have a staging date up to and including 1 May 2014 will need to assess whether a partner is a worker for automatic enrolment. If so, they should take steps to automatically enrol any partner with qualifying earnings with effect from their automatic enrolment date, unless the partner was an active member of a qualifying scheme on this date.

Where an LLP has already completed its declaration of compliance (registration), there is no need to amend the figures already submitted. An LLP which has not yet completed its declaration should include any partners who have been assessed as workers.

This information will be available on our website in due course.

Declaration of compliance (registration)

The term 'declaration of compliance' is the way that we now describe 'registration'. Completing registration is a legal duty for employers and one of the ways in which we track compliance. Research has shown that small and micro employers had a different understanding of the word registration than larger business and that the term declaration of compliance resonated more strongly with them. Declaration of compliance provides a clear indication to employers that they must confirm that they have complied with their duties.

Proactive drives

We undertake a range of proactive and reactive compliance work in line with the objectves of our compliance and enforcement strategy:

- establishing and maintaining a 'pro-compliance culture' amongst employers
- maximising deterrence for those who are considering committing a breach
- preventing non-compliance
- swiftly detecting non-compliance
- investigating breaches in a fair, objective and professional manner
- effectively enforcing against non-compliance.

We undertake targeted proactive drives with employers or third parties where we identify a risk of non-compliance. This helps us understand the underlying issues, devise effective mitigations, and detect, deter and tackle non-compliance. We do this in a range of ways including through a detailed analysis of our data sources (such as PAYE information) to spot anomalies, followed up by targeted actions like visits to determine the extent of any non-compliance and implement appropriate remedies.

Local authority proactive drive

The complex and changing structure of local authority educational establishments has resulted in different relationships between local authorities, schools and workers.

Automatic enrolment duties are the responsibility of the employer, and some schools are employers in their own right; for example voluntary aided schools, foundation schools and academies. Conversely, workers at community schools and voluntary controlled schools are usually employed by, and the responsibility of, the local authority. Local authorities often continue to look after certain shared services, such as pensions and payroll, for schools where the local authority is no longer the employer. However, individual schools may choose to outsource their payroll and other services to an external provider. This might be a private company or even another local authority. This can lead to situations where a school is the responsibility of the local authority for automatic enrolment but its payroll is processed elsewhere. In these circumstances it is vital that lines of communication between the school, the local authority and the shared service provider are sufficient to identify what needs to be done, when and by whom.

This information will be available on our website in due course.

Lessons learned for employers from our casework

Failure to achieve active membership from the staging date and backdating contributions

Where an employer has failed to comply with their duties on time, the law requires employers to backdate active membership to their automatic enrolment date. As far as possible our aim is that workers are put back into the position they would have been in, had they been enrolled at the right time.

One of our recent cases involved a large employer that had failed to meet their duty to automatically enrol. Following investigation it transpired that the employer believed they could apply to defer their staging date from November 2013 to a date in 2017. Through engagement with the employer it was accepted by the employer that they could not move their staging date. As a result the employer took steps to comply, which included calculating and backdating five months' worth of contributions to their staging date.

Employers and their advisers should be aware that the law requires the employer to achieve active membership from the automatic enrolment date. That means contributions are due from that date and our approach, as far as possible, is to ensure workers are put back into the position they would have been in had the employer complied.

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