

*Film & TV*

Auto-enrolment: impact  
for film and television  
production companies

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The auto-enrolment duties currently being phased in over a period of five-and-a-half years, which started on 1 October 2012, will eventually apply to all employers in the UK. Once an employer is covered by the new duties, it will be required to auto-enrol its "eligible jobholders" in a pension scheme meeting specific standards (a "qualifying scheme") unless the jobholders are already active members of the employer's pension scheme which meets the requirements of being a qualifying scheme.

A jobholder can opt out of the pension scheme in which he has been auto-enrolled, but if he does not do so the employer will be obliged to pay minimum pension contributions as long as he remains an active member of that scheme.

A brief high level summary of auto-enrolment follows but you should take specific legal advice on your circumstances.

## When do the new employer duties apply?

The new duties will apply to Companies with effect from their "staging date" assigned by the Department for Work and Pensions.

Broadly, if a Company had a PAYE reference number on 1 April 2012, it has either already past its staging date or if it has less than 30 employees, will have a staging date between 1 January 2016 and 1 April 2017. New employers established after 1 April 2012 will have staging dates from 1 April 2017 to 1 April 2018, depending on when they were established.

A Company must register with the Pensions Regulator within four months of its staging date. The registration process must be undertaken online.

## Who must be auto-enrolled?

The requirement is that an employer is obliged to automatically enrol a worker on his automatic enrolment date ("**AED**") in an automatic enrolment scheme if the worker on his automatic enrolment date ("**AED**") qualifies as an eligible jobholder, unless he is already an active member of his employer's qualifying scheme.

While auto-enrolment is directed at low earners, specific issues can also arise in relation to high-income individuals who have claimed enhanced protection or fixed protection from a lifetime allowance charge.

Once it is subject to the new auto-enrolment duties, the Company must ensure that all eligible jobholders are enrolled in an automatic enrolment scheme with effect from their AED, unless they are already active members of a qualifying scheme.

A summary of the requirements is set out in the table below:

Monthly Gross Earnings	Age			Weekly Gross Earnings
	16 to 21	22 to SPA	SPA to 74	
£486 and below	Has a right to join a pension scheme			£112 and below
Over £486 to £833	Has a right to opt in			Over £112 up to £192
Over £833	Has a right to opt in	<b>Must be enrolled</b>	Has a right to opt in	Over £192

A "jobholder" is a worker who works (or ordinarily works) in the UK under a contract, is aged at least 16 and under age 75, and is paid qualifying earnings in a relevant pay reference period.

Determining whether someone is an eligible jobholder is not always easy and it is a rather complex area. It would, by way of example, be risky to say that all independent contractors would not be eligible to jobholders, many may well have to be auto-enrolled if they meet contain other requirements.

## When must an eligible jobholder be auto-enrolled?

As a general rule, an employer is required to auto-enrol an eligible jobholder in an automatic enrolment scheme, and provide him with prescribed information about the scheme, within a scheme joining window of one month from the jobholder's AED.

A key issue for many employers will be ascertaining the correct AED for a jobholder. In some cases, this will simply be the date on which a new jobholder starts employment (or the employer's staging date, if a jobholder is employed on that date). But there will be many cases where a worker's AED will be later than this. For example, if an employer uses a monthly pay reference period and a new joiner starts work fairly late in the month, he may not receive earnings that exceed the earnings trigger in the initial pay reference period. In that case, the jobholder's AED will be the first day of the following pay reference period. Equally, low earners may not count as eligible jobholders until their second pay reference period. A further point to note is that an employer can use a postponement period to delay the jobholder's AED by up to three months (and in practice, we have seen a number of employers using the three month postponement to work around the need to auto-enrol workers on short-term contracts).

More detailed advice can be given on request.

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## What type of pension scheme must jobholders be auto-enrolled into?

An eligible jobholder must be auto-enrolled in an "automatic enrolment scheme". This is a registered pension scheme that (amongst other things):

- Counts as a qualifying scheme by meeting several requirements about the quality of the benefits it provides or the level of contributions payable (depending on the type of scheme involved).
- Contains no restrictions on admission to the scheme in its eligibility criteria. In particular, the scheme cannot contain any restrictions that prevent an employer using the scheme to meet its auto-enrolment, opting-in and re-enrolment duties or require a new joiner to make a choice or provide information in order to become an active member.

There are several options for complying with the requirements and we can provide further details and information if required.

## Once enrolled, what contributions are payable?

Period	Minimum employer contribution	Minimum total contributions (including tax relief)
First transitional period: employer's staging date to 30 September 2017	1%	2%
Second transitional period: 1 October 2017 to 30 September 2018 <sup>1</sup>	2%	5%
Steady third period: 1 October 2018 onwards	3%	8%

## Ongoing employer duties

An employer must ensure that once an eligible jobholder has been auto-enrolled, the employer takes no action that could result in the jobholder ceasing to be an active member of a qualifying scheme or the scheme ceasing to be a qualifying scheme.

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<sup>1</sup> **NB:** In the Chancellor's 2015 Autumn Statement, the government confirmed that the dates for the second and third periods will be delayed by six months so as to bring them into line with the financial year.

Once an eligible jobholder has been auto-enrolled, the employer will be under a continuing legal duty to avoid taking any steps that would result in him no longer being an active member of a qualifying scheme or the scheme ceasing to be a qualifying scheme.

If either event happens, the employer will be required to enrol the jobholder in an automatic enrolment scheme with effect from the day after active membership ceased or the scheme stopped being a qualifying scheme.

## Providing information to members and schemes

There are also provision-of-information requirements in relation to jobholders who are already working for an employer and are members of a scheme which happens to be a qualifying scheme. For a jobholder in this class, the employer must give specific information to the jobholder within two months of his notional AED (in other words, two months after its staging date).

If the employer is required to auto-enrol anyone in the relatively rare circumstances mentioned above, it will also be required to give specific information to those individuals.

A potential data protection issue may arise in relation to the transmission of enrolment information about jobholders from the employer to the scheme and this should be considered in light of your contracts of employment.

## Using a postponement period

The legislation allows an employer to operate an optional postponement or waiting period of up to three months before an eligible jobholder must be auto-enrolled. This right can benefit employers with high staff turnover, as they will not have to auto-enrol jobholders who are likely to be employed for only a short time. Equally, postponement can be used to smooth auto-enrolment dates so they align with existing payroll processes.

## Employment protection measures

There are several statutory provisions designed to protect jobholders' and entitled workers' employment rights. These include bars on "prohibited recruitment conduct" (for example it will be unlawful for an employer to ask job applicants at interview whether they plan to opt out of auto-enrolment and on offering inducements to opt out of auto-enrolment).

These restrictions could give rise to particular issues for employers offering flexible benefits packages involving the choice of alternative benefits to pension scheme membership. The DWP has warned that an employer who offers a flexible benefit package which provides alternative benefits instead of the basic 3% employer contribution could be at risk of breaching the ban on inducements.

The employment protection measures came into force on 30 June 2012. They apply to the Company even though it has not yet reached its staging date.

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## Record-keeping requirements

Employers are required to keep detailed records evidencing their compliance with the new duties and should, broadly, retain records of the following for six years.

## Penalties for failing to comply with the employer duties

The Pensions Regulator has been empowered to enforce compliance with the new regime and can impose a range of penalties on an employer that has failed to comply with the new duties.

If the Company does not comply with the auto-enrolment regime, the Pensions Regulator may intervene and require certain steps to be taken or levy financial penalties. As mentioned above, the Company will be required to register with the Regulator within four months of its staging date.

In the first instance, the Regulator can issue a formal compliance notice. If a breach is not remedied, the Regulator can impose fixed penalties starting at £400. In the case of serious or persistent breaches, the Regulator can order escalating penalties. These range from £50 a day for employers with one to four workers to £10,000 a day for those with 500 or more workers.

## Steps in preparation for auto-enrolment

There are several steps which can be taken to prepare for auto-enrolment and you should allow yourself sufficient time to ensure your processes will work. We would be happy to assist in this respect.

## Further information

The Pensions Regulator has published a range of helpful materials about auto-enrolment, including 12 detailed guidance notes.

Please let us know if you would like any advice on your specific auto-enrolment issues.



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