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DC schemes warned about rising AE errors

When auto-enrolment (AE) was first introduced, many employers were unsure of their legal duties and made genuine errors and omissions. Over a decade later, however, The Pensions Regulator (TPR) is now tightening up its enforcement regime.

In this briefing, we discuss the measures that employers should be taking to run compliant AE schemes and make the most of their investment in pensions.

AE schemes play a crucial role in providing an income when someone stops working. This is particularly important in today's insecure economic landscape, in which retirement is a common source of worry. The original intention was to 'nudge' people into saving for the future. Yet many individuals still see their pension plans and regular contributions as a low priority.

When AE was first introduced, many employers were unsure about the regulations they needed to comply with and the full range of duties to carry out. They often brought in schemes and processes in a hurry to meet strict deadlines.

At this time, The Pensions Regulator (TPR) tended to take a pragmatic view, appearing to understand that most failures of duties were due to genuine misunderstandings on the part of employers about what had to be done and by when, rather than deliberate omissions.

However, now that AE has been in place for over a decade, TPR understandably expects employers to be fully conversant with their duties and is taking a stricter approach, even where failures are unintended, as is often the case.

What should employers be aware of?

In our experience, the most common errors that employers and their payroll providers make include:

- Incorrect employee communications or failure to issue communications when required
- Incorrect pensionable earnings definition applied to contribution calculations
- Incorrect application of tax relief.

Of these, tax relief errors are particularly common. Correcting them can prove costly, time-consuming and damaging to employer-employee relationships.

More AE changes on the horizon

A government review in 2017 recommended lowering the age threshold for AE from 22 years to 18, and removing the lower limit of the qualifying earnings band, meaning that contributions would be paid from the first pound earned. This was, of course, before the social and financial impact of the Covid-19 pandemic hit us all.

However, the Pensions (Extension of Automatic Enrolment) Act 2023 has given the Secretary of State the power to implement both these changes. And given the recent change of government, we're now expecting them to be introduced sooner rather than later.

The changes should offer improved financial resilience for retirement among young people and lower earners. But they also place additional costs and responsibilities on employers.

TPR enforcement and penalties

AE duties are legal requirements. If employers fail to comply, TPR may undertake enforcement action, including compliance notices, and fixed or escalating penalty notices (fines).

With TPR expected to increase the number of checks they carry out every year, here are some of the key points that employers need to be aware of:

- Employers that do not comply face enforcement action via a risk-based approach

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- If contributions are missed or paid late, TPR expects employers to put their staff back to the position they would have been in had payment been timely. This may involve backdating contributions
- Where contributions are backdated, the employer must pay all unpaid employer contributions. And as part of any enforcement action, employers may also be asked to pay employee contributions and potentially make good lost investment returns
- Failure to maintain payment of the correct contributions to a scheme – or the use of an inappropriate definition of pensionable earnings – may result in penalties
- Penalties may also apply in the case of errors in AE communications to staff
- Penalty notices must be paid online or by BACS transfer.

With escalating penalties starting at daily rates of £50 to £10,000, depending on employee numbers, it's clear TPR will be taking a much stronger approach towards those employers that fail to comply with their duties.

Pension governance

Robust pension governance has never mattered more. Its key role in the effective running of every workplace scheme was reinforced in the King's speech at the State Opening of Parliament in July. The King said: "Bills will be brought forward to strengthen audit and corporate governance, alongside pension investment."

First Actuarial has launched FirstEngage, a package of DC services for employers keen to improve governance and safeguard compliance.

As part of FirstEngage, we will review your DC arrangements on a regular basis, including your compliance with the AE employer duties.

Our aim is to improve pension outcomes – engaging your employees and giving them more value from their pension savings, as well as increasing the return that you as an employer get from your investment in pensions.

FirstEngage can include these valuable services:

- A dedicated DC pension consultant and access to a wider team – To provide day-to-day support
- Annual scheme governance review and report – To meet the expectations of TPR
- AE oversight – To keep processes and communications clear and compliant
- Salary exchange – To help you set up and maintain salary exchange, and benefit from the significant tax savings it offers to both employers and their employees
- Employee engagement – To provide clear guidance and information for staff, helping them understand and value their pension.

Find out more about First Engage.

Get in touch

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