Automatic enrolment and pension contributions: COVID-19 guidance for employers

We know this is a challenging time for everyone and we recognise the strain this is putting on employers.

The Pensions Regulator (TPR) will take a proportionate and risk-based approach towards enforcement decisions, in light of these challenging times, with the aim of supporting both employers and savers.

The TPR are working with HM Treasury and the Department for Work and Pensions to feed into the Coronavirus Job Retention Scheme's central guidance on the pensions element of the grant. The guidance below addresses areas where some employers have asked for further clarity. They will be adding to their guidance next week (beginning 14 April), so please check back here for further updates.

Automatic enrolment duties

Have my workplace pension duties changed?

Your automatic enrolment (AE) duties continue to apply as normal, including your re-enrolment and re-declaration duties. This is the case whether your staff are still working or are being furloughed as part of the Coronavirus Job Retention Scheme.

New employers

If you are a new employer, you should continue to assess your staff and put them into a pension if they are eligible. You can also use a process called postponement which postpones your duty to assess new or newly eligible staff (and therefore make pension contributions) for up to three months.

Re-enrolment

Many smaller employers are approaching or carrying out their first re-enrolment of staff. We will continue to write to you with information and support on how to carry out your re-enrolment duties and complete your re-declaration of compliance, recommending that you assess your staff for re-enrolment on the third anniversary of your staging date or duties date.

You cannot use postponement at re-enrolment. However, if you are struggling to complete your re-enrolment duties on the third anniversary of your staging date or duties start date due to the coronavirus pandemic, you can choose a later date up to three months after your third anniversary to assess your staff. Use the TPR re-enrolment date tool to see your available dates.

The TPR knows that these are challenging times. If your business is struggling with cashflow as a result of the coronavirus, the government has published information about the support available for employers such as:

- the Coronavirus Job Retention Scheme, if you are struggling with maintaining your current levels of staff deferring VAT and Self-Assessment payments
- a Statutory Sick Pay relief package for small and medium sized businesses
- a 12-month business rates holiday for all retail, hospitality, leisure and nursery businesses in Great Britain
- small business grant funding of £10,000 for all business in receipt of small business rate relief or rural rate relief
- grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £15,000 and £51,000
- the Coronavirus Business Interruption Loan Scheme offering loans of up to £5 million for small and medium sized business through the British Business Bank
- a new lending facility from the Bank of England to help support liquidity among larger firms
- the HMRC Time To Pay Scheme

You can find out about the different support packages available on the Business Support website.

The TPR wants to help employers to keep going in these challenging times, so they will take a proportionate and risk-based approach towards enforcement against those who fail to meet their duties.

Maintaining pension contributions

Do I have to continue paying pension contributions?

The obligation for you and your members of staff to make contributions is set out in your pension scheme's rules or other governing documentation.

Your staff may choose to either reduce their contribution level (if the scheme rules allow this) or opt out or cease active membership of the scheme if they decide that is right for them at this time. However, you must not encourage or induce them to choose this option.

Any member of staff who reduces their contribution below the statutory minimum, or opts out, or ceases active membership, must be put back into the pension scheme at the next re-enrolment date provided they:

- Meet the criteria for re-enrolment.
- Opted out or ceased active membership more than 12 months before the re-enrolment date. If they have opted out or ceased active membership within the 12 months before the re-enrolment date you can choose to re-enrol them, but you don't have to.

Unless a member of your staff asks to opt out of their workplace pension or reduces their contributions, you and your staff members must continue to make the contributions required under the scheme at the correct time.

Any staff contributions you deduct from their wages must be paid to the scheme and not used for any other purposes.

If you're struggling to make pension contributions

The TPR appreciates that this is a challenging time in terms of cashflow and resources. The government recently announced that the Coronavirus Job Retention Scheme would include the employer's statutory minimum AE contribution. If you make a claim for a grant (to cover the lower of 80% of furloughed worker's salary or wage or £2,500 per month), you will also be able to claim the statutory minimum employer pension contribution on those wages.
If you think you may not be able to make your pension contributions, please speak to your provider in the first instance to explore whether there is flexibility to change the due date for payment of employer contributions to a future date or,

whether they may be able to help you plan to pay contributions over a longer period. You could also consider using the government support packages, which are there to help with cashflow.

Coronavirus Job Retention Scheme

The TPR are aware that many of you have questions about the pensions element of the Coronavirus Job Retention Scheme. They are working with their colleagues at HM Treasury and the Department for Work and Pensions to feed into the scheme's central guidance on the pensions element of the grant.

Employers have asked for some further clarity on the following issues.

Payroll processes and pension contributions

Even if you are making a claim under the Coronavirus Job Retention Scheme, your normal payroll process still runs as usual. Deductions such as tax and national insurance contributions as well as pension contributions will continue to be made from your furloughed member of staff's wages and paid as usual. You and your furloughed staff's pension obligations remain unchanged and you will still upload the contribution schedules to your pension provider.

The Job Retention Scheme does not require you to make any changes to your existing pension arrangements or your payroll processes. The current scheme rules and contribution requirements will continue to apply. When you pay your staff, you will run your pension contribution calculation as you do normally.

Some employers calculate their pension contributions on a different basis and do not use banded qualifying earnings. This may be because they have chosen to certify under set 1, 2 or 3 and pension contributions are calculated from the first penny of earnings.

Where this is the case you will calculate and pay across your pension contribution as normal. However, you will also need to calculate 3% of the qualifying earnings of your furloughed staff as part of the process for making the claim for the total grant under the Coronavirus Job Retention Scheme. This is in addition to your existing pension contribution calculation in payroll not instead of it.

Employers paying more than the statutory minimum contribution

You might pay more than the statutory minimum AE contribution included in the grant under the Coronavirus Job Retention Scheme because:

- you choose to pay your furloughed worker more than 80% of their salary or more than £2,500 a month
- the furloughed worker is an active member of a defined benefit (DB) pension scheme or a DB member of a hybrid pension scheme
- you choose to use certification for your defined contribution (DC) pension scheme (sometimes known as a 'money purchase scheme') and the scheme rules or governing documentation may require contributions from the first penny of earnings
- under the scheme rules, your contribution rate is higher than 3%
- under the scheme rules, you pay the total contribution and your member of staff does not pay any: this will be the case if you use salary sacrifice on pension contributions

If you are paying more than the AE statutory minimum contribution, the excess will not be funded by the Coronavirus Job Retention Scheme. You should continue to make the correct contributions due under the scheme and in this case will have to pay a proportion of the pension contribution cost yourself.

Reducing the employer contribution to the statutory minimum

If you use a DC pension scheme and your employer contribution under your scheme is more than the statutory minimum, you may be able to decrease it to the statutory minimum. However, you cannot legally reduce your contributions to below the statutory minimum.

There are a number of factors you should consider when deciding to decrease the employer contribution including:

- Your employment contracts with your staff and whether any changes need to be made, by agreement. You may wish to seek legal advice on the process.
- Any agreements you have with recognised trade unions or other staff representative forums to discuss or notify of such changes.
- The rules or governing documentation of the pension scheme you use, whether these currently permit you to reduce your contributions to the statutory minimum or whether you will need a change to the scheme rules. If the pension scheme you use is a Group Personal Pension it is unlikely that the contract permits a reduction and you and your furloughed worker may need to enter into new contracts with the provider. If you are unsure of your scheme provisions, you should speak to your scheme trustees or provider.
- Who has the power under the rules to make changes if you have a trust-based scheme. This might be you or the trustees or a shared power. If the power is a trustee power or shared power, you will need to engage with the trustees of your scheme. Even if you have the power to amend the scheme rules, we would recommend that you notify the trustees beforehand.
- Whether there are rules that apply under pensions legislation, even if employment law permits. For example, employers with at least 50 employees with a DC pension scheme, are legally required to consult with members if they are making changes that decrease employer contributions.

Employer consultation requirements

The requirement under pensions legislation to consult on certain changes only applies if you have at least 50 employees. Before you decide to decrease the employer contribution you must carry out a consultation in accordance with a number of rules. These rules include that the minimum period of consultation must be 60 days.

However, if all of the following apply, they will not take regulatory action in respect of a failure to consult for the full 60 days:

- You have furloughed staff for whom you are making a claim under the Coronavirus Job Retention Scheme.
- You are proposing to reduce the employer contribution to your DC scheme in respect of furloughed staff only. For staff who have not been furloughed the existing pension contribution rate will continue to apply.

The reduced contribution rate for furloughed staff will only apply during the furlough period, after which time it will revert to the current rate.

You have written to your affected staff and their representatives to describe the intended change and the effects on the scheme and on your furloughed staff.

The TPR would also encourage you to carry out as much consultation as you can. This regulatory easement will be maintained until 30 June 2020, but they will review this date as matters progress.

The TPR expects you to comply with the full consultation requirements when deciding to decrease the employer contribution if all the above criteria have not been met.

The contents of this document are provided by The Pensions Regulator (TPR). TPR is an executive non-departmental public body, sponsored by the Department for Work and Pensions.

If you would like any help please do not hesitate to contact us on 01603 789966 or email: corporate@smith-pinching.co.uk