

26 June 2015

# 3HR Legal Weekly

## Benefits Consultancy

### Auto Enrolment – The Pensions Regulator – FINES

Small and micro employers are being warned to check the date they must be ready to meet new workplace pensions duties and to prepare early.

All employers need to act as automatic enrolment enforcement activity increases. The Pensions Regulator (TPR) has the powers to take action against employers who fail to carry out their duties.

The Pensions Regulator has issued its first four escalated auto-enrolment penalties, which range from £50 to £10,000 a day depending on the severity of the breach. The organisations received fixed penalty notices for failure to comply with a statutory notice or specific employer duties. These are the first ever escalating penalty notices being given out to employers. Despite support from TPR and previous fines, they have still failed to comply with the legislation, proof that ignoring auto-enrolment simply isn't an option

The quarterly bulletin from TPR also found: 198 employers were fined for failing to comply with their workplace pensions duties between 1 January and 31 March 2015.

In this period we've seen an increase of almost 20% when it comes to fixed penalty notices, and over the last six months that figure is even higher, with the number of notices rocketing from just 3 to 367. We fully expect this to continue as the UK's 1.2 million SMEs [small and medium-size enterprises] stage over the next three years.

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## Immigration

### Employing Migrant Workers

**Q. We have a number of group companies in the UK and also a number of different office locations, what options do we have regarding getting a Sponsor Licence to employ migrant workers?**

A. Many of our clients find themselves in this situation, and fortunately there are a number of options available - and the options are applicable regardless of whether you have different group companies, office locations or both. One very important point to note that the Home Office has recently confirmed is that any location at which migrants regularly work must be registered on the Sponsoring company's Sponsor Licence.

The options for companies in this situation are either for each business or office to obtain its own Sponsor Licence, or for them each to be formally registered with the Home Office as linked to one Sponsor Licence. Each option has advantages and disadvantages - the first option has the added expense of numerous Licence applications, as well as needing multiple Key Personnel (such as Authorising Officer, Level 1 Users, etc.). However, it has the benefit of no individual organisation being dependent on another for its ability to employ migrant workers. The second option, by contrast, has the benefit of requiring only a single initial Sponsor Licence. However, any breaches of the Home Office rules by one of those linked entities could potentially lead to the loss of the one Sponsor Licence - being potentially disastrous for all of the entities in the event of the loss of all migrant workers.

To link the entities and therefore take advantage of the second option above, requires a submission to the Home Office, together with some evidence of the connection between the companies or office locations. This is something that 3HR has substantial expertise in and are able to assist with. Of course, which option is the best for your company will depend on your specific circumstances and it is important to be aware of the benefits and risks of each option available to you.

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## Employment Law

### Travelling To Work

**Is time spent travelling to work 'working time'?**

The Advocate General (AG) has given an opinion in a Spanish reference to the European Court of Justice that travelling workers who have no fixed or habitual workplace can count the time spent travelling from home to their first customer and from their last customer home as 'working time' under the Working Time Directive. If followed by the ECJ, this could have an impact on the way pay for mobile workers in the UK should be calculated.

In this Spanish case, Tyco employs around 75 workers in Spain installing and maintaining security equipment. Each of these is assigned to the Madrid office but in practice as each has responsibility for a particular geographical area they spend their working days travelling to clients' premises to do their work. The workers have the use of a company vehicle which they use to go from home to work, during work and to return home at the end of the day. Historically, Tyco did not treat the first and last journey of the day as working time so a worker's working hours started to run from the worker's arrival at the first customer of the day and ended when the worker left the premises of the last customer. The workers sought to challenge this classification as being contrary to the Working Time Directive.

In the AG's opinion, when these travelling workers are in their vehicle travelling to a client they are at their workplace. The AG was clear that during the journeys the workers were at their employer's disposal and for these workers, travelling is an integral part of the work and is a necessary means of providing services to the customers, meaning that it should be regarded as forming part of the workers' activities.

The AG's opinion is not binding but is often followed by the Court, which will give its judgment later this year. If the Court follows this opinion, employers will need to recalculate their travelling workers' hours and pay accordingly and will need to bear in mind the daily and weekly rest periods to avoid breaching the Working Time Directive.

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