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3HR Legal Weekly

Employee Benefits

Automatic Enrolment: Assessing Your Expatriate Workforce

Q: Do expatriate workers need to be enrolled into an automatic enrolment compliant pension scheme?

A: Employers preparing to meet their auto enrolment duties will probably not expect to be required to enrol foreign nationals into a qualifying workplace pension scheme (QWPS). However, there is currently no statutory exemption for expatriates on assignment in the UK. An employer will need to carefully examine their expatriate workforce in order to determine their eligibility for auto enrolment.

Employers will first need to consider if their expatriate assignments meet the definition of “worker”. This is wider than the definition of “employee” and it is likely that most expatriates on assignment in the UK will be considered a worker. The next step will be to consider if the expatriate meets the definition of “ordinarily working in the UK”. Auto enrolment legislation states that only workers that are working or ordinarily working in the UK will need to be automatically enrolled into a QWPS.

Currently there is no clear legal definition of “ordinarily working in the UK” and this can make it hard to determine what duties are owed to expatriate workers. However, The Pensions Regulator has provided guidance on what criteria will help determine if an individual is working or ordinarily working in the UK. According to this guidance, most expatriates will be exempt as long as:

- the expatriate’s contract of employment is outside of the UK with the parent company, and;
- the expatriate’s parent company continues to be considered their head quarters, and;
- there is a clear expectation that the expatriate will return to the parent company upon completion of their assignment.

The situation will not always be clear, with expatriates occasionally fulfilling some, but not all of the above criteria. The length of an expatriate’s assignment can also be a factor. Where the situation is not clear, it is recommended that employers seek legal advice or assistance from pension professionals.

3HR Benefits Consultancy and 3HR Legal Services have a wealth of experience in assisting employers with assessing their expatriate assignments and with their automatic enrolment preparations.

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Immigration

Premium Service Centre Appointments

Q. I have heard there are changes in the way that Premium Service Centre appointments are booked for visa extensions – how will this affect me?

A. The Home Office is changing to an online approach to submission of visa extension applications, so that the extension process is now more aligned with the entry clearance process. In practice, this means that it is necessary to submit the application form online before it is possible to proceed to booking an appointment (or checking appointment availability). As such, we are now letting clients know that we need all of their relevant personal information and copies of their documentation in advance of being able to book the appointment.

We suggest that companies aim to start the application process earlier now, in order to minimise the disruption caused by this new system. Before, it was possible to book an appointment and then use the intervening time to prepare the documents and provide all the necessary information for our completion of the application forms. Now, the earlier the documents and information are provided to us, the earlier we will be able to book an appointment. Of course, this also means that the later the information/documents are provided, the later it will be possible for us to arrange the appointment and therefore there is a greater chance that the preferred time and date will not be available.

Due to the likelihood of changes to the Immigration Rules in the early part of next year, we have been encouraging clients to start thinking about their extension applications earlier and this new system reinforces that approach. Remember that a Certificate of Sponsorship can be assigned up to 3 months before the intended start date, so early planning is still possible.

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