

AUTOMATIC ENROLMENT FACTSHEET 7

WORKERS

It's important employers fully understand their duties as part of automatic enrolment. To assist with this, Scottish Widows has produced a range of fact sheets covering some of the key technical aspects of the regulations. Further details may be found on The Pensions Regulator's website: <http://www.thepensionsregulator.gov.uk/employers/tools/employer-duties.aspx>

The automatic enrolment (AE) legislation applies to all workers who wholly or ordinarily work in the UK. An employer needs to establish who its workers are, before categorising them as eligible jobholders, non-eligible jobholders and entitled workers. This fact sheet explains the definition of a worker for AE purposes and summarises the guidance on establishing whether someone's wholly or ordinarily working in the UK.

WORKER

A worker is someone who has a contract of employment, which doesn't have to be in writing.

Contracts for services

Some individuals engaged on a self-employed or contract for services basis are treated as workers under the AE regulations, even if HMRC accepts they're self-employed for income tax purposes. This applies if someone has a contract to perform work or services personally, rather than to undertake the work as part of their own business for a fee. Any employers who think this may apply to them should seek legal advice.

Agency workers

If someone (the worker) has a contract of employment with a firm (the agent) which pays their salary while allocating them to work on temporary assignments with third parties (the principal), the agent is the employer who's responsible for the AE duties towards the worker. If the agent arranges the engagement for the worker, but the worker then has a contract of employment with the principal which pays their salary, the principal has the AE duties.

Where the worker doesn't have a contract with either the agent or the principal, the next step is to look at the contract between the agent and principal to determine who's responsible for paying the worker. Whichever of the agent and principal is contractually responsible for paying the worker has the AE duties for that worker.

It's also possible that the worker doesn't have a contract of employment, and the contract between the agent and principal doesn't specify which of them is responsible for paying the worker. If so, whichever of the agent and principal actually pays the worker has the AE duties.

Company directors

There are special provisions for one-person companies. If an individual is the sole director of a company under a contract of employment, and there are no other employees, the director isn't a worker. However, as soon as the company has at least one other employee, all the employees including the director are workers.

A director of a company can only be a worker for AE purposes if they have a contract of employment with the company. This should cover other directors of small owner-managed companies even where they award themselves salary as part of their remuneration/profit distribution strategy.

Office holders

Office holders, such as non-executive directors and company secretaries aren't normally workers. However, if they have a contract of service for all or part of their duties, they are a worker.

WORKING IN THE UK

In most cases, it's clear that someone is working wholly in the UK. The starting point is whether their employment contract requires them to work at a UK location. If so, any occasional business trips outside the UK as part of their work are irrelevant. The legislation also applies to non-UK nationals, unless they're working in the UK illegally.

Someone is working wholly in the UK if they're a seafarer on a ship operating exclusively in UK territorial waters and/or someone who works offshore in the UK sector of the continental shelf or the UK sector of a cross-boundary oil-field.

If someone is working in the UK and hasn't been seconded here from overseas, their nationality, country of residence, and employer's nationality have no effect on whether the AE provisions apply to them.

ORDINARILY WORKING IN THE UK

Some employers will have to consider in more detail whether some of their workers are working or ordinarily working in the UK. Obvious examples include airline employees, seafarers and holiday representatives. Employers who send their UK based employees on overseas placements and secondments with their own holding companies, subsidiaries or other employers will also have to consider whether the worker continues to be ordinarily working in the UK. Similarly, overseas employers who place or second employees to UK firms will also be subject to the AE provisions and will have a duty to consider whether the worker is now ordinarily working in the UK.

Airline employees

James is an airline pilot who lives in the UK and has a contract of employment with a UK airline on long haul flights, mainly to the USA. His employer deducts UK tax and National Insurance from his salary, which is paid in sterling. Although he frequently spends several days away from home as part of his work, he's regarded as ordinarily working in the UK. He's considering moving to Amsterdam and commuting to work so that he'll remain employed on identical terms. If he does so, this won't change the fact that he's ordinarily working in the UK.

Jillian's position is different. She lives in Holland, where she's employed by a Dutch headquartered airline as cabin crew on long haul flights to New Zealand and Australia. She's paid in Euros with no National Insurance deductions. She commutes to and from a UK airport, where her employer has offices and her work starts and finishes. Jillian isn't ordinarily working in the UK.

Holiday firms

Cliff is employed as a ski instructor by a UK holiday firm. His short-term contract of employment states he'll be based in Canada for the season and paid locally in dollars. He's required to attend a week's training session at the firm's UK headquarters before leaving to begin work in Canada. The holiday firm can consider that he doesn't ordinarily work in the UK.

Helen is employed as a tour representative by a UK holiday firm, based in Watford where she lives. Her contract of employment states that she must go on placement to any of its Greek resorts, but will work at the Watford headquarters between placements.

Her placements usually run for between four to six months, and she spends only a few weeks in the UK each year. She's paid in sterling and her employer deducts UK tax and National Insurance from her salary. Despite the amount of time she spends outside the UK, she's considered to be ordinarily working in the UK.

Overseas placements and secondments

Kevin's employer is a UK IT company, the subsidiary of an Indian firm. At the time his employer's assessing whether he's a worker for the purposes of its AE obligations, he's halfway through a four year placement at the holding company's Indian headquarters. Before he left, he lived and worked in the UK and was paid in sterling with deductions for tax and National Insurance. His contract of employment is still with the UK company and he's expected to return to work for it at the end of the placement. As he's still UK based, he's treated as ordinarily working in the UK. If the IT company's other employees take up placements in India on the same basis after AE's introduced, those employees will also remain treated as ordinarily working in the UK.

Dorota is from Poland and works for a Polish employer. She's seconded to the UK for two years and expects to return to Poland at the end of that time. Her contract of employment is still with the Polish company. The UK company pays her salary with UK tax and National Insurance deducted on behalf of her employer. The UK company has no AE duties in respect of Dorota, as it's not her employer. The Polish company does have AE duties towards Dorota, but concludes she's not ordinarily working in the UK.

Every care has been taken to ensure that this information is correct and in accordance with our understanding of the law and HM Revenue & Customs practice, which may change. However, independent confirmation should be obtained before acting or refraining from acting in reliance upon the information given.

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