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Monday 01 August 2005



FEATURES

Consultation is the key in shake-up of pensions

Personnel Today 12 July 2005 00:00 This article first appeared in Personnel Today magazine. **Subscribe online** and save 20%.

Yet again, pensions are in the news. The government proposes introducing consultation obligations for both occupational and personal pension...

 **Article continues below**

An advertisement for Microsoft Business Solutions. It features a stack of papers on a clipboard with the text "SUPPLY CHAIN MANAGEMENT SOFTWARE FROM MICROSOFT". To the right, the text reads "Take control with Microsoft Business Solutions." and "Find out how." with a blue arrow pointing right. At the bottom left, there is a list of services: "Financial Management", "Customer Relationship Management", and "Supply Chain Management". At the bottom right is the "Microsoft Business Solutions" logo.

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... schemes. These force employers to highlight key issues and consult before making major changes to pension schemes. Currently, the weight of operating a pension scheme is leading many employers to limit their pensions obligations. Balanced against this is the general concern about the low level of pension provision. Inevitably, any further obligations on employers is a hot topic.

Background

The Department for Work and Pensions (DWP) recently published a

consultation paper and two sets of draft regulations. By requiring employers to consult with employees before making major changes to pension schemes, these draft regulations aim to provide protection to active and prospective scheme members, while maintaining the employer's ability to make long-term commercial decisions.

The consultation on the draft regulations will run until 26 August 2005. Thereafter, like the Information and Consultation of Employees Regulations 2004, the new rules will be implemented in phases each April depending on the number of employees in the business. They will apply to businesses with more than 150 employees from 2006, those with more than 100 employees from 2007 and to businesses with more than 50 employees from 2008.

The draft regulations

The first set of regulations, entitled Occupational and Personal Pension Schemes (Consultation by Employers) Regulations 2006, lays out the consultation process. The second, entitled Pensions Act 2004 (Consultation by Employers) (Protections for Nominated Representatives) Regulations 2006, provides protection for nominated representatives from detriment or unfair dismissal and gives them the right to paid time off to carry out their duties.

The main provisions

- Employers must consult employees if making one or more of the 'listed changes'.
- The listed changes are different, depending on the type of pension scheme being considered, but include increasing the age at which benefits become applicable to employees, preventing new members being admitted to the scheme, removing an employer's liability to make contributions towards the scheme and introducing member contributions where they were not previously payable.
- If required to consult, employers must give employees and their representatives written information about the proposal, including a closing date for the submission of any comments.
- The written information must be provided at least two months before the change is to take place. It should state what effects the proposed change would make on the scheme and members, be accompanied with any relevant background information, indicate a timescale for the implementation of the changes and be given a time which enables the representatives to consider and study the impact of the changes.
- The employer must consult with employee representatives who may be representatives of a trade union, elected under the information and consultation regime, or specifically elected for the purposes of the regulations.
- At the closing date for submissions, the employer must consider any comments that have been received.
- If the regulations are not followed, a complaint can be made to the Pensions Regulator.

Other similar consultation legislation in the employment arena has been interpreted as requiring employers to show they have genuinely considered employee comments, but employees are not able to exercise a veto.

Conclusion

The listed changes include steps which employers often take to 'manage'

their pensions deficit. It is likely that those employers who have not already made these changes will be prompted to bring forward any changes they might have in mind.

Once consultation is required, the formal process will involve careful organisation and preparation of the written information.

Claims have been made in consultation situations where employees were misled as to the consequences.

When workplace relations deteriorate, other pressures may be brought to bear, and workforce pressure may lead some employers to abandon plans to change their pension schemes.

Key learning points for HR

- Review your pension obligations - now
- Note when the regulations come into force for your business
- Ensure senior management understand the implications
- Look out for the guidance for businesses - to be published early next year by the DWP

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