Pensions for self-employed – is the Department for Work and Pensions missing the obvious?

Employment Tax

01 April 2019

Auto enrolment should already apply to self-employed ‘workers’ but this is largely ignored. If you have any self-employed clients that you think could be ‘workers’, please let LITRG know so we can try and gauge the extent of the issue.

There is currently a lot of debate about how to help self-employed people save for retirement and, in particular, whether the self-employed could somehow be included in the auto-enrolment regime.

The Department for Work and Pensions (DWP) has recently announced it will work on improving pension participation and retirement outcomes among self-employed people by testing a number of different approaches. Their report sets out their plans and also invites organisations from a range of sectors, including invoicing software providers and accounting organisations, to work with the DWP to co-design and test interventions.

This is encouraging, but there is an omission in the report which is that the lowest paid and most vulnerable in self-employment are probably already included in the auto enrolment regime – by virtue of having ‘worker’ status for certain employment law purposes.

A ‘worker’ is basically someone who provides work or a service as part of someone else’s business. A ‘worker’ generally must carry out the work personally, rather than being able to send someone in his or her place. Their work arrangements tend to be ‘midway’ between self-employment and employment in that do not have the ‘master/servant’ relationship that an employee has with their engager but neither are they 100% their own bosses, deciding how much to charge for their work, how

much holiday to give themselves, and so on.

This is why ‘workers’ have a minimum set of employment rights to help protect them, including the right to be paid the minimum wage, to annual leave – and to a workplace pension.

‘Worker’ status could encompass vast swathes of dependent self-employed people – for example people in the construction industry (such as a carpenter providing his services to a building contractor) and those in the gig economy (as per the recent Court of Appeal decision in

Uber BV v Aslam & others EWCA Civ 2748 upholding the decision of the Employment Appeal Tribunal).

Auto enrolment applies to ‘workers’ rather than to just employees (Pensions Act 2008 s88) and indeed, The Pensions Regulator have some quite detailed guidance on how to identify ‘workers’ – see pages 8 and 9 of their ‘Detailed guidance for employers’ booklet.

However, The Pensions Regulator has no guidance available on its website to businesses around the mechanics of administering auto enrolment in ‘worker’ cases (where the individual might not be on the payroll). Nor does there appear to be any specific compliance or enforcement work going on in this area (an almost impossible task, we would have thought, due to issues with individuals not appearing in any official data).

Awareness on the part of individual is also probably low, as GOV.UK does not list auto enrolment as a ‘worker’ right. The bottom line seems to be that while pension provision is theoretically available for ‘workers’, it does not transpire in practice.

It is hard to know where to begin in a bid to try and understand more about this issue. However, from a practical perspective, we thought it would be useful to start by trying to estimate the size of the problem and this is where you come in. Do you have any clients that are self-employed but could have ‘worker’ status? How many? Has any business ever asked you for advice about administering a workplace pension for someone off payroll? Have you ever seen a workplace pension in operation for a ‘worker’? Any evidence or examples that you could provide us with (to the address below) will be very helpful in informing our next steps. Thank you.