

JLT Employee Benefits

AE Smart



FACT SHEET 120. Who Does Auto-Enrolment Cover?

This fact sheet explains who auto-enrolment covers. Who do you need to assess and potentially pay contributions for? Are there any people that work for you who you don't have auto-enrolment duties towards?

Key Facts

- > Auto-enrolment rules apply to anyone who works for you in the UK under their contract.
- > It is usually straightforward to work out who this means, but it can sometimes be unclear if an individual is employed or self-employed, works in the UK or is the responsibility of an agency.
- > There are some questions you can ask to help determine if someone is an employee or not.
- > The final decision rests with you.

What is a “worker?”

“Worker” is the term that the auto-enrolment rules use to mean someone that you need to manage for auto-enrolment.

The rules define a worker as any individual who:

- > works under a contract of employment, or
- > has a contract to perform work or services personally and is not undertaking the work as part of their own business.

In other words, is the person your employee? In most cases, this is clear, but there are some grey areas where you might have to use your judgement.

Some rules of thumb

Here are general rules of thumb which we have found useful.

- > If you apply national minimum wage and working time rules to someone, then this is a good indication that they are a worker because the same definition applies.

- > If you have to use your judgement, gather all the evidence you need and document your decision, so you have an audit trail if you are challenged.
- > Casual workers, workers on zero-hour contracts, apprentices and UK workers temporarily seconded overseas are usually in.
- > Equity partners, agency workers, non-executive directors, volunteers, local authority councillors and overseas workers temporarily seconded to the UK are usually out.

The rules in practice

The definition of worker is effectively taken from employment legislation, which is, in turn, fleshed out by principles set out in case law.

If you need to check if someone is a worker, you should start with their contract with you. Remember that the contract does not have to be in writing. What you have said to the person, as well as what happens in practice, may be important.

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Unfortunately, there is no single test that determines if someone is a worker. Instead, you must look at the entire picture for each person. The final decision is yours.

Employee or contractor?

If you are not sure if someone is an employee or a contractor, here are some questions to ask.

- > Does the individual perform their work/services personally, or could they send a replacement?
- > Are they undertaking work as part of their own business?

We have included a checklist at the end of this fact sheet to help you decide if someone is a worker or not.

Non-executive directors, office holders and other groups

Non-executive directors are usually office holders and not workers because they do not have employment contracts. If they do have an employment contract, they would

count as workers and need to be managed for auto-enrolment.

We have come across many groups where there has been debate about their status, such as apprentices, exam markers, minister of religion, local government councillors.

The same rules apply to everyone. You should apply the rules of thumb and checklist to help you work out if they are workers or not.

If you need extra help, please discuss your circumstances with your AE Smart Guide.

Special Tax Status

There are some special tax arrangements that have grown up over the years where HMRC allow someone to have Schedule D (self-employed) tax status, even though that person is a waged or salaried worker. You often find these arrangements in certain industries, such as the entertainment industry.

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People with these arrangements still count as workers and auto-enrolment applies to them.

Overseas workers

Automatic enrolment applies to a worker who is working or ordinarily works in UK under their contract.

Again, you should first look at the contract to decide a worker's normal place of work.

Where there is doubt, the key issue is whether the individual's base is in the UK. To work this out, you should consider

- > Where their base is in their employment contract
- > Where their duties start and end
- > Where they live
- > What currency they are paid in
- > Whether they pay UK tax/NI (but tax status in itself is not conclusive as to whether someone is a worker).

Agency Workers

Whoever is responsible for paying agency workers is responsible for auto-enrolling them. In general, this is the agency.

If you have agency workers, you should check your agreements with them, to see whether or not they could pass the costs on to you.

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Checklist

You can use this checklist to help you determine if an individual is covered by auto-enrolment rules. If you can tick most or all of the boxes below, then they probably are.

<input checked="" type="checkbox"/>	Questions.
<input type="checkbox"/>	Do they have a contract of employment?
<input type="checkbox"/>	Did they sign standard terms and conditions?
<input type="checkbox"/>	While at work, are they under the supervision or control of a manager?
<input type="checkbox"/>	Do you have to offer them work, which they have to accept?
<input type="checkbox"/>	Are they integrated into your business?
<input type="checkbox"/>	Are they expected to perform the work personally (ie they cannot send a substitute in their place)?
<input type="checkbox"/>	Do you deduct tax and National Insurance from the individual's wages?
<input type="checkbox"/>	Do you provide any tools, equipment and materials necessary to do the work?
<input type="checkbox"/>	Do they regularly work for you?
<input type="checkbox"/>	Do you pay sick pay or maternity/paternity/adoption pay?
<input type="checkbox"/>	Do they have to ask you for time off and get holiday pay?

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