

# JLT Employee Benefits

# AE Smart



## FACT SHEET 430. How Are HR Procedures Affected?

**This fact sheet explains the safeguards that protect the pension rights of both your current and prospective employees. These applied to all employers from July 2012 and we recommend that you update your HR procedures and guidance.**

### Key Facts

- > You must not take, or fail to take, any action that results in your employees ceasing active membership of a qualifying pension scheme, or which results in such a scheme ceasing to be a qualifying scheme.
- > Any decision by your employees to opt out of or leave their pension scheme should be taken freely and without influence, and they should not be subject to any unfair treatment because of scheme membership.
- > You must not try and screen job applicants on grounds relating to potential pension scheme membership.
- > It would be good practice to incorporate the above safeguards into your HR procedures manual or guidance.

### Introduction

There are safeguards that protect your employees' pension rights. There are also measures to protect job applicants.

These safeguards have been in force since July 2012 and apply to you regardless of when your staging date is.

### Stopping active membership of a qualifying scheme

Unless an employee makes a request, or is already an active member of another qualifying pension scheme for automatic enrolment purposes, you must not take, or fail to take, any action that results in either:

- the employee ceasing to be an active member of a qualifying scheme; or
- the scheme of which they are an active member ceasing to be a qualifying scheme.

If either of the above should happen, you must immediately re-enrol the

employee back into an automatic enrolment scheme.

In certain circumstances, you may need to consult before you cease active membership of a pension scheme (see *Fact Sheet 340: Do I Need to Consult Employees?*).

### Unfair treatment of employees

You must not treat an employee unfairly or dismiss the employee on grounds related to auto-enrolment. For example, you cannot deny an employee promotion or other training opportunities just because he or she has decided not to opt out of pension scheme membership.

If this safeguard is breached, the employee can take you to an employment tribunal.

### Inducements

You cannot try to make someone leave a pension scheme. This is called an inducement. For example, you cannot tell someone that they should opt-out

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or else there won't be any money for pay increases.

It does not matter whether or not you succeed in making someone leave the scheme; trying is enough.

If you are unsure whether or not something would be regarded as an inducement, the "sole or main purpose" test should be applied. Is the sole or main purpose of what you are doing to persuade employees to opt-out or cease membership?

In other words, you need to think carefully about the motivation behind the action being contemplated.

The Pensions Regulator has provided some examples in their Safeguards guidance which you can see at: <http://www.thepensionsregulator.gov.uk/docs/detailed-guidance-8.pdf>.

### Prohibited recruitment conduct

During the recruitment process, you cannot say or imply that a job applicant's success could depend on

whether or not they opt out of an automatic enrolment pension scheme.

The aim of this measure is to stop employers from trying to screen out job applicants that they believe will join the pension scheme.

### Ensuring compliance

To ensure that your organisation complies with the auto-enrolment safeguards, we recommend that the 'unfair treatment'; 'inducements' and 'prohibited recruitment conduct' sections of this Fact Sheet are incorporated into your HR procedures or guidance.

Whilst not compulsory, this is good practice and may help prevent or mitigate inadvertent breaches.

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