XpertHR Podcast

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Clio Springer: Hello. Welcome to this week's XpertHR podcast with me, Clio Springer. Pensions auto-enrolment was introduced due to widespread concern that too many people would not have sufficient pension provision on retirement. It was initially legislated for by the previous Labour government, and the provision started to kick in during the Coalition government with the first employers auto-enrolling from October 2012. So where are we now?

I'm delighted to welcome to the podcast this week our guest speaker Kate Upcraft. Kate is a Payroll Consultant and contributing author to XpertHR's pay and pensions content, and she's going to talk us through the rules. Thank you for coming in today, Kate.

Kate Upcraft: You're welcome.

Clio Springer: Okay, so my first question: where are we now? [0:00:49.9]

Kate Upcraft: Well even though auto-enrolment's been rolling out for four years, we've still got a million employers to auto-enrol by February 2018. It really is the most challenging period of all, as most of these employers have got no experience of pensions at all, and so need an awful lot of help and support, just at the time, of course, when the intermediary market's stretched because of the volumes that are involved.

Clio Springer: Well you mentioned February 2018 there. Is this the final staging date for pensions auto-enrolment and which employers is that going to apply to? [0:01:16.7]

Kate Upcraft: Yes. There are just eleven staging dates left and a million small or micro-businesses who've got to stage for auto-enrolment. But it is worth remembering that you can bring your staging date forward now with less than a month's notice since the beginning of this tax year. But if you're using a payroll agent to run your payroll, don't think of doing that before discussing with them whether they can cope with you moving your staging date. And if you're thinking of creating any new businesses, be aware that from next October, 1st October 2017, any new business will have an obligation to auto-enrol their eligible job-holders the first time that anyone is paid at the right age and earnings level. There aren't going to be future staging dates. You'll have an immediate obligation to offer pensions.

Clio Springer: Okay, well from your experience, Kate, how do you think pensions auto-enrolment's been going generally, particularly in terms of take-up and compliance? [0:02:04.7]

Kate Upcraft:	I think it's fair to say it's going as well as you could expect at this stage, and that really is testament to those payroll agents, such as accountancy practices, because they've really worked flat-out to learn to become pensions specialists. They didn't have exposure to pensions before because their smaller clients didn't offer pensions. And also the pensions and payroll software developers, they've really utilised technology to try and streamline what was very manual at the outset, so that you can deal with the huge volumes we've got. But of course small and micro-employers, who are the ones to stage now, haven't got the time and resources that perhaps the larger employers have, so this is why we're starting to see more compliance issues, and the regulator starting to issue increasing numbers of fines.
Clio Springer:	And what are the fines typically for? [0:02:48.6]
Kate Upcraft:	Well mainly relating to failing to make what's called the Declaration of Compliance. And that's sad because it usually means that the business might well have done everything else but they've fallen at the last and almost really the easiest hurdle. And also we're starting to see some providers themselves falling by the wayside, and that's also probably going to increase over the next few months because we've got a new piece of legislation – a Pension Schemes Bill – coming through Parliament that's going to have an impact on some of those new starters in the pensions market.
Clio Springer:	Okay, well that's some of the background, so can you give us an overview of what pensions auto-enrolment means in practice? [0:03:24.4]
Kate Upcraft:	The key thing is that you have to incorporate auto-enrolment into everything you do in HR and payroll – all your activities from recruitment to promotion, and even when people's employment's been terminated. So all parts of your employee lifecycle, you've got to consider the impact of pensions membership. So that impacts your policies, your software, the communications that you send out. And at the same time as we've got these million small and micro-employers auto-enrolling, many of the medium-sized employers are re-enrolling because they've reached their third anniversary of staging, and the pay period they choose to re-enrol is really important too, because they've got to run two assessments in the same pay period. So worth speaking to your payroll software provider if that's coming up for you soon.
Clio Springer:	Okay, well we can have a look at re-enrolment later. So can you talk us through any rules about the pension scheme itself and the minimum requirements? [0:04:14.9]
Kate Upcraft:	Yes, lots of very small employers are probably assuming they've got nothing to do because their employees have already got existing personal pensions, but sadly a lot of those old legacy schemes aren't classed as qualifying auto-enrolment schemes, which means you've got to close them down and find a new provider. In fact, that's happened to me this month because it's my staging date, I had a

stakeholder pension scheme, it wasn't auto-enrolment-compliant so I've had to close it down and find somebody who can provide a new scheme to me.

Clio Springer: That's not necessarily going to be the position of all employers that have always had a pension scheme? [0:04:49.0]

Kate Upcraft: No, of course not. Not all the legacy schemes are going to be non-compliant and if you've found that the scheme you've had for many years is classed as a qualifying scheme by the provider, then there's absolutely nothing to do. The employees can stay in it; as long as you're paying the right level of contributions you don't even have to tell them anything.

Clio Springer: Well going back to the obligation to auto-enrol, can you explain that in a little bit more detail? [0:05:10.3]

Kate Upcraft: Yes. There are three groups of workers and they all have different duties that apply to them as part of auto-enrolment. Now you notice I specifically didn't call them 'employees' because this is a bigger group than employees, and some research carried out last year by the Citizens Advice Bureau found that there were about half a million individuals who are classed as 'personal service workers'. They're invoicing their clients but although they class themselves as self-employed, they are within the scope of auto-enrolment, and they're a really hard group to deal with because they're not on typical payroll and HR systems; they're on finance systems.

So the workers who are subject to employment contracts – the ones who are on the payroll – they're the easy group to assess because you have visibility of who those three groups are.

Clio Springer: Okay, so moving onto those three groups. [0:05:55.0]

Kate Upcraft: Right. So the eligible job-holders. They're the group who are aged 22 to state pension age, who've got qualifying earnings (and that's a specific definition that are over the current auto-enrolment threshold of £10,000 a year).

The second group are called 'non-eligible job-holders'. They are either 16-74, who are earning between the lower earnings limit for National Insurance (which is just around £6,000) to £10,000, that auto-enrolment threshold, or they're too young or too old in government terms (so under 22 or over state pension age), regardless of what their level of earnings are.

And then the final group are called 'entitled workers'. They're 16-74 but they're earning under that lower earnings limit for National Insurance, so under £6,000 a year.

Clio Springer: Okay, so let's start with eligible job-holders. [0:06:47.0]

Kate Upcraft: Yes. Your payroll or pensions software will help you decide who the eligible job-holders are. I would ideally suggest that assessments are done in your payroll software rather than your pension provider doing them. I would say that, you might say, because I'm a payroll consultant, but this is particularly around avoiding any doublehandling of data and extending deadlines by passing information backwards and forwards.

So other than meeting the age and earnings that we've already talked about, some of those eligible job-holders you can exclude from auto-enrolment if you want to, but it's entirely up to you whether you want to use those exemptions.

Clio Springer: And who would be in those excluded groups? [0:07:23.3]

Kate Upcraft: Okay, there are some specific groups then. People you know who are about to leave, directors, equity partners in any partnerships, employees who've already taken pensions tax protection because they've reached the pensions lifetime allowance so they can't be in a pensions scheme again, and anybody who's in the last twelve months just told you they don't want to be in a pensions scheme and come out. All of those groups you can choose to exclude if you want to.

Clio Springer: Okay, but for eligible job-holders who are not in one of the excluded groups, what happens to them? [0:07:52.8]

Kate Upcraft: Well once you've assessed them and worked out that that's who they are, you've got to make arrangements for them to be automatically made members of a qualifying pensions scheme, and then tell them that's what's been done to them, and give them details of how they can opt out of what you've done to them directly with your chosen pension provider if they want to.

Clio Springer: Okay, well let's move onto the non-eligible job-holders now. [0:08:13.4]

Kate Upcraft: So the non-eligible job-holders, they aren't auto-enrolled but you still have to tell them that they have the right to opt in voluntarily if they choose. If they want to exercise the right there's no deadline to doing that, but if they do choose to opt in, you've got to make them members of the same qualifying pension scheme as the eligible job-holders.

Clio Springer: Okay. And the final group? [0:08:34.2]

Kate Upcraft: These are the entitled workers. They'll probably be your casual or seasonal employees, probably least likely to want to join a pension scheme, but they've still got to be offered the opportunity. What you can do is not offer them the same quality of pension scheme as your eligibles and non-eligibles, just one that's registered with HMRC for tax relief.

Clio Springer: Okay, so any employer that hasn't yet staged will need to identify which groups their workers fall into and all employers need to continue to do this post-staging for new workers? [0:09:04.4]

Kate Upcraft: Yes, for new workers, but in fact for any employees whose age and earnings change. That's why you've got to do an assessment every payroll run. So it's not just a job that you do once at staging and then every three years.

If you're not really sure how many of your employees fall into each of these three groups, you could run a check at the moment, ahead of your staging, using something called the “duties checker” on the pension regulator’s website, which will give you a handle on how many you’ve got in each category based on your current data.

Clio Springer: Presumably if someone opts out of the pension, they and the employer are going to get back any contributions that they’ve already made? [0:09:40.8]

Kate Upcraft: As long as they do it within the timescale. So they’ve got 30 days to exercise their opt-out right from the date that you first write to them and yes, they would both get their contributions back – the employee and the employer – and they’ve got the choice to opt back in at any time. They can only opt in once a year but they can opt in at any time.

If they don’t opt out, of course, they stay in pension membership and it’s up to the employer to take the right level of contributions from their pay each pay period.

What the definition of ‘pensionable pay’ is, of course, is not the same as ‘qualifying earnings’ that it takes if they go into a pension scheme in the first place. ‘Pensionable pay’ is set by the scheme rules for the pension that you’ve chosen. We have to acknowledge at the moment, of course, that total contributions are set at 2% including tax relief at this point in time.

That £10,000 that I mentioned, that is the threshold for putting them into a pension, does have the opportunity to be changed by the Government on an annual basis. We’ll probably know before Christmas this year if it’s going to change for 2017/18. The view is it’s unlikely to, but bear that in mind. There’s an opportunity for it to change and your pensionable pay is something you do have more control over within your own pension scheme rules.

Clio Springer: Okay, but there has been a change to contribution levels recently, hasn’t there? [0:10:53.8]

Kate Upcraft: For the future, yes. Contributions are going up on 6th April 2018 and 2019. That’s a six-month delay on what we originally expected, so now the increases are aligned to tax years. So once we get to 6th April 2018 the total contributions now have to be 5% including tax relief, and then the following year 8% including tax relief.

You can as an employer decide that split between employer and employee contributions, but as long as you’ve met the total and the minimum employer contribution, which at the moment is 1% but then will increase in 2018 and then again in 2019.

Clio Springer: So the obligation to auto-enrol kicks in on staging, which most of you have already done, but it continues for new workers and on an on-going basis. But there are some rules around postponement, aren’t there? [0:11:43.8]

Kate Upcraft: Postponement has been a really useful tool for employers who’ve already reached staging. It allows an employer to delay assessment for between one day and three months, but it’s crucial to understand that’s not delaying your staging date. There’s still work to do on staging. You must have a pension scheme ready for your staging date. But effectively it's become a pension probation period. So if you've got a six-month probation period for employees who join you, for pension terms, after three months you will have to assess the employee for pension membership.

It's also a very useful tool, postponement, for people who get spikes in earnings, if that happens in your business. Perhaps employees receive a bonus or a commission that suddenly tips them over the £10,000 threshold or whatever that is pro-rated to weekly or monthly.

To avoid them being put into a pension and paying one contribution a year when their earnings spike, you can postpone them into the next week or month when their earnings have probably dropped below the threshold again, and that is very useful. And you can keep doing that on an on-going basis when there are spikes of earnings.

Clio Springer: And is there anything else that employers need to know about postponement? [0:12:46.8]

Kate Upcraft: Well I'm afraid it's just a nudge and governments are keen on nudges at the moment. It's a nudge because you're saying, 'I'm choosing not to auto-enrol you, but you have, as the employee, the right to override that decision and then the employer has to honour it and put you into a pension if that's what you wish to do.'

Clio Springer: Well we mentioned re-enrolment earlier, so can you explain a little bit about what this is? [0:13:06.3]

Kate Upcraft: It's important to remember, auto-enrolment doesn't start and end on staging. It's something you have to do every time you run the payroll. And then every three years you have to have a full assessment and put back into pension membership anybody who at that point is an eligible job-holder who's not in a pension scheme when you reach that crucial re-enrolment date, who might have opted out up to three years before.

Clio Springer: And what about the re-enrolment date? [0:13:31.4]

Kate Upcraft: Well you can pick your date. You have quite a bit of flexibility, and that can be really useful to you depending on what else is going on in your business. So you've got a six-month window, three months either side of your original staging date – not postponement date; staging date.

So some of my clients have brought their re-enrolment date forward because that means they've got fewer people on the payroll at that particular month so that's easier for them to do. Others have had to delay it because there's too much going on in the organisation and they need a bit more breathing space before they do auto-re-enrolment as well.

And there are two assessments to do in whichever week or month you choose for re-enrolment. You've got your re-enrolment for the people who've opted out up to three years before, and the normal assessment for people who are reaching the age and earnings threshold for the first time.

It's also important to think about letters that come out at that point. You must make sure they refer to 're-enrolment', not 'enrolment', because things have moved on.

Clio Springer: Are there any other connected duties around pensions auto-enrolment? [0:14:27.3]

Kate Upcraft: I've mentioned the word 'letters' a few times, and this is around the statutory communications that are part of the duties. You have to tell people what you've done to them and what their options are and when they've been assessed, and you've got six weeks to issue these statutory communications after the assessment day.

Now it doesn't matter who issues this communication but somebody has to do it within the deadline. Your pension provider might offer to do it, your outsourced payroll agent might offer to do it, but find out who because for example, if you choose to go with the National Employment Savings Trust (the pension scheme created by the Government), they don't provide that communication so you'll have to arrange that yourself. It's not arduous if you're a small or micro-employer. You can set them up on word processing using the templates on the regulator's website.

Clio Springer: Okay, well you've mentioned the pensions regulator a few times. Can you explain its role? [0:15:14.9]

Kate Upcraft: Well the first thing to say is the regulator is nothing to do with HMRC, which a lot of small employers think. They're an entirely separate regulator, they report to the Department of Work and Pensions, and they've got extensive compliance and enforcement powers, even down to criminal prosecutions. They oversee not only occupational pensions but they also look at employers and make sure that employers have met their employer duties, and they encourage employees to whistleblow if they think that their employer has discriminated against them or in any way treated them unfairly.

So the best advice is if you are getting into a problem with auto-enrolment in any way, shape or form, talk to the regulator as soon as you identify a problem. If you don't, that's when you're much more likely to receive a penalty.

Clio Springer: The pensions regulator only deals with trust-based occupational pensions, though, doesn't it? [0:16:04.0]

Kate Upcraft: They do, and this is really confusing, and the Government's been under a lot of pressure to deal with this because there is another regulator involved here. If you chose to use a contract-based pension, so you go to an insurance company to set up a pension – you might call them 'group personal pension' often – they're looked after by the Financial Conduct Authority. So two regulators within one market isn't helpful but that's the way it is, I'm afraid.

Clio Springer: And you mentioned earlier the Declaration of Compliance to the pensions regulator and the fact that some employers fall at this hurdle. So what do employers have to do? [0:16:33.4]

Kate Upcraft:	Within five months of your auto-enrolment staging date or your re-enrolment date you have to submit a Declaration of Compliance to the regulator. It's an online form, it confirms that you've met your obligations, and it provides statistical information to the regulator that they can use to pass onto DWP about how effective the duties have been.
Clio Springer:	Okay, and presumably employers have to keep records? [0:16:55.6]
Kate Upcraft:	Huge amounts of records. Really an audit trail of everything you have done to show that you've met the correct deadlines and communication obligations. But don't feel that that means creating an awful lot of extra records. Most of your payroll records will suffice. Your pensions scheme provider will also have a lot of records. So talk to both parties first and then just plug the gaps if there are any.
Clio Springer:	Okay, Kate. Well is there anything else that employers need to be aware of that we should be alerting them to? [0:17:21.6]
Kate Upcraft:	Yes, because the Pensions Act 2008 has one part of it that's been the law for every single employer in the UK since July 2012, and that's relating to something called the "employee safeguards". So for over four years now it's been illegal to discriminate against an employee on the grounds of them wanting to join your pension scheme or to encourage them to leave a pension scheme that they're already in. And crucially, this right not to be discriminated against starts as soon as you interview somebody. So even during the recruitment process you must not have discriminatory conversations about, 'Please don't join the pension scheme here because it's too expensive for us.' And then that obligation not to discriminate continues right through the employment with you.
Clio Springer:	Okay. And how do you think the future of pensions auto-enrolment is going to pan out? [0:18:06.8]
Kate Upcraft:	Well the Pensions Schemes Bill that I mentioned that's started to go through Parliament is a significant milestone. It's going to give the regulator – the pensions regulator – a lot more power to close down some pension schemes, and these are the schemes that are called "master trusts". Now they've been able to be set up since 2012 with very little legislative oversight. They don't even have to prove they've got enough financial reserves to be in this for the long-term, and that's very concerning, given a lot of small employers have signed up to these types of arrangements. So the message is really do your due diligence on the pensions provider that you're choosing, particularly if they are new entrants to the market, to be certain they are going to be still there for you and your employees for the foreseeable future.
Clio Springer:	And is there anything else for the future? [0:18:52.1]
Kate Upcraft:	There is a huge overall auto-enrolment review next year, sponsored by the Department of Work and Pensions. We hope it will change and simplify some of the legislation. And there's a review of the National

Employment Savings Trust, which will allow it to become a full-service pensions scheme. It will take away some of the hindrances that NEST has at the moment, for example to take transfers in from other pensions schemes.

Now NEST itself is a master trust. There's no suggestion that NEST isn't financially solvent because it was loaned a huge amount of money by the Government to be set up. However, it needs to repay that loan to us taxpayers, so one thing you should be aware of if you choose NEST is it's probably not going to stay free for that much longer on the basis it's got to make that repayment.

Clio Springer: So from your experience, Kate, are there any particular difficulties that employers are encountering? How is pensions auto-enrolment working? [0:19:43.4]

Kate Upcraft: It's been a really steep learning curve for the payroll teams and the payroll software industry because they really didn't have much involvement with pensions provision until 2012 unless they were large employers. So those payroll professionals themselves are becoming quite sought-after. There's just not enough sufficiently trained resource out there to deal with the volumes that we've got to look at through 2017 and beyond.

So really to say if you outsource your payroll, you'll need to expect your fees to go up because you're receiving a pensions admin service as well as a payroll service now. I'm particularly worried about the payroll agents who provide outsourced payroll and whether they're going to cope with the volumes over the next year because more small employers are likely to try and outsource their payroll because it's all just become too complicated now. So if you see yourself in that space, start thinking about talking to an outsource provider now and researching the market.

Clio Springer: Well thank you very much for that very useful guidance and insight, Kate. And we have more information in the Employment Law Manual, as well as in our interactive Live-flow workflows on pensions auto-enrolment.

And that brings us to the end of this week's podcast, which you've been listening to with me, Clio Springer, and our guest speaker, Kate Upcraft. We're back again next Friday but until then it's goodbye from us.