



Looking ahead

Global Pensions Agenda

December 2019

1 Poland – ongoing implementation of employee capital plans

The act on employee capital plans, introducing a new type of defined contribution pension savings plan, entered into force on 1 January 2019. The new provisions are already applicable to the biggest employers (those with at least 250 employees) from 1 July 2019 and will gradually cover all employers by 2021. The minimum contributions will need to be paid by both employers and employees - 1.5% of salary by the employer and 2% by the employee. Additional contributions will also be possible, up to a limit of 4% for employee and employer, amounting to 8% in total.

Action — Entities employing at least 50 people as at 30 June 2019 will be covered by the new obligations from 1 January 2020. Other employers should factor in the associated additional costs and take note of the implementation deadlines applicable to them.

2 USA – cybersecurity in retirement plans

Retirement accounts are at risk of cyber attack, including fraud, hacking, phishing, and more. This can lead to fiduciary breach lawsuits, such as a widely reported suit against Estée Lauder in October 2019 resulting from cyber fraud.

Action — Plan sponsors and fiduciaries should consider a review with counsel of their cybersecurity processes and procedures, as described in more detail [in our briefing](#).

3 Russia – treatment of pre-pensioners

Russian pension reform aimed at increasing the retirement age has become a trigger for strengthening the legal protection of “pre-pensioners”. These are employees with five years or less to go before their retirement age (before 2019 this was two years or less). Employers must provide pre-pensioners with two working days a year for routine medical check-ups. The company’s

CEO or HR employees may face criminal liability for unreasonable refusal to hire pre-pensioners or dismissal of these employees in violation of laws.

Action — Employers should identify pre-pensioners among existing employees. The safest option would be to require that they provide a document issued by the pension fund confirming their status. Also consider carefully the grounds for refusal to hire pre-pensioners.

4 Netherlands – state pension age increases delayed

Legislation will delay the increase in the state pension age from 2020 onwards. As a result, the state pension age will increase to 67 in 2024 (instead of 67 in 2021). This change will come into force as of 1 January 2020.

Action — If the employment contract includes a pension clause referring to the state pension age as the retirement age, this may involve a change in the retirement date for the employee. Check what is included on this in employment contracts and ask for advice.

5 UAE – new DIFC workplace savings plan

Expatriate employees working in the UAE are currently not entitled to any mandatory pension (state pensions are mandatory for UAE and GCC nationals). Instead, they receive an end of service gratuity (ESG) payment on termination of their employment. The Dubai International Finance Centre (DIFC), a leading free zone and financial hub in the UAE with its own independent employment laws, now intends to replace the current ESG scheme. From 1 January 2020, all employers operating in the DIFC will be obliged to put in place a defined contribution arrangement requiring minimum monthly employer contributions.

Action — Employers in the DIFC should review their policies and prepare to make changes to comply with the proposed legislative changes. For more information, read our [global employment and labor law update](#).

6 Russia – payments to employees subject to social security contributions

In March 2019, the Supreme court of the Russian Federation decided that employee compensation paid by the employer (for instance for apartment rental) is subject to social security contributions (SSC). The courts have tended to side with the tax authority and find that most types of compensation are subject to SSC - few disputes are decided in favour of companies.

Action — Check if there are payments to employees that are not subject to SSC, analyse whether this is correct in light of recent rulings and prepare a defence file for protection during the next tax audit.

7 Ireland – update on new auto-enrolment system

The Irish government issued an update in November 2019 confirming some of the features of its new pensions auto-enrolment system. Employer contributions will begin at 1.5% of qualifying earnings, rising over nine years to a maximum of 6% (based on matching employee contributions). A limited number of retirement savings providers will be chosen by a new government body and their charges will be capped at 0.5%. However, many important details (such as a start date for the system and what tax relief will apply to contributions) remain to be clarified.

Action — Employers should monitor developments carefully, as there will be material cost and administrative implications. Click our updates on the [new automatic enrolment system](#) and [progress update](#) for more information.

8 France – new regulation for DB and DC plans

The so-called “Pacte” law (*loi Pacte*) and two new ordinances make major changes to existing pensions law. For defined benefit pension plans, the main change relates to the obligation to allow the definite accrual of rights by employees with three years of service. In addition to the need for employers to change plan rules, the measure has a significant impact on their financial commitment. For defined contribution pension plans a new system has been created, the collective retirement savings plan (*plan d'épargne retraite collectif*), which differs from the existing systems in many respects: financing methods, governance and liquidation of rights.

Action — Companies affected by the reform must define the purpose sought by their internal pension policy and make sure that their plan complies with the new regulations.

9 Austria – access to old aged part-time allowance

Under the old aged part-time (*Altersteilzeit*) regime older employees may, with employer consent, reduce their working hours and receive partial wage compensation to account for the reduced hours. From 1 January 2019, access to the old aged part-time allowance was changed to six years before reaching the statutory standard retirement age (65 for men and rising gradually from 60 to 65 for women). For employees who have already fulfilled the admission requirements in 2018 or earlier, it is also possible to apply for old aged part-time allowance in 2019 or 2020.

Action — Employers should consider these changes when they negotiate/agree to employees receiving old aged part-time allowance.

10 Norway – case on qualifying income for pension

The appeal court (*Borgarting Lagmannsrett*) dismissed a case related to a claim for retroactive payment of pension contributions due to the employer applying an incorrect definition of pension qualifying income. An employee claimed that bonuses should be included in the pension qualifying income with reference to the Pension Act and a Supreme Court ruling from June 2016. Based on this the city court concluded that the employee would have to base his claim on an agreement between him and the employer. As such an agreement did not exist the employee did not have a basis for his claim. The employee appealed the decision, but the appeal court found this to be so clear that it dismissed the case.

Action — Employers should take note of this decision.

11 Italy – new law regarding consultants

Law Decree n. 101/2019, introduced important changes with regard to consultants who pay their social security contributions to the special contribution fund called *Gestione Separata*. These consultants are now entitled to receive the indemnity in case of sick leave, maternity and parental leave as well as the unemployment allowance in case of involuntary termination of their consultancy agreement with the company. This is on the basis that at least one month of social security contributions has been paid in the previous year.

Action — Employers must take into account these new provisions in relation to consultancy agreements.

For more detail on these or any other issues, speak to your usual Eversheds Sutherland adviser or contact:



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