

An employee wants to stop or reduce his pension contributions but might wish to restart or increase them in the future. The short answer is that no one can compel anyone to belong or contribute to a pension scheme, but there is a little more to it.

(In order to avoid the confusing use of the plural "they" as a gender neutral 3<sup>rd</sup> person singular pronoun, I use "he" and its equivalents and rely on the Interpretation Act 1978 s6, as though this note were an enactment, to provide the necessary "or she" and equivalents. For a possible gender neutral pronoun see my article 20 in "other legal topics" at [www.law-office.co.uk](http://www.law-office.co.uk).)

1 **basics** There are two underlying principles, which are:

- (a) an employee (unless enrolled automatically) becomes a member of a pension scheme (including a contract as well as a trust based scheme) by applying to join and his application being accepted; and
- (b) by s160 of the Pension Schemes Act 1993, any terms in employment contracts, which require employees to belong to a pension scheme or any particular scheme, are void, the corollary of which is that a member of a pension scheme is not or may cease to be a member.

2 There are two forms of **automatic membership**, which are:

- (a) "voluntary", ie pension schemes, such as the NHS's, and occasionally private sector schemes, in which the employee becomes a member automatically on starting the appropriate employment, unless he opts out; and
- (b) **statutory automatic enrolment (AE)** under the Pensions Act 2008, by which every employer must enrol eligible jobholders automatically into a pension scheme, unless the jobholder is already in a qualifying scheme, but the jobholder may opt out within the later of one month of being enrolled and being notified of it.

Section 160 (para 1(b) above) applies to all pension schemes, and, in the case of an AE scheme, it applies at any time, even if the member has not exercised the statutory right to opt.

3 **death in service (DIS)** benefits (usually lump sums but can be or include dependants' pensions) are made available either as part of the benefits provided by an occupational pension scheme or under a stand-alone arrangement. In practice, but not out of legal necessity, the DIS benefits are provided at no cost to employees, who become entitled to them either on the condition of being a pension scheme member for pension benefits or automatically irrespective of membership of the or a scheme for pension benefits.

Because the DIS benefits are free so far as the employee is concerned, as are pensions from a **non-contributory pension scheme**, ie one in which the contributions are paid by only the employer, there is usually no reason for an employee to refuse to be a member or to wish to cease membership, except for a tax reason (annual or lifetime allowances – as to which see my New Year 2017 updates and my pension articles 51 and 52, and, in respect of the NHS Pension Scheme, article 65 at [www.law-office.co.uk](http://www.law-office.co.uk)).

4 **leaving what?** Depending on the scheme's rules the employee, who simply wants to leave the scheme, might have several choices, particularly if the employee's aim is to reduce outgoings and maximise disposable income, temporarily or permanently.

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- (a) **leaving the scheme** The pension scheme rules say how much notice the member must give and to whom (usually the trustees). The member's rights on leaving are dealt with as summarised in para 5 below.
- (b) **leaving the scheme except for DIS benefits** This depends on the scheme's rules and might, if the benefits are insured, might depend on the effect, if any, on the premiums paid by the employer of one or more employee's ceasing to be covered.
- (c) **reduction of contributions** This depends on the scheme's rules, and, subject to them might be a reduced % of pay or a fixed periodic amount lower than is paid at present.
- (d) **suspension of contributions** This depends on the scheme's rules.
- (e) **salary sacrifice** If the employer agrees, the saving for the employee might be worthwhile, especially if the employer's saving of NICs is passed to the employee.

NB Leaving under (a) will, in all normal circumstances, result in the employer not being in a qualifying scheme for AE, and the reduction or suspension under (c) or (d) might have the same result. If so, the employer will be required to re-enrol the employee after three years.

5 **accrued rights on leaving a pension scheme** The pension scheme rules say what happens to a member's accrued rights, which, in the case of occupational pension schemes, must be not less than is required under the preservation provision of the Pension Schemes Act 1993.

- (a) A member of a personal pension scheme (typically a contract between the member and an insurance company or other provider) has an account consisting of the employer's and employee's contributions increased or reduced by the investment returns on it. The member may draw benefits from it if already over the minimum pension age (normally age 55), leave the account in the scheme or transfers it to another scheme.
- (b) The preservation requirement is that:
  - (i) if the employee has up to three months' pensionable service, his but not the employers' contributions are repaid to him without interest;
  - (ii) if the employee's pensionable service is over two years, he may transfer his rights to another scheme or leave them in the scheme until he starts to take pension benefits at his normal pension age; and
  - (iii) if the employee's pensionable service is between (i) and (ii) he can choose either the refund of contributions as in (i) or a transfer out as in (ii).

6 **re-joining** This depends on the scheme's rules, but should normally be allowed.

7 **employment contract** Prudently drawn contracts should not specify amounts of any salary related benefits (other than insured DIS benefits), but employment contracts may safely and often do state the employer's contributions to a money purchase scheme. Changes in pension rights and obligations should be changed by a written agreement, unless they have effect automatically by any other changes of employment terms, including changes by a furlough agreement.

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