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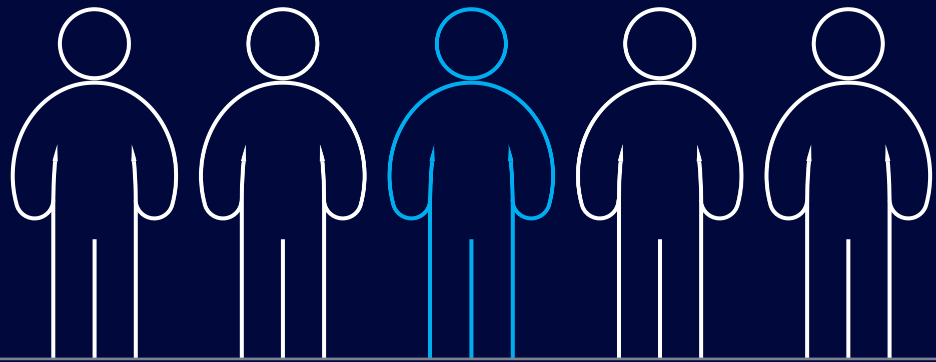
A pensions automatic enrolment case study

"Everybody comes to Rick's"... Rick comes to Vialex for pensions law advice

A case study, inspired by the 1942 Warner Brothers film Casablanca, and with acknowledgement to "Everybody Comes to Rick's", the unproduced play on which the film screenplay was based.

In the film, Rick Blaine (famously portrayed by Humphrey Bogart) is the proprietor of the popular Casablanca night spot Rick's Café Americain, which he runs with the assistance of Sam, Carl, Sascha, Emil, Abdul and Corinna.

In our case study scenario, the characters and Rick's business plans are reimagined to the present day.



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Richard ("Rick") Blaine is looking to open an American-style nightclub in the UK and there are a number of key members of staff he wants to employ from the start.

He's heard that employers in the UK must make arrangements for their workers to become members of a workplace pension scheme with employer and employee contributions payable.

He would like to know what his company will need to do in respect of the various employees and provides some information about them.

Rick is a director of the company. He doesn't have a service contract but will draw a regular salary. He's a US citizen, aged 37.

Sam is also a director, He's in charge of entertainments and plays the piano most evenings. Sam does have a service contract and as well as being paid a basic salary he'll receive a monthly bonus equal to 10% of the nightclub's profits.

Carl will work as their head waiter. He's also taking on the role of the nightclub's financial controller and will keep the accounts; he'll have a separate contract of employment for this work. He will reach State Pension Age in a few years' time but is likely to continue working.

Sascha will be the head barman. He'll be paid a regular salary and will expect to receive a generous amount as well in tips.

Emil will be employed as the croupier. He won't receive a salary, but instead commission on the proceeds from the casino.

Abdul will be employed as the doorman. He'll have a 'zero hours contract' and be paid weekly.

Corinna is a musician who will come in a few nights a week to play the guitar and sing. She won't be employed by Rick's Café Americain but has her own business and is booked through that.

Qualifying workplace pension scheme

As a UK employer Rick will need to set up a "qualifying workplace pension scheme" for his workers as soon as his company commences operating. This could be the government's default scheme, known as the National Employment Savings Trust (NEST), or he could seek advice from an independent financial adviser (IFA) about other options.

Assessment of workers

Rick should then carry out an assessment of his workers. There are different categories of workers with different pension rights based on their age and what they're paid, and he needs to identify which of his workers fall within which categories. "Eligible jobholders" must be automatically enrolled into their employer's scheme; "non- eligible jobholders" and "entitled workers" do not require automatic enrolment, but they may opt to join if they wish. As part of the process, must identify whether they have "qualifying earnings", i.e., whether they are paid above a specified "earnings trigger" and between the Lower Earnings Limit and the Upper Earnings Limit for National Insurance purposes.

3-month obligations postponement or application of contractual enrolment

If Rick needs more time the company could opt to "postpone" its obligations but may only do so for a period of up to 3 months. Alternatively, he could opt to apply what's known as "contractual enrolment" and enrol all employees in the company's pension scheme without any assessment being required, but he wants to learn more about the process.

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Based on the information he has provided, Rick is advised that

Rick - may be a US citizen, but he's ordinarily working in the UK. Although he doesn't have a service contract there are other staff who do. He is not exempt from the automatic enrolment requirements and should be automatically enrolled into the scheme.

Sam - both Sam's salary and monthly bonus would count as "qualifying earnings", though the total amount on which contributions are payable will fluctuate from month to month. Subject to him meeting the eligibility criteria for age and pay he should be automatically enrolled into the scheme.

Carl - has two separate contracts with the company doing very different jobs, and so separate assessments would need to be carried out for each. If his pay is within the "qualifying earnings" limits he should be automatically enrolled into the pension scheme in respect of either or both roles. Carl would cease to be an "eligible jobholder" when he reaches State Pension Age, but he could opt to remain a scheme member if he wishes.

Sascha - subject to meeting the eligibility criteria for age and pay, he should be automatically enrolled into the scheme. However, only Sascha's regular salary would be pensionable as tips are excluded from the definition of "qualifying earnings".

Emil - The commission paid to Emil would be "qualifying earnings" and he should be automatically enrolled if he meets the eligibility criteria.

Like Sam, the amount paid to Emil is likely to fluctuate and it's possible that in some months the amount may be lower than the "earnings trigger". If so he would remain a member of the pension scheme, but no contributions would be payable for those months.

Abdul - is paid weekly and that is the pay reference period that would need to be used. As he's on a "zero hours" contract his actual pay may vary considerably from week to week. It's possible that his pay will mostly be below the "earnings trigger" and automatic enrolment wouldn't apply, though he could still opt to join the pension scheme. If there was a spike in his earnings in any week taking him above the "earnings trigger", Abdul would have to be automatically enrolled in respect of that week but could potentially "opt out".

Corinna - appears to have a "contract for services" and isn't therefore a "worker" employed by Rick's business. The automatic enrolment obligations wouldn't apply, though Corinna could opt to join a personal pension scheme herself.

Rick will also need to decide on a definition of "pension payable" for his company's pension scheme and whether any elements of "qualifying earnings" should be excluded. He'll also need to consider whether contributions are to be payable on "band earnings" (i.e. between the Lower Earnings Limit and the Upper Earnings Limit for National Insurance purposes) or on his workers' total salaries.

There's a lot of information for him to take in, but Rick's very grateful for the advice he's received so far. On his way out he's overheard telling a friend that...

"this could be the beginning of a beautiful friendship."