



PENSIONS WARNING

Sorting out hygienists' pensions is no easy task, says Amanda Maskery

Hygienists and therapists should be discussing future pension arrangements with practice owners ahead of the introduction of auto-enrolment.

This warning comes amid the introduction of the auto-enrolment regime, which is in the process of being phased in over a five-and-a-half-year period. Auto-enrolment is designed to ensure that everyone in the workforce has an income in retirement by requiring employers to create a pension scheme.

Unfortunately, determining whether hygienists are 'workers' and therefore covered by the new regime, or self-employed contractors, is no easy task.

What's the difference?

If you are an employee then it is very likely that you will be covered by the auto-enrolment regime as you will count as a 'worker'. If you consider yourself to be self-employed, the situation may be a little more complicated.

Hygienists are likely to be classified as 'workers' if they are required to perform their services

personally and there is mutuality of obligation, i.e. there is an obligation on a practice to provide a certain amount of work, and any obligation on the hygienist to accept it. However, they are less likely to be considered if they are carrying out a business and the practice is the customer.

The definition of a 'worker' is there to protect individuals who are not employees but also cannot be regarded as carrying on their own business. Self-employed individuals may or may not be caught, depending on the circumstances, and someone who is self-employed may still qualify as a worker even though they are not an employee.

What if your employer gets it wrong?

The Pensions Regulator (the Regulator) is responsible for ensuring employers comply with their duties under the auto-enrolment regime. Workers can report malpractice to the Regulator and they will be able to bring claims for dismissal or detriment arising as a result of breach of the employer duties.

The Regulator may issue various compliance notices and if a breach is not remedied, the Regulator can order penalties. These range from £50 a day for employers with one to four workers to £10,000 a day for those with 500 or more workers.

If practice owners willfully fail to comply with certain key duties, such as auto-enrolment, re-enrolment, and the jobholder's right to opt in, they will be guilty of an offence, liable on conviction to imprisonment or a fine or both.

It is likely that practice owners will be assessing the position of the hygienists and therapists they engage to determine whether or not they fall outside of the auto-enrolment regime.

Please note that this article focuses on determining whether hygienists are 'workers'. The obligations practice owners will have under the auto-enrolment regime will be determined by what type of 'worker' a hygienist then is. **DH&T**



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There is no single factor, by itself, capable of defining a hygienist's employment status. However, the Pensions Regulator's detailed guidance suggests that consultants, such as hygienists, are likely to be 'workers' if most or all of the following statements are true:

- ▶ The practice owner relies on their expertise and expects them to perform the work themselves
- ▶ There is an element of subordination between the practice owner and the individual in respect of the specific operation or project on which they are contracted to work
- ▶ The contractual provisions state that the contract is not a contract for services between the practice owner and the individual's own business
- ▶ The contract provides for employee benefits such as holiday pay, sick pay, notice, fees and expenses
- ▶ There is a mutual obligation set down in the contract to provide or do the work
- ▶ The individual does not incur any financial risk in carrying out the work
- ▶ The practice owner provides the equipment and other requirements to the individual to carry out their work.

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