

News

Bus firm is first employer guilty of failing to auto-enrol

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By Annie Makoff

Even businesses making minimum contributions could face legal action in future, experts warn

A bus operator has become the first employer in the UK to be found guilty of failing to auto-enrol its staff on to a workplace pension scheme – as experts warned that even businesses making minimum contributions could be leaving themselves open to future legal action.

Oldham-based Stotts Tours and its managing director, Alan Stott, admitted deliberately avoiding setting up workplace pension schemes for 36 staff, despite employees meeting auto-enrolment criteria, the Pensions Regulator reported.

Under current auto-enrolment legislation, anyone earning more than £10,000 a year and aged between 22 and the state pension age is entitled to be automatically enrolled on to a workplace pension scheme.

Employers like Stotts Tours with fewer than 50 staff on their largest PAYE schemes have been legally obliged to place staff into suitable workplace pension schemes and begin making pension contributions since between June 2015 and April 2017.

Stotts Tours pleaded guilty to a total of 16 offences of ‘wilfully failing’ to comply with auto-enrolment legislation. Sentencing is due on 14 December, with a maximum sentence of an unlimited fine.

Nathan Long, senior pension analyst at Hargreaves Lansdown, said it was the first time criminal damages had been brought against an employer, even though more than 20,000 organisations had already been fined for not properly signing staff up to a workplace pension. He urged employers “of all shapes and sizes” to view the case as a “wake-up call”.

The news comes as industry experts said employers that only make minimum pension contributions were running a “high-risk strategy” and could face legal action in the future.

In a document published this week, legal firm Eversheds Sutherland and mutual insurer Royal London warned there were legal precedents in other countries where employers were forced to pay damages for failure to provide adequate pension provision. In future, courts may decide that employers have an ‘implied duty’ to look after the workforce that goes beyond the previous minimum levels.

Steve Webb, Royal London director of policy and former pensions minister, said in an article for *The Telegraph* that **employers should not regard auto-enrolment as a ‘once and done’ exercise**, and instead should continually review their workplace pension scheme to ensure its suitability, whether it represents good value for

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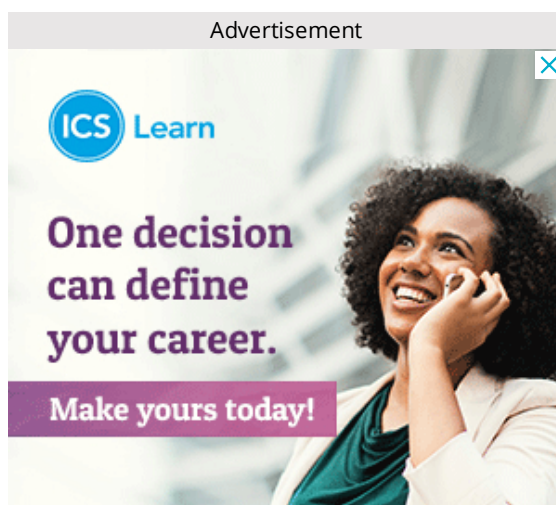
ACCEPT AND CLOSE

Minimum auto-enrolment contribution rates are set to rise in April 2018 to 2 per cent, and again in April 2019 to 3 per cent. Lynda Whitney, partner at Aon, told *People Management* that 40 per cent of employers needed to take action within the next two years to reflect these increases, to ensure they do not fall foul of legal action in the future.

“The Pensions Regulator works on the basis of trying to assist and support employers in meeting their auto-enrolment duties, but there clearly comes a point when education and information isn’t sufficient and court action has to be taken,” she said.

Whitney also warned of a “significant mismatch” between minimum contribution levels and what employees need to maintain a good standard of living in the future. She urged employers to consider making higher rates of pension contributions. If employers and employees only put in the minimum, employees will either have to live on less or work longer, she said.

Whitney added: “We will also be watching carefully to see if current opt-out rates remain low following the 2018-19 minimum contribution rates increase, as, in this case, behavioural inertia is actually a good thing if it keeps people in workplace pensions.”



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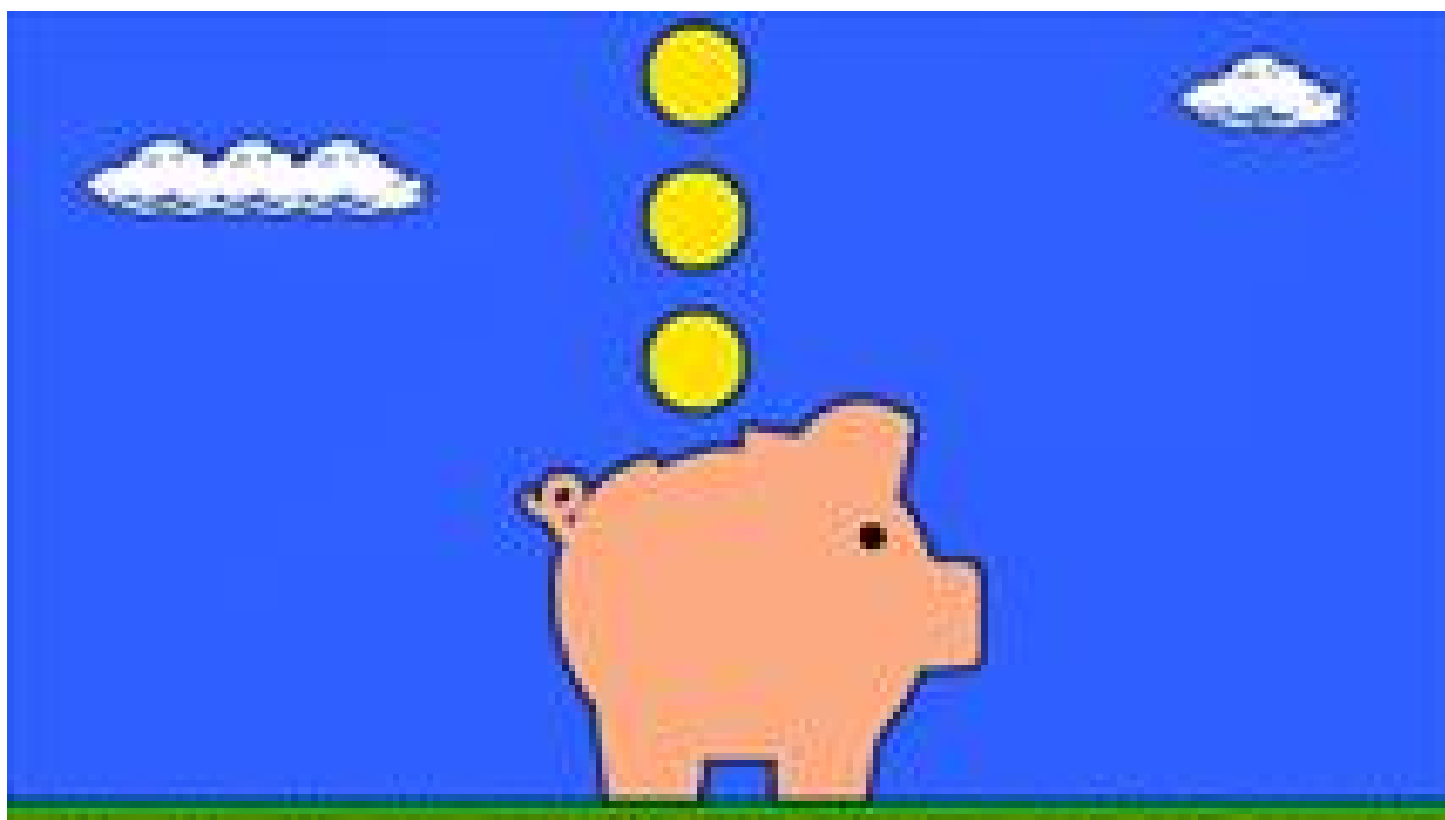
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