

Superannuation Guarantee Legislation changes To be actioned prior to 29 July 2005 to avoid penalties

In line with the Government's Superannuation Guarantee legislation, announced earlier this year, employers must offer employees a choice of fund for their superannuation from 1 July 2005. Under choice, an employee has the ability to have their superannuation guarantee contribution (SGC) paid into the complying super fund of their choice. If no fund is selected, generally the employer's default fund is used.

What are the obligations for employers?

Employers must implement changes to current employment processes. This involves giving all new employees a standard choice form, as well as all current employees before 29 July 2005. The form has been developed by the ATO and a copy is enclosed.

The employer does not have to accept the employee's choice of fund where the fund is non-complying, requires the employer to become a participating employer, the fund requires contributions to be made at more regular intervals than the minimum contribution levels for the SCG, or where the employee is looking to change their choice of fund more than once in the 12 month period from 1 July 2005.

What happens if I do not offer choice of superannuation?

The penalty for not offering a choice of fund or not giving effect to a valid choice is **\$500 per employee impacted per quarter.**

Are there any obligations on employees?

The employee must provide a completed standard choice form containing all information required to enable the employer to meet their superannuation obligations. This includes evidence that the selected fund is an eligible fund.

Opportunities for employees

Choice will provide employees with the opportunity to set up and contribute superannuation to their own Self Managed Superannuation Fund (SMSF). Previously, employees may have been required to contribute to their employers default fund. If you would like to discuss these options to determine if a SMSF would be beneficial for you, or would like assistance in setting up a SMSF, please contact Anna Wong of this office on 8252 5504.

I already offer my employees choice, what do I need to change?

You will continue to offer new employees a choice of any fund, but will need to do so on a standard choice form from 1 July 2005. One key change is that you will need to specify a default fund. This is a mandatory requirement and the default fund will need to meet particular requirements. These requirements will be specified in the regulations.

If an employer changes the default fund, a new standard choice form must be given to all employees within 28 days and the employer must implement the members' choice of fund within two months of receipt of a completed standard choice form.

ACTION PLAN

Now, ie before 1 July 2005

Review existing employee arrangements and determine which employees can make a choice of fund. There are some exceptions to the rules, including:

- employees hired under state awards and contributions are being made in accordance with the award;
- employees for whom contributions are being made in accordance with certain workplace agreements or certified agreements under the Workplace Relations Act 1996 or Industrial Relations Act 1988;
- employees who are members of certain defined benefit funds.

If the employer is already making contributions to the employee's choice of fund, then a Standard Choice Form does not have to be given to the employee provided that the employer has a record of the choice in writing.

Review payroll systems and update procedures to allow employee's choice of fund data to be captured. As a minimum, the employer will require the name, ABN, contact details and postal address of the fund, plus the employee's membership number.

Choose a default fund. A default fund is required where an employee has a choice of fund but does not exercise it. The default fund must provide a minimum level of life insurance cover as per s9A of the Superannuation Guarantee (Administration) Regulations 1993. An option is based on the age of the employee. For a person under 56 years of age, a premium of at least 50 cents a week needs to apply.

Where the employee is hired under a federal award which nominates a fund, that fund is the default fund. Where contributions are being made to a Retirement Savings Account (RSA), the minimum insurance levels do not apply. Also, special rules apply for defined benefit schemes.

New Employees

All new employees commencing after 1 July 2005 must be given the standard choice form within 28 days of starting work, unless they have already advised their choice of fund. It would be a good idea to update employee induction packages to include the standard choice of fund form.

By 28 July 2005

All existing employees must be given a Standard Choice Form by this date, unless the employer is already making contributions to the employee's choice of fund or the employee is exempt. It is a good idea to keep accurate records of when Choice of Fund forms were distributed to employees and the date they received the information back from the employee.

August - September 2005

Collect the choice of fund forms from the employees. The employees must provide all of the necessary information, including written evidence from the fund that it will accept contributions made by the employer for the employee.

The employer has **2 months** from the collection of the form to act on the form and cease contributing to the default fund.