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JUDGE FINDS CALSAVERS NOT PRE-EMPTED BY ERISA

*By Mercer's Brian Kearney and Margaret Berger
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ERISA does not pre-empt the California Secure Choice Retirement Savings Program (CalSavers), a federal judge ruled last week ([Howard Jarvis Taxpayers Ass'n. v. California Secure Choice Ret. Sav. Program](#), No. 2:18-CV-01584-MCE-KJN (E.D. Cal. March 29, 2019)). The plaintiffs — the Howard Jarvis Taxpayers Association (a pro-taxpayer group) and two of its employees — sought to stop the program from taking effect before employers begin enrolling July 1.

CALSAVERS

[CalSavers](#) applies to nongovernmental employers — both for-profit and nonprofit — that have at least five employees in California and don't offer a retirement plan or an auto-enrollment payroll-deduction IRA. Covered employers must automatically enroll their workers in the program, but workers can opt out. An employer's duties under the program are limited to distributing state-provided information, enrolling workers who don't opt out and remitting payroll deductions. Employers don't contribute to the program and have no liability for program benefits, investment returns or program design.

CalSavers is nearing the end of its pilot phase. The program opens for all covered employers to enroll on July 1, 2019. Employers with at least 100 employees in California must enroll by June 30, 2020. The deadline is extended one year for employers with 50 to 99 employees and two years for employers with five to 49 employees.

PAYROLL-DEDUCTION IRAS UNDER ERISA

A 1975 Department of Labor (DOL) rule exempts payroll-deduction IRAs from ERISA if certain conditions are satisfied ([29 CFR § 2510.3-2\(d\)](#)). One condition is that participation in the arrangement must be completely voluntary. DOL originally took the position that even if employees can opt out, auto-enrollment arrangements aren't completely voluntary, making these programs ineligible for the exemption.

In 2016, DOL issued [rules](#) that would have made auto-enrollment programs run by states, cities and certain other political subdivisions exempt from ERISA. However, Congress [rescinded](#) those rules the next year.

CALSAVERS NOT PRE-EMPTED BY ERISA

If ERISA governs the CalSavers payroll-deduction IRAs, then the state mandate would be pre-empted by ERISA. The plaintiffs claimed CalSavers is subject to ERISA because the auto-enrollment feature makes the payroll-deduction IRAs ineligible for the DOL exemption. The court declined to rule on that point but found CalSavers is not subject to ERISA on other grounds.

Citing Supreme Court decisions, the district court explained that ERISA pre-empts a state law that actually “governs ... a central matter of plan administration” or “interferes with nationally uniform plan administration.” But because CalSavers applies only to employers without ERISA retirement plans, the state law does not “govern” or “interfere with” any ERISA plan.

The court added that ERISA is meant to protect employees promised employer-sponsored benefits and spare employers from having to comply with multiple federal and state requirements for benefit plans. Under CalSavers, however, employers make no promises to employees about their benefits and have only ministerial responsibilities. Ruling that ERISA pre-empts CalSavers would be inconsistent with ERISA’s underlying purpose, the court said.

WHAT’S NEXT?

The plaintiffs have signaled that they will either amend the case or file an appeal. For now, CalSavers is scheduled to open for enrollment on July 1. Employers in California should continue preparing to meet their enrollment deadlines.

RELATED RESOURCES

- [Howard Jarvis Taxpayers Ass’n. v. California Secure Choice Ret. Sav. Program](#), No. 2:18-CV-01584-MCE-KJN (E.D. Cal., March 29, 2019)
- [CalSavers Website](#)
- [Pub. L. No. 115-35](#), Disapproving the DOL Rule on Savings Arrangements Established by States for Nongovernmental Employees (Congress, May 17, 2017)
- [2016 Ch. 804](#), Establishing the California Secure Choice Retirement Savings Program (CA Legislature, Sept. 29, 2016)
- [Final Regulations on Savings Arrangements Established by States for Nongovernmental Employees](#) (DOL, Aug. 30, 2016)
- [29 CFR § 2510.3-2\(d\)](#), Safe Harbor Exempting Certain Payroll-Deduction IRAs from ERISA

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