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NEW JERSEY TO ENACT RETIREMENT SAVINGS PLAN FOR PRIVATE-SECTOR WORKERS

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New Jersey lawmakers have approved a bill (A 4134) to create the New Jersey Secure Choice Savings Program — a state-run retirement savings program for private-sector workers. The bill now heads to Gov. Phil Murphy, who is expected to sign it. Once the legislation is signed, the program must roll out within two years, although an oversight board may delay implementation up to a year.

AFFECTED BUSINESSES

Employers (both for profit and not for profit) with 25 or more employees (including leased employees) that have not offered tax-favored retirement plans in the past two years — and have been in business at least two years — will have to offer the new program. Smaller or newer employers could join voluntarily. Employers that fail to properly enroll employees will owe annual penalties of up to $500 per employee.

IRA AUTO-ENROLLMENT

Affected businesses will auto-enroll employees in the program and deduct 3% of employees' pay, unless employees opt out or elect a different amount. Workers who opt out may re-enroll during future open enrollment periods. Participating employees' contributions will go into the New Jersey Secure Choice Savings Program Fund — a special fund outside of the state treasury (and not guaranteed by the state).

The fund will be operated so employees' accounts will meet the federal tax code requirements for IRAs. Employees apparently will be able to choose standard or Roth treatment for their contributions, which will be subject to the annual IRA contribution limits.

Employers that fail to remit any portion of an employee's contributions to the fund will be slapped with a penalty of $2,500 for the first offense and $5,000 for every later offense.

STATE-RUN PROGRAM

A board of state-appointed officials will administer the program and prepare enrollment packages for employers to distribute. Employers will not have any fiduciary, plan administration or investment duties or any responsibility for communications between employees and the program administrators or benefits paid to program participants.

INVESTMENTS

Participants will select investment options from a lineup established by the board, which will include investment options like a capital-preservation fund, a life-cycle fund or any other option deemed appropriate by the board.

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PRIVATE PLAN ALTERNATIVES

In lieu of participating in the program, employers may sponsor an alternative arrangement, such as a defined benefit plan, a 401(k) plan, or an automatic payroll-deduction IRA offered through a private provider. Before opening the state-run program, the board may set up a website to give employers information about alternatives offered by private-sector vendors.

IMPLEMENTATION

The bill will take effect upon signing and requires program implementation within two years, though the board may delay launch up to one year. As other states have done, the program will roll out in two phases, with an earlier effective date for larger employers and a later date for smaller employers. The bill does not define “larger” and “smaller” employer or specify the small-plan phase-in period, leaving those decisions up to the board.

FEW CHANGES FROM 2016 BILL

The program resurrects one passed in 2016 but vetoed by then-Gov. Chris Christie, who favored a voluntary small-employer marketplace that was enacted but never implemented. Lawmakers dusted off the 2016 bill and left it largely — but not entirely — intact. Among other minor changes, the new bill:

- Provides for the phased-in implementation described above.
- Treats leased employees as employed by the employer, not the leasing company.
- No longer requires a life-cycle fund as the default investment and instead lets the board designate the default investment option.
- Puts no cap on the number of funds offered in a given year.
- Allows annual administrator fees to run as high as 0.75% of the fund’s total balance for the program’s first three years and 0.60% for all years afterward (instead of 0.60% for all years under the 2016 bill).
- Explicitly exempts employers from most program responsibilities except for enrolling employees and transmitting payroll deductions to the state-sponsored fund.
- Strikes language from the 2016 bill that would have scrapped the program if found to be an ERISA plan.
- No longer permits the board to indefinitely delay the program due to insufficient funds, but allows the board to delay implementation for up to one year.

OTHER STATE-RUN PROGRAMS

Five other states — and one city — have enacted state-run mandatory IRA programs, although only three jurisdictions have actually implemented the programs. Four other states have enacted or implemented some form of voluntary retirement savings program for private-sector employees.

Mandatory Programs

OregonSaves. Oregon launched a mandatory auto-IRA program for private-sector employers in 2017, becoming the first state to do so. Employers that sponsor retirement plans are exempt and generally must certify their exempt status every three years.

Illinois Secure Choice Savings Program. Illinois's program began enrolling employees in 2019 for employers with 500 or more Illinois employees and will eventually expand to employers with at least 25 Illinois employees.

CalSavers. California is accepting employers into the pilot CalSavers program, and employers of all sizes can begin registering July 1, 2019. Employers with 100 or more employees in California must register by June 2020; deadlines for smaller employers will phase in over the next two years.

Other mandatory payroll-deduction IRAs awaiting launch. Several jurisdictions — Connecticut, Maryland, and the city of Seattle — have enacted similar mandatory auto-IRA programs that have yet to launch. Connecticut's Retirement Security Exchange and Maryland's Small Business Retirement Savings Program are expected to begin operating this year. No launch date has been announced for Seattle's Retirement Savings Plan.

Voluntary Programs

New York. In 2018, New York enacted a voluntary payroll-deduction Roth IRA program that private-sector employers can offer their workers. The Secure Choice Savings Program's board will decide whether to require participating employers to automatically enroll employees.

Washington. Washington state opened a voluntary, state-run retirement marketplace for employers with fewer than 100 employees in March 2018.

Multiple-employer plans (MEPs). Massachusetts has implemented a voluntary, state-run qualified defined contribution program, the CORE Plan, for nonprofit employers (under Internal Revenue Code § 501(c)(3)) with 20 or fewer employees. In 2017, Vermont began planning to implement the Green Mountain Secure Retirement Plan, a voluntary, state-run 401(k) multiple-employer plan for private-sector employers with 50 or fewer employees. No launch date has been announced for Vermont's program.

RELATED RESOURCES

- A 4134 (New Jersey Assembly, Feb. 25, 2019)
- CalSavers
- Connecticut Retirement Security Exchange
- Illinois Secure Choice Savings Program
- Maryland Small Business Retirement Savings Program

- Massachusetts CORE Plan
- NY Gen. Bus. L. §§ 1300-1316, New York State Secure Choice Savings Program
- OregonSaves
- Seattle Retirement Savings Plan
- Vermont Green Mountain Secure Retirement Plan
- Washington Small Business Retirement Marketplace

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