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EMPLOYERS NOW FACE PENALTIES FOR FAILURE TO COMPLY WITH OREGONSAVES

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Employers with workers in Oregon now face investigation and penalties for failure to comply with OregonSaves, the country's first state-run mandatory auto-IRA program for private-sector workers. A new law (SB 164), signed by Gov. Kate Brown on May 22, sets procedures for filing complaints against noncompliant employers and establishes civil penalties of up to $5,000 per calendar year. The law takes effect Jan. 1, 2020.

OREGONSAVES: AN OVERVIEW

Since 2017, employers with employees in Oregon have been required to register with the OregonSaves payroll-deduction Roth IRA program. Employers that sponsor a qualified retirement plan don't have to participate in the program but must certify their exemption and renew it every three years. Employers can certify their exemption on the OregonSaves website.

Phased registration. Registration began in 2017 for employers with 100 or more Oregon employees, extending in phases to smaller companies. Employers with 10 or more Oregon employees had to register or certify exemption by this past May 15, and employers with five or more Oregon employees must register or certify exemption by Nov. 15. The final phase will cover employers with even one Oregon employee; these employers must register or certify exemption by May 15, 2020.

Facilitation responsibilities. Nonexempt employers must "facilitate" the program by:

- Registering by the applicable deadline
- Enrolling current workers within 60 days after the registration deadline — and new employees within 60 days after hire
- Processing payroll deductions
- Remitting funds to the program
- Maintaining records

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Key features. The program features auto-enrollment and auto-escalation (both subject to employee opt-out) and a default target date investment fund (alternative funds are available at the employee's request). Administrative fees of up to 1.05% per year are charged to the participants' account.

NEW ENFORCEMENT FEATURES

Until now, the program had no enforcement mechanisms. The new law gives Oregon's Bureau of Labor and Industries authority to investigate and penalize noncompliant employers.

Employee request. Employees can report noncompliant employers to the bureau — although complaints can't be made earlier than two years after the employer's applicable registration deadline. (The earliest registration date was Nov. 15, 2017, which means noncompliant employers could face complaints as soon as the law takes effect in January 2020.) An employee request may trigger an investigation, though the law doesn't require an investigation for every complaint.

Board request. The law also says the Oregon Retirement Savings Board can ask the bureau to investigate a noncompliant employer but only after first trying three times to bring the employer into compliance using "different means of communication when available."

Penalties for noncompliance. Employers found to be noncompliant face civil penalties of up to $100 per affected employee, capped at $5,000 total per calendar year. The bureau can adjust the penalty (up or down) for mitigating or aggravating circumstances. Money received as penalties will be applied to reimburse any costs incurred in the investigation; remaining funds will be applied toward the program's administrative costs and expenses.

MORE TO COME

The legislature is considering two more bills relating to OregonSaves. SB 165 lets employers indicate their exempt status using an Oregon Department of Revenue form. SB 166 gives the board the power to enter into agreements to provide administrative services to other states offering similar retirement plans, such as investment and account management, recordkeeping, website and materials development, and reporting.

RELATED RESOURCES

Non-Mercer Resources

- OregonSaves website
- SB 164 (Oregon Senate, May 22, 2019)
- SB 165 (Oregon Senate, Jan. 14, 2019)
- SB 166 (Oregon Senate, Jan. 14, 2019)