



# Colorado enacts state-run auto-IRA program

*By Ellen Stone and Brian J. Kearney  
Aug. 27, 2020*

## In this article

[Scope of auto-IRA program](#) | [Key features](#) | [Related resources](#)

Most private-sector employers in Colorado that don't offer a retirement plan will have to enroll workers in a state-run, payroll-deduction IRA program, under legislation enacted earlier this summer ([2020 Ch. 295](#)). The legislation does not set an implementation date, so exactly when the program will get up and running is unclear.

## Scope of auto-IRA program

The Colorado Secure Savings Program will be established and implemented by a state-appointed [board](#). The board is responsible for designing and disseminating to all covered employers an implementation packet and an employee information package describing the mechanics of making contributions to and opting out of the program.

## Covered employers

Private-sector Colorado employers — whether for profit or not for profit — must participate in the program if they meet all of the following criteria:

- Have been in business for at least two years
- Had five or more employees in Colorado at any time during the previous calendar year
- Have not offered a retirement plan for at least two years

Other employers in Colorado can elect to participate in the program.

**Exemption for employers with retirement plans.** Employers are exempt if they have sponsored during the last two years:

- A qualified retirement plan under Internal Revenue Code Section 401(a), 401(k) or 403(a)
- A 403(b) tax-sheltered annuity plan
- A 457(b) deferred compensation plan
- A simplified employee pension (SEP) plan
- A savings incentive match plan for employees (SIMPLE 401(k) or IRA plan)

Employers also can become exempt if they enter into a “legally compliant” multiple-employer plan. The board will establish a process for employers to claim their exemption, using existing state forms and compliance structures.

**Assistance for small employers.** The statute requires the board to establish a grant program to encourage compliance with the program and defray the costs for small businesses with five to 25 employees. Grants are limited to \$300 per employer.

## Covered employees

A covered employee is anyone age 18 or older employed by a qualifying employer for at least 180 days and earning wages subject to Colorado state income tax. The program will allow individuals who aren't employees of a covered employer but are eligible for an IRA to participate.

## Key features

While the board is charged with working out the details, the program will have the following key features:

- **Employer mandate.** Covered employers will have to auto-enroll Colorado employees in the program and timely remit their payroll deductions. For employers failing to comply, the board can establish fines of up to \$100 per year for each eligible employee not enrolled, with a maximum penalty of \$5,000 in a calendar year. Employers won't be fined until three months after receiving a notice of noncompliance. Fines won't be enforced until one year after the later of the date the program begins operating or the employer becomes covered by the program.
- **Employers not sponsors or fiduciaries.** The statute says the program is not an employer-sponsored retirement plan. Employers won't be fiduciaries for the program or have any responsibility for plan

## Colorado enacts state-run auto-IRA program

administration or investments. Employers won't be liable for investment performance, program design or benefit payments.

- **Auto-enrollment.** Covered employers will have to auto-enroll employees in the program and deduct 5% of their pay (unless an employee opts out or elects a different amount). The statute authorizes the board to set a mechanism for adjusting contribution levels, including automatic adjustments. Covered employees may defer up to the maximum annual IRA contribution permitted under the Internal Revenue Code.
- **Timely deposit of contributions.** Employers will have 14 days to send employees' contributions to the program administrator. The board will establish the process for withholding contributions from an employee's wages and remitting withheld amounts.
- **Investments.** Investment options will include a low-risk investment portfolio, target date funds and other investments determined by the board. The board can contract with up to three investment managers, private financial institutions and other service providers to invest contributions.
- **Fees.** For the first five years of program operations, total annual fees cannot exceed 1% of total program assets. Thereafter, fees cannot exceed 0.75% of total program assets.

## Related resources

### Non-Mercer resources

- [2020 Ch. 295](#) (Colorado Legislature, July 14, 2020)
- [2019 Ch. 236](#) (Colorado Legislature, May 20, 2019)

### Mercer Law & Policy resources

- [New Mexico enacts retirement savings plan and marketplace](#) (May 13, 2020)
- [Judge finds CalSavers not preempted by ERISA](#) (April 2, 2019)
- [New Jersey to enact retirement savings plan for private-sector workers](#) (March 5, 2019)

*Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.*