Resources for tracking state and city retirement initiatives

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In this article

This article summarizes state and city retirement initiatives for private-sector workers and rounds up relevant Mercer and third-party resources. This listing will be updated periodically and may not always reflect the latest developments in every state.

California

In 2012, the state legislature passed the California Secure Choice Retirement Savings Trust Act, creating the CalSavers program. CalSavers is a mandatory payroll-deduction Roth IRA program for nongovernmental employers — both for-profit and not-for-profit — 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 register new eligible employees within 30 days of their hire date. CalSavers will send an information packet to the employee, who will then have 30 days to opt out. An eligible employee is one who is at least 18 years old, is covered by the state's unemployment insurance laws and receives a W-2 with California wages.

The default contribution rate is 5% of an employee's gross pay. Under the program's auto-escalation provision, after employees have participated for at least six months, contributions increase by 1% every Jan. 1 until the contribution rate reaches 8%. Employees can opt out of auto-escalation or change their contribution rate at any time.

Employers are prohibited from making contributions, pay no program fees and have no fiduciary liability. Employers must remain neutral about the program, neither endorsing nor discouraging employee participation.

The CalSavers Retirement Savings Board will send a penalty notice to employers that fail to comply with the program. Employers face a penalty of $250 per eligible employee if they fail to comply within 90 days after receiving the notice. An additional penalty of $500 per eligible employee applies if the employer is still not in compliance 180 days after receiving the notice.

Employer enrollment deadlines. CalSavers opened for employers to enroll on July 1, 2019, with phased-in enrollment deadlines based on an employer's number of eligible employees (although employers can join at any time):

- Employers with more than 100 employees originally had to register by June 30, 2020, but the deadline was extended to Sept. 30, 2020, due to the COVID-19 pandemic.
- Employers with more than 50 employees must register by June 30, 2021.
- Employers with five or more employees must register by June 30, 2022.

Employers can register for the program at https://employer.calsavers.com/.

Court challenge. In 2018, a self-described pro-taxpayer group filed a lawsuit to stop CalSavers from taking effect, arguing that ERISA preempts the program because its auto-enrollment feature makes participation by employees involuntary. A 1975 federal Department of Labor (DOL) rule exempts payroll-deduction IRAs from ERISA if the arrangements are "completely voluntary" and certain other conditions are satisfied (29 CFR § 2510.3-2(d)).

The district court found CalSavers isn't preempted by ERISA. However, the court declined to rule on whether CalSavers — with its auto-enrollment feature — is a completely voluntary program under the 1975 rule. Instead, the court focused on other aspects of the program to find no ERISA preemption — for example, CalSavers applies only to employers without an ERISA-covered retirement plan, and employers' responsibilities are only administrative.

On appeal, the 9th Circuit upheld the district court decision, finding that CalSavers is not an ERISA plan and therefore needn't satisfy the 1975 safe harbor. The court based its finding on two pertinent facts: CalSavers is established and run by the state and doesn't require employers to offer their own ERISA plan. The court also found conditioning eligibility on an employer's lack of an ERISA plan isn't an impermissible reference or connection to ERISA.

The plaintiffs could petition the 9th Circuit for a rehearing or appeal to the Supreme Court.

Non-Mercer resources

- CalSavers Retirement Savings Program
- CalSavers webpage for employers
- CalSavers regulations (CalSavers Retirement Savings Board, Jan. 25, 2021)
- CA Gov't Code tit. 21, the CalSavers Retirement Savings Trust Act (CA Legislative Information)
- *Howard Jarvis Taxpayers Ass'n. v. Cal. Secure Choice Ret. Sav. Program*, No. 20-15591 (9th Cir. May 6, 2021)
- Secretary of Labor's amicus brief in *Howard Jarvis Taxpayers Ass'n v. Cal. Secure Choice Ret. Sav. Program* (9th US Circuit Court of Appeals, June 19, 2020)

- *Howard Jarvis Taxpayers Ass'n. v. Cal. Secure Choice Ret. Sav. Program*, No. 2:18-CV-01584- MCE-KJN (E.D. Cal. March 29, 2019)
- 29 CFR § 2510.3-2(d), Safe harbor exempting certain payroll-deduction IRAs from ERISA

Mercer Law & Policy resource

- Judge finds CalSavers not preempted by ERISA (April 2, 2019)

Colorado

The state has enacted legislation to create (2019 Ch. 236) and implement (2020 Ch. 295) the Colorado Secure Savings Program, a mandatory state-run, payroll-deduction IRA program. The legislation does not set an implementation date, although a tentative timeline from September 2020 suggests implementation won't take place until at least 2022. Once the program is operational, private-sector Colorado employers — for-profit and not-for-profit — will have to 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 tax-favored retirement plan (e.g., a 401(a), 401(k), 403(b) or 457(b) plan) for at least two years

Employers in Colorado that aren't required to participate in the program can do so voluntarily. Employers participating in a multiple-employer plan are exempt. A state-appointed retirement board will establish a process for employers to claim their exemption, using existing state forms and compliance structures.

Covered employers will have to auto–enroll employees and deduct 5% of their pay, unless an employee opts out or elects a different amount. A covered employee is anyone age 18 or older employed by a covered employer for at least 180 days and earning wages subject to Colorado state income tax.

Employers that fail to comply will face 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 will have no fiduciary responsibility for the program.

Non-Mercer resources

- Colorado Secure Savings Program
- 2020 Ch. 295 (CO General Assembly, July 14, 2020)
- 2019 Ch, 236 (CO General Assembly, May 20, 2019)

Mercer Law & Policy resource

- Colorado enacts state-run auto-IRA program (Aug. 27, 2020)

Connecticut

State legislation (2016 Act 29 and 2016 Act 3, §§ 95–108) has established a mandatory auto-IRA payroll-deduction program known as the Connecticut Retirement Security Exchange. A state-appointed board, the Connecticut Retirement Security Authority (CRSA), is responsible for designing, implementing and maintaining the program. The program was scheduled to begin in 2018; however, implementation has been delayed. The pilot is currently scheduled to launch in July 2021.

Private-sector Connecticut 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 Connecticut as of Oct. 1 of the previous year
- Paid five or more Connecticut workers at least $5,000 in the prior calendar year
- Do not offer a tax-qualified retirement plan that is open to new entrants

Private-sector employers with fewer than five Connecticut employees may elect to participate in the program. Participating employers can't make any contributions but must automatically enroll covered employees (unless they opt out), timely remit payroll-deduction contributions, and distribute board-prepared enrollment materials and other communications. Employers have no fiduciary liability for the program.

A covered employee is anyone age 19 or older employed by a qualified employer for at least 120 days in Connecticut to perform a service recognized for unemployment compensation purposes under state law.

The CRSA must establish and maintain a website identifying vendors of alternative arrangements — such as employer-sponsored retirement plans or payroll-deduction IRAs — that employers may implement instead of the state-run program.

Non-Mercer resources

- Connecticut Retirement Security Authority website (CT Comptroller's Office)
- Press release (CT Comptroller's Office, April 20, 2020)
- 2016 Act 3 (CT General Assembly, June 2, 2016)
- 2016 Act 29 (CT General Assembly, May 27, 2016)

Illinois

In 2015, the state enacted legislation creating the Illinois Secure Choice Savings Program, an auto-enrollment payroll-deduction Roth IRA. Launched in 2018, the program generally covers any employer that has 25 or more workers in the state but doesn't offer a retirement plan. Employers are exempt if they sponsor a tax-favored retirement plan (e.g., a 401(a), 401(k), 403(b) governmental 457(b) plan or a multiemployer plan), even if the plan

doesn't cover any Illinois workers or all workers. The law also exempts employers in business less than two years and those with fewer than 25 eligible employees.

The program is available to employees age 18 or older who have wages subject to Illinois income tax. The default contribution rate is 5% of an employee's compensation, which generally includes wages, salaries, professional fees and other amounts received for services rendered — the same definition that applies for IRA contributions.

Covered employers must register eligible new employees with the program within 30 days of their hire date or accept their election to opt out. Noncompliant employers could face a fine of $250 per employee for the calendar year in which the employee should have been enrolled. The penalty increases to $500 per employee for each subsequent year an eligible employee who hasn't opted out remains unenrolled. Employers have no fiduciary responsibility for the program.

Non-Mercer resources

- Illinois Secure Choice Retirement Savings Program
- IL Admin. Code tit. 74, §§ 721.100–721.720, Secure Choice Savings Program regulations
- 820 IL Comp. Stat. 80, the Illinois Secure Choice Savings Program Act (IL General Assembly)

Maryland

The state legislature has enacted (2016 Ch. 324) the Maryland Small Business Retirement Savings Program, an auto-enrollment payroll-deduction IRA program. The program applies to for-profit and not-for-profit employers engaged in business in the state that pay employees through a payroll system or service, unless one of these exclusions apply:

- The employer currently offers — or offered at any time in the past two calendar years — a tax-favored retirement plan or IRA separate from the state-run program.
- The employer has not been in business for two full calendar years.

Employees age 18 or older are eligible for the program if they work for a covered employer, unless any of the following apply:

- The employee is eligible for a "qualifying retirement plan" or participates in a multiemployer plan.
- The employee is covered by the federal Railway Labor Act (which applies to certain railroad and airline employees).

The program is not yet operational. Once it begins, participating employers will auto-enroll employees at a default rate to be determined by the Maryland Small Business Retirement Savings Board but will not have fiduciary responsibility for the program. Covered employees can opt in or out at any time.

The law does not provide any penalties for covered employers that fail to comply. However, employers that participate in the program will receive a waiver of the $300 filing fee for the annual report that business entities must file.

Non-Mercer resources

- Maryland$aves website
- 2016 Ch. 324 (MD General Assembly, May 10, 2016)

Massachusetts

In 2012, the state legislature enacted the Massachusetts Defined Contribution CORE Plan (MA Gen. Laws Ch. 29, § 64E). The CORE Plan is a multiple-employer 401(k) plan open to not-for-profit employers with 20 or fewer employees. Employer participation is voluntary. All employees of a participating employer are eligible to participate and are automatically enrolled, but they can opt out.

The program launched in October 2017. The Massachusetts legislature is currently considering legislation that would expand the CORE Plan to all employers in the state and create a separate, mandatory auto-enrollment payroll-deduction IRA program.

Non-Mercer resources

- CORE Plan website
- CORE Plan statutory and regulatory information
- MA Gen. Laws Ch. 29, § 64E

New Jersey

The state legislature enacted (2019 Ch. 56) the New Jersey Secure Choice Savings Program in March 2019. For-profit and not-for-profit employers with 25 or more employees that have been in business at least two years and have not offered tax-favored retirement plans in the past two years will have to participate in the program. Smaller or newer employers will be able to join voluntarily.

Covered employers will auto-enroll employees in the program and deduct 3% of employees' pay, unless employees opt out or elect a different amount. Participating employers will have no fiduciary responsibility for the program.

A board of state-appointed officials will administer the program. Enrollment of employees was originally scheduled to begin in 2021, but the board may delay the implementation for another 12 months. To date, the state does not appear to have taken any action — beyond allocating funds in the fiscal 2021 budget — to implement the program (e.g., no website exists and no officials have been appointed to the board).

Non-Mercer resource

- 2019 Ch. 56, New Jersey Secure Choice Savings Program Act (NJ Legislature, March 28, 2019)

Mercer Law & Policy resource

- New Jersey to enact retirement savings plan for private-sector workers (March 5, 2019)

New Mexico

Enacted in February 2020, the New Mexico Work and Save Act (2020 Ch. 7) creates both a state-run, payroll–deduction Roth IRA savings program and a retirement plan marketplace. Participation in the programs is voluntary for both employers and employees.

Employers eligible to participate include private-sector for-profit and not-for-profit employers that have a primary place of business physically located in New Mexico. Participating employers will not have fiduciary responsibility for the payroll-deduction IRA program, but plans offered through the marketplace will generally be subject to ERISA.

Covered employees include all full- and part-time employees of a covered employer who are at least 18 years old, unless the employee is covered by a multiemployer pension plan or the federal Railway Labor Act. The programs are also available to self-employed individuals.

The marketplace is slated to start operating by July 1, 2021, and the auto-IRA program by Jan. 1, 2022.

Non-Mercer resources

- Work and Save website (NM State Treasurer's Office)
- 2020 Ch. 7 (NM Legislature, Feb. 26, 2020)

Mercer Law & Policy resource

- New Mexico enacts retirement and savings plan marketplace (May 13, 2020)

New York

State legislation enacted in 2018 (2018 Ch. 55) established the New York Secure Choice Savings Program, a state-run, payroll-deduction Roth IRA program for private-sector employers that don't sponsor retirement plans. The program is voluntary and will be open to all private-sector employers — both for-profit and not-for-profit — in New York State that haven't offered a qualified retirement plan in the last two years. Participating employers will have no fiduciary responsibility for the program.

Employees age 18 or older who have New York wages are eligible to participate. A state-appointed retirement board will determine whether eligible employees of participating employers will be automatically enrolled.

Originally scheduled to launch by April 2020, the program has not yet opened for enrollment. The board could delay implementation by an additional 12 months.

Non-Mercer resource

- 2018 Ch. 55 (NY Senate, April 12, 2018)

New York City

In May 2021, New York City enacted two pieces of legislation (Chs. 51 and 52) to create the Savings Access New York Retirement Program, a city-run, auto-enrollment payroll-deduction savings program for employees age 21 and

older whose regular duties occur in the city. The program covers private-sector employers — both for-profit and nonprofit — with five or more employees working in the city, if the employer has been in operation for at least two years and hasn't maintained a retirement plan for that time (including a payroll-deduction IRA or the New York Secure Choice Savings Program described in the previous section).

The program is mandatory for covered employers, but other employers can elect to participate. Covered employees can opt out, while self-employed individuals and other employees who aren't covered may voluntarily opt in. The program's default contribution rate is 5% of pay, but employees may change the rate and may also make lump sum contributions. Employers will be responsible for enrolling employees and remitting their salary deferrals, but will not make additional contributions to the program.

The law is scheduled to go into effect in August 2021, assuming all necessary actions have been carried out before then. The program's retirement savings board will establish enrollment deadlines.

Non-Mercer resource

- 2021 Ch. 51 (New York City Council, May 11, 2021)
- 2021 Ch. 52 (New York City Council, May 11, 2021)

Oregon

In 2015, the state enacted the Oregon Retirement Savings Plan, known as OregonSaves, an auto-enrollment payroll-deduction Roth IRA. Employers of all sizes must participate unless they offer a qualified retirement plan. Employers register or certify their exemption on the OregonSaves website.

OregonSaves opened for employer registration in 2017, starting with the largest employers and working down. The last registration deadline — for employers with four or fewer employees — is Jan. 15, 2021 (the deadlines have passed for employers of all other sizes). New employers in Oregon have 90 days to register or certify their exemption.

The program covers employees age 18 or older who are subject to Oregon's unemployment insurance laws. Employers must register employees within 30 days of their hire date. The default contribution rate is 5% of an employee's W-2 compensation, with 1% increases every Jan. 1 up to 10%. Employees can change their contribution rates at any time or opt out of the program altogether.

In addition to enrolling employees and facilitating payroll deductions, employers must distribute informational materials to employees (among other administrative duties). Employers are not program fiduciaries and must remain neutral about the program, neither endorsing nor discouraging employee participation. Employers that fail to comply with the program face civil penalties of up to $100 per affected employee, capped at $5,000 total per calendar year.

Non-Mercer resources

- OregonSaves website
- Oregon Retirement Savings Board website (OR Treasury)

- OR Admin. R. 170-080-0001 to 170-080-0065, Oregon Retirement Savings Program regulations (OR Treasury)
- OR Rev. Stat. §§ 178.010–178.990, Oregon Retirement Savings Plan (OR Legislature)

Mercer Law & Policy resource

- Employers now face penalties for failure to comply with OregonSaves (June 3, 2019)

Vermont

Enacted in 2017 (2017 Act 69, § C.1), the Vermont Green Mountain Secure Retirement Plan is a state-run, voluntary multiple-employer plan for employers with 50 or fewer employees and no retirement plan. Employers that choose to participate must auto-enroll their employees, who can opt out. Self-employed individuals are also able to participate.

The plan initially was set to launch in early 2019. However, the state delayed implementation pending the federal DOL's issuance of final regulations on multiple-employer plans. According to program website, the Green Mountain Secure Retirement Board is working to launch the program in 2021.

Non-Mercer resources

- Vermont Green Mountain Secure Retirement Plan website (VT State Treasurer's Office)
- 2017 Act 69, § C.1, the Green Mountain Secure Retirement Act (VT General Assembly, June 8, 2017)

Mercer Law & Policy resource

- Rules for DC multiple-employer plans eased as DOL seeks input on open MEPs (July 31, 2019)

Virginia

In April 2021, the state enacted VirginiaSaves (2021 Ch. 556), an automatic-enrollment, payroll-deduction IRA program for private-sector employees. For-profit and not-for-profit employers with at least 25 employees that have been operating for at least two years must participate unless they offer an auto-enrollment payroll-deduction IRA or qualified retirement plan. Other employers may elect to participate voluntarily, but must ensure their participation does not create an ERISA plan. Participating employers will have no fiduciary responsibility for the program.

Employees age 18 or older who work at least 30 hours per week and have Virginia taxable income are eligible to participate. Employers must auto-enroll eligible employees, but employees may opt out at any time. Employer contributions are prohibited.

The program is scheduled to begin operations by July 1, 2023. The program's board will establish employer enrollment deadlines.

Non-Mercer resource

- 2021 Ch. 556, VirginiaSaves (Virginia General Assembly, April 15, 2021)

Washington

Enacted in 2015 (Ch. 296), the Washington Small Business Retirement Marketplace provides a website where self-employed individuals and employers with fewer than 100 employees can compare and shop for state-verified, simple, low-cost retirement savings plans and IRAs. Participation is voluntary for both employers and employees.

The Retirement Marketplace, which opened in March 2018, offers 401(k) plans with and without auto-enrollment, a safe harbor plan, a profit-sharing plan (employer-only contributions), as well as Roth and traditional IRAs. The website also provides links to educational materials and other resources for employers and individuals.

Non-Mercer resources

- Washington's Retirement Marketplace (WA Department of Commerce)
- Retirement marketplace information page (WA Department of Commerce)

Seattle, WA

In 2017, Seattle approved an ordinance (Ord. 125467) establishing a savings program, known as the Seattle Retirement Savings Plan, for employees working for a covered employer within the city limits. The plan applies to private-sector employers that do not offer their own retirement plan or participate in a multiple-employer or multiemployer plan. Covered employers must offer the plan to employees age 18 or older. The plan has not yet been implemented.

Non-Mercer resources

- Seattle Retirement Savings Plan website
- Ord. 125467 (Seattle City Council, Nov. 22, 2017)

Related resource

- Georgetown University Center for Retirement Initiatives (registration required for some content)

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