What Employers Need To Know About Mandatory Payroll Deduction Savings Programs

Insights
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Administering and providing retirement benefits can present difficulties to employers. If you offer such benefits, you must choose and monitor service providers, offer prudent investment options, and administer benefits, among other responsibilities. It is for these reasons that some employers decline to offer them.

Recognizing such difficulties, a number of states have drafted legislation to establish and maintain state-sponsored retirement plans for private sector workers. To date, California, Connecticut, Illinois, Maryland, Massachusetts, and Oregon have done so.

U.S. Department of Labor (USDOL) Guidance
In August 2016, the USDOL issued guidance on these state-sponsored retirement plans. It indicated that they would not be subject to ERISA provided they satisfy certain safe harbor requirements. These safe harbor requirements include: employees' participation must be voluntary, employer's participation is required by law (in other words, the applicable state requires employers to adopt a payroll deduction savings program), employer's participation is limited to ministerial functions (i.e., collecting and remitting payroll deductions), and employers may not make any contributions on behalf of their employees.

Even if employers remit payroll deductions, the state still has most of the responsibility over the amounts. The USDOL has not established maximum time limits for transmitting deductions to the state as it has for employer-sponsored retirement plans. However, it has suggested that states establish a process to ensure that deductions are transmitted timely.

Employers that sponsor retirement benefits may wonder if their non-eligible employees will be required to participate in these state-sponsored programs. Although the exact language of any laws should be reviewed, the USDOL has indicated that these programs should focus on employers who do not offer employer retirement benefits rather than targeting specific employees who are ineligible for employer-sponsored benefits.

California Secure Choice Retirement Savings Board
As an example of a state-sponsored retirement savings program, California adopted California Secure Choice, which will be implemented gradually over a 36-month period. Secure Choice's key feature is automatic payroll deduction. If employees do not opt out, 3% of their salary or wages will

be contributed automatically, although they will be given the option to designate another amount. The annual contribution limits will likely be the same as IRA annual contribution limits ($5,500 for 2017, or $6,500 for those over age 50).

The Secure Choice Investment Board has reserved the right to adjust the default contribution rate anywhere between 2% and 5%. It can also automatically increase contributions by 1% annually, up to a maximum of 8%. Employees will be able to terminate their participation at any time and will have an opportunity to re-enter the program during an open enrollment period, which will occur at least once every two years.

Future Developments

The USDOL has proposed a similar rule for "qualified political subdivisions." A qualified political subdivision would include any city, county, or similar governmental body with a population equal to or greater than the least populated state in the nation. Currently, the least populous state (Wyoming) has just under 600,000 people.

Consistent with this proposed rule, New York City recently announced plans to establish a retirement savings program for private sector employees. If the USDOL finalizes rules on qualified political subdivisions, more cities or counties may follow this lead. If this occurs, you will have to stay up to date not only on your state's developments, but also track local legislation.

It is likely that other states, and perhaps other qualified political subdivisions, may begin drafting legislation for state-sponsored retirement plans. The USDOL has given states flexibility to experiment with these programs, so it is possible that programs could be modified once established. We will continue to keep you updated on your obligations as they change.

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