



# New York Employers Soon Required to Enroll Employees in Retirement Savings Plan

Insights

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New York employers that don't sponsor their own retirement plans will soon be required to automatically enroll employees in New York's state-run savings plan. Lawmakers originally created the New York State Secure Choice Savings Program in 2018 as a voluntary retirement savings program, allowing private sector and nonprofit employees to participate through automatic enrollment payroll deductions. But last month, Governor Kathy Hochul signed into law an amendment requiring private employers to automatically enroll employees in the Program, with an aim of assisting employees who do not already have access to an employer-sponsored retirement savings plan. Now that private employers will be required to participate in the Program, here is what employers need to know.

## Who Does This Apply To?

The Program applies to both non-profit and for-profit employers in New York state that meet the following requirements:

1. The employer has not already offered their employees a qualified retirement plan including, but not limited to a 401(a), 401(k), 403(a), 403(b), 408(k), 408(p) or (457(b) plan, in the last two years;
2. The employer has at least 10 employees in the state over previous calendar year at all times; and
3. The employer has been in business for a minimum of two years.

If all three of these requirements are met, then an employer's participation in the Program is mandatory. Employers that already offer a qualified retirement plan such as a 401(k) are prohibited from terminating their existing plan in order to participate in the Program.

Although the Program requires that employers who meet the above-mentioned criteria automatically enroll their employees in the Program, employees may choose to opt out of the Program at any time. An employee who opts out of the Program but later wishes to participate will need to wait until an annual open enrollment period to do so.

The Program covers all employees age 18 or older who work in New York, regardless of how many hours the employee works. Accordingly, the Program is open to both full-time and part-time employees.

## **How Does The Program Work?**

The Program is an automatic payroll deduction IRA managed by the Program's board, which is responsible for selecting the investment options in the Program. The state pays the administrative costs associated with creating and managing the Program until it has sufficient assets to cover those costs itself. At that point, any costs must be paid out of money within the Programs' fund.

Employees participating in the Program may select a specific contribution amount to pay into the Program (either as a percentage of wages or a certain dollar amount within IRS limits). For those employees who do not opt out or select a specific contribution amount, the default election deferral is set at 3% of their wages. The retirement savings accounts created for individuals will be Roth IRA accounts, which means money contributed to the account will be after income taxes on those earnings have already been deducted.

## **What Must Employers Do?**

Under the Program, the duties of the employer are strictly administrative. Employers covered by this law must:

1. Make the state's employee informational materials available to employees;
2. Automatically enroll each employee in the Program unless they opt out;
3. Set up the payroll deposit retirement savings arrangement to allow employees to participate in the Program; and
4. Manage the employee contributions to the program.

Importantly, participating employers are not fiduciaries under the Program. As such, employers are shielded from liability with respect to benefits paid and investment returns amongst the Program participants. The New York Secure Choice Savings Program Board serves as the fiduciary of the Program and is solely responsible for designing and operating the Program.

## **Next Steps for New York Employers**

While the law became effective when Governor Hochul signed it into law on October 21, it is unclear when the Program will open for enrollment. It is not expected this will happen until sometime in 2022. Therefore, you are not required to take any immediate action. Once the Program opens for enrollment, you will have nine months to setup the payroll deposit system. You should be on the lookout for additional details regarding when the Program opens for enrollment, as well as any regulations that are issued.

We will continue to monitor developments regarding this Program and provide updates once more information is available, so make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the

most-up to-date information. If you have questions about the Program, contact your Fisher Phillips attorney, the authors of this Alert, or any attorney in our [New York City office](#).

*Henry Thomson-Smith contributed significantly to the development of this Insight.*

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