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MOST NEW JERSEY EMPLOYERS MUST PROVIDE RETIREMENT SAVINGS PROGRAMS STARTING MARCH 28

Insights
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New Jersey employers with 25 or more employees that do not currently sponsor a retirement savings plan will soon be required to facilitate their employees' enrollment in the New Jersey Secure Choice Savings Program Fund to save for retirement through automatic payroll deductions. The [New Jersey Secure Choice Savings Program Act](#) establishes a retirement savings program in the form of an automatic enrollment payroll deduction "for the purpose of promoting greater retirement savings for private sector employees in a convenient, low cost, and portable manner." Although enacted in March 2019, the implementation date was extended to March 28, 2022 due to COVID-19, and employers have 9 months thereafter to comply. In just a few short weeks, many New Jersey employers will need to commence the process of registering for the program and, once registered, setting up the requisite payroll deductions to comply with the Act. Here's what you need to know to make sure you are ready for the changes.

[Ed. Note: The program was not established by the implementation date; we recommend you check [the state's website](#) for updates.]

Who is Covered?

The Act covers all private employers in New Jersey that: (1) have employed 25 or more employees in New Jersey; (2) been in business at least two years; and (3) have not offered a qualified retirement plan in the preceding two years (such as a 401K plan).

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Small employers with fewer than 25 employees may provide payroll deposit retirement savings arrangements for employees who elect to participate in the program but are not required to do so.

How Does the Program Work?

Participating employers must automatically enroll all employees who do not opt out of the program at a 3% pre-tax contribution rate, unless the employee requests a different contribution rate. Once enrolled, employers must provide payroll deposit retirement savings arrangements for their employees and deposit the funds into the program on the employees' behalf.

Employers do not operate or administer the program and are not considered to be a fiduciary over the program. Participating employers will not have any liability for an employee's decision to participate in or opt out of the program or have any responsibility for the investment performance of the program. While the program is at no cost to employers, there are certain administrative burdens imposed on employers to comply with the Act.

What Must Employers Do Now?

The Act establishes the New Jersey Secure Choice Savings Board which, among other things, is required to design and disseminate to all employers both an employer and an employee information packet. The packet will include background information on the program, appropriate disclosures for employees, and other pertinent information. The Board is also required to set up a website with information. At this point, employers are in a holding pattern until the Board disseminates the required information – which is expected to be by the March 28 implementation deadline.

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For the first six months following the opening of the program, the Board will provide a process for employers to register for participation. Then, participating employers must provide the employee information packet to current employees upon implementation of the program.

What Obligations Will Employers Have Once They are Registered For the Program?

After current employees are enrolled, employers will be required to provide program information to new employees at the time of hire and enroll new employees within three months of the hire date. Employers will be required to automatically withhold 3% of pre-tax earnings for all employees who do not opt out of the program, and keep track of any opt-out requests. Employers will also be required to deposit the funds into the program on behalf of the employees.

After the initial implementation of the program, participating employers must designate an annual open enrollment period for employees who previously opted out of the program to enroll. Additionally, employers will be required to report information relevant to compliance with the Act on their state income tax return.

What are the Risks of Non-Compliance for Employers?

Employers covered under the Act will be subject to fines and penalties for failure to comply with its terms. An employer who fails to enroll an employee who did not opt out of participation without reasonable cause will be subject to a written warning during the first calendar year a violation occurs, a \$100 fine for the second calendar year, a \$250 fine for each employee who was not properly enrolled for the third and fourth calendar years, and a \$500 fine for each employee who was not properly enrolled for the fifth and any subsequent calendar year.

Employers that collect employee contributions but fail to remit any portion to the fund will be subject to a \$2,500 penalty for the first offense and a \$5,000 penalty for each subsequent offense.

Conclusion

New Jersey employers should be on the lookout for detailed information about registration and next steps from the Board by March 28. If you have any questions about New Jersey's mandatory retirement savings plan requirements and how these changes may impact your business, please contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [New Jersey office](#). Make sure you are

subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information.