



California's New State-Sponsored Retirement Program to Debut Soon

Insights

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In September 2016, the California legislature amended the California Secure Choice Savings Trust Act of 2012 ("Secure Choice"). This law will eventually require employers with at least five employees, and which do not offer employer-sponsored retirement benefits, to establish automatic payroll deductions for their employees to participate in the Secure Choice retirement savings plan. Employers will only act as intermediaries and remit the payments to the state, which will administer the program. The state has already established the California Secure Choice Retirement Savings Investment Board to administer the program.

Even though Secure Choice includes an automatic payroll deduction feature, employee participation must remain voluntary. This means that employees must be given advanced notice of the automatic payroll deduction and a chance to opt out. If employees do not opt out, 3% of their annual salary or wages will be contributed automatically to the program. Employees will also be given the option to designate another amount. The annual contribution limits will likely be the same as IRA annual contribution limits, which will be \$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%. The Secure Choice Investment Board also is permitted to 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 be given an opportunity to re-enter the program during an open enrollment period, which will occur at least once every two years.

The law will be implemented gradually. Within the first 12 months after the program opens for enrollment, employers with more than 100 eligible employees that do not offer an employer-sponsored retirement plan or automatic enrollment payroll deduction IRA will be obligated to participate in the program. Within 24 months after the program opens for enrollment, it will apply to employers between 50 and 99 employees, and within 36 months, it will apply to employers with more than five employees. The definition of employee is broad and includes anyone "employed by an eligible employer."

The U.S. Department of Labor (DOL) has issued guidance and a safe harbor for state retirement programs, such as Secure Choice. The DOL has confirmed that employers will not be establishing ERISA plans by remitting payroll deductions to the state for their employees. The DOL requires that employer involvement in these programs be limited. Employers are only permitted to:

- Collect and remit employee payroll deductions
- Provide notice and distribute materials to employees regarding the program
- Maintain payroll records regarding collections and remittances
- Provide information to the state to facilitate the operation of the program

Employers have no discretionary authority, control or responsibility under the program and are not permitted to make contributions on behalf of their employees. The Secure Choice Investment Board will select and monitor investment options. Employers will not be involved in the investment options or their employees' investment decisions. Employers will not be fiduciaries of the program.

Some employers that do sponsor retirement benefits may be wondering if their non-eligible employees will be required to participate in these state-sponsored programs. Based upon existing guidance, Secure Choice will not be available to any employer that sponsors a retirement benefit plan.

Given that this is a new program and that the Secure Choice Investment Board has been given flexibility with the implementation of the program, it is quite possible that the state may modify the program. If it does, we will keep you updated on any changes that may affect you or your employees.