



Eye On Washington

Legislative Update



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Legislative Trends: State Automatic IRA Retirement Plan Mandates Expected to Become Effective Soon

Recent U.S. Department of Labor (DOL) regulations that were intended to facilitate state automatic IRA retirement plan mandates were recently revoked by Congress and withdrawn. This revocation may affect some state laws, which generally have not gone into effect. However, at least three states have signaled that they will proceed. Oregon is in the process of notifying the first wave of employers that their plan will become effective later this year. Several other states are considering legislation or are studying the feasibility of such plans.

Background

Some policymakers have expressed concerns that as much as one-third of the U.S. workforce does not have the opportunity to save for retirement at the workplace. Federal legislation to require most employers to offer basic retirement savings programs with automatic enrollment was introduced throughout the Obama Administration, but was not enacted.

To facilitate state adoption of similar laws, the DOL finalized regulations¹ in 2016 that provided guidelines under which state payroll deduction savings programs would not be covered by the Employee Retirement Income Security Act (ERISA). Separate rules covering similar plans administered by political subdivisions² were also finalized in 2016. As many as 88 cities/counties were thought to qualify under these rules. The DOL rules provided that such programs had to be mandatory, with no employer discretion as to whether to offer them. Programs would need to feature automatic enrollment, requiring employees to opt out if they did not wish to participate. (Hence, these programs are often referred to as "Automatic IRA" plans.) There could be no employer contributions and the employer's role was limited to administering disclosures, enrollment, and payroll deductions.

However, Joint Resolutions 66 and 67 were recently enacted by Congress to revoke these DOL rules. This

revocation could affect certain existing state plans; e.g., some state laws would automatically become ineffective if it is determined that implementation would create ERISA liability for the state or for employers. The impact remains unclear. Some state laws pre-dated the DOL rules. Other states have signaled that they will proceed.

State retirement plan mandates have been enacted in California, Connecticut, Illinois, Maryland and Oregon, but have not yet taken effect. Employers are generally exempt from such laws if they offer a qualified retirement plan, such as a 401(k) plan.

Oregon ("OregonSaves") Program Becomes Effective in Late 2017

Oregon is in the process of notifying the first wave of employers (i.e., those with 100 or more employees) that they may be subject to the law. The identified companies are being asked to register or certify that they offer a qualified retirement plan, and are therefore exempt, by November 15, 2017.

OregonSaves launched a pilot program in July with eleven employers, who have already begun making payroll deductions for participating employees. In August, more than 40 additional employers will be invited to register for the pilot program and begin payroll deductions in October.

1 USDOL EBSA Final rule Savings Arrangements Established by States for Non-Governmental Employees, 29 CFR Part 2510, RIN 1210-AB71, FRB 8/30/2016.

2 USDOL EBSA Final rule Savings Arrangements Established by State Political Subdivisions for Non-Governmental Employees, Final rule 29 CFR Part 2510, RIN 1210-AB76, FRB 12/20/2016.



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The OregonSaves website notes that employers will have no financial obligations to the program and are not required to make employer contributions. After the initial registration and providing employee information to set up the accounts, employers are only required to furnish OregonSaves program information to employees and to make and remit payroll deductions.

Employees are automatically enrolled in the program, but can adjust their contributions or opt out of (or go back in to) the program at any time. Unless they opt out or adjust their elections, employees will contribute 5% of wages. This percentage will automatically escalate by 1% annually, up to 10%. Amounts deducted are considered Roth IRA contributions (i.e., are after-tax deductions). Employers will not need to furnish an annual tax statement.

However, employees with higher incomes may not be eligible to contribute to a Roth IRA. If an employee earns more than the Roth IRA income limits set by the federal government, they may need to opt out. For 2017, employees can save up to \$5,500 per year if they are younger than 50 and \$6,500 per year if they are 50 or older. The OregonSaves system will monitor employees that are nearing the contribution limit and advise the employer to stop contributions when the limit is reached.

After the initial implementation, employers will need to add to the system any employees hired subsequently, either by typing in their information or by uploading a list of employees using the electronic template supplied. OregonSaves will verify each employee's identity and will contact them by mail or email to provide account information. For additional details on the Oregon law and program, see <https://employer.oregonsaves.com/>

Outlook

Beyond Oregon, states that have enacted legislation are in the process of rulemaking and preparing to implement over the next two to three years. At least 15 additional states considered legislation in 2017 that would either have established a similar retirement plan mandate or provided for a legislative feasibility study. Some cities, such as New York City and Philadelphia, have proposed similar laws, but have not yet enacted them.

For additional background, see the June 2016 *Eye on Washington*, [**State Automatic-IRA Retirement Plan Mandates Gain Momentum**](#).

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