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Did You Know California has a State Mandated Retirement Plan?

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Frequently Asked Questions About CalSavers

Question:

What is CalSavers?

Answer:

CalSavers is a new California law designed to encourage employees to save for retirement. CalSavers was originally called California Secure Choice and was approved by the State Legislature in 2016.

CalSavers provides employees with a retirement savings program without the administrative complexity, fees, or fiduciary liability of existing options for employers. Most employers with at least five employees, that do not already offer an employer-sponsored retirement plan, will be required to begin offering a retirement plan or provide their employees access to CalSavers.

When an employer participates in CalSavers, an automatic two to eight percent (2-8%) of pay is deducted from each employee's paycheck and deposited to the employee's CalSavers account, unless the individual employee elects a different amount or completely opts-out of the program. A CalSavers account is a personal IRA account overseen by the CalSavers Retirement Savings Investment Board.

Question:

Which employers must participate?

Answer:

Every California employer must participate in CalSavers if it has:

- No retirement plan; and
- More than five (5) full or part-time employees (with at least one employee in California).

Employers that maintain employer-sponsored "retirement plans" to benefit their employees will be exempt from CalSavers. For the exemption, "retirement plans" will include 401(k) plans, qualified profit sharing plans, defined benefit plans, cash balance plans, and 403(a) and 403(b) plans, and arrangements under Section 457(b), 408(k) and 408(p) of the Internal Revenue Code (the "Code"). Employers participating in or contributing to union multiemployer pension plans will also be exempt from CalSavers.

The number of employees, for eligibility for CalSavers, is determined based on the average number of employees as reported to the California Employment Development Department for the quarter ending on the most recent December 31, and the previous three-quarters of available data from the reports.

Non-profit employers must comply with CalSavers, but certain employers are exempt, such as governmental entities.

Question:

When is it effective?

Answer:

An ongoing pilot phase launched on Nov 19, 2018. The mandatory participation dates for employers subject to the mandate will phase-in yearly, based on the number of full-time and part-time employees working for the employer.

June 30, 2020, is the deadline for employers with at least 100 employees, and smaller employees will phase-in :

June 30, 2021:
50-99 employees

June 30, 2022:
5-49 employees

Early participation is also permitted, so beginning July 1, 2019, employers with at least five employees can voluntarily register for CalSavers if they wish to participate before their required registration date.

Question:

What are the advantages of participating in the CalSavers program?

Answer:

- Employers will have no liability for an employee's decision to participate in, or opt out of, CalSavers;
- Employers will have no liability for the investment decisions of participating employees;
- Employers will not be a fiduciary of CalSavers; and
- Employers will not bear responsibility for the administration, investment performance, or the payment of benefits earned by participating employees.

Question:

What are the drawbacks of the CalSavers law?

Answer:

Employers may be concerned when they receive notices from the CalSavers Retirement Savings Investment Board stating that they must register with CalSavers. The CalSavers program will notify those employers that, based on available information, appear to be required to participate in CalSavers by the applicable registration deadlines and require those employers that have not previously registered for CalSavers to do so on or before the deadlines. However, there appears to be no way of preemptively establishing that an employer is exempt from CalSavers because it sponsors a retirement plan. In addition, there is no requirement that the CalSavers program search the Department of Labor's database of Forms 5500 filings to determine which California employers already sponsor a retirement plan. For that reason, employers that already sponsor retirement plans, which are erroneously identified as employers required to participate in CalSavers, may inform CalSavers of their exemption from the program using procedures that still need to be established.

Question:

How does an employer participate in CalSavers?

Answer:

1. Register for CalSavers here;
2. Upload their employee roster to enable enrollment of all employees;
3. If applicable, designate a payroll services provider to facilitate on the employer's behalf.; and
4. Transmit the payroll contribution to a third-party administrator to be determined by the program.

Question:

What are the penalties for failing to comply with CalSavers?

Answer:

Penalties have been proposed of $250 per employee if the employer does not comply within 90 days of receiving a notice requiring registration and $500 per employee if the employer does not comply within 180 days of receiving the notice.

Question:

What is the status of CalSavers?

Answer:

The law is still in flux, and implementation may be subject to delays and changes.

In addition, there is a lawsuit seeking to strike down the law because the Employee Retirement Income Security Act ("ERISA") (a federal law that governs employee benefits) preempts it. The State of California argues that CalSavers is not preempted because it is not established or maintained by an individual employer, but is established by the State of California, and because the program is completely voluntary for the employees.

Question:

Do any other states or cities have similar laws?

Answer:

Connecticut, Illinois, Maryland, Oregon, and Seattle also have state or city-run retirement programs.

Question:

What is the takeaway?

Answer:

Employers in California that do not want the administrative burden and expense of sponsoring a retirement plan can participate in CalSavers in order to give their employees an opportunity to save for retirement on a tax-free basis.

Employers that already sponsor their own retirement plans may receive notices that they must register for CalSavers when in fact they are exempt and need not register or participate.