In a Growth State of Mind – Consider Retirement Plan Mandates When Expanding Operations to New States

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Over the last few years, governmental agencies, retirement planning advisors, and social service providers have increasingly voiced concerns that American workers are not adequately saving for retirement. Many observers consider this lack of retirement preparedness to be a crisis, as over one-third of private sector workers do not have access to a retirement plan. In response, California, Illinois, Connecticut, Oregon, Maryland, New Jersey, and Seattle have enacted laws mandating that employers provide state-run retirement programs to their employees.

At first blush, many employers – especially employers that currently offer 401(k) or pension plans to their employees – may quickly dismiss these laws as not applicable. However, as employers add small employee groups, resulting from multistate expansion through organic growth or acquisitions, they should be aware of state-run retirement plan mandates to ensure compliance and avoid the accumulation of penalties.

Below is a brief overview of two examples:

**CalSavers Retirement Savings Program (“CalSavers”)**

The California Secure Choice Retirement Savings Trust Act requires California employers to participate if they have five or more employees and do not offer an employer-sponsored retirement plan. Employers with 100 or more employees must register by June 30, 2020; 50 or more employees by June 30, 2021; and five or more employees by June 30, 2022.

In general, employees who are at least 18 years of age and receive an Internal Revenue Service Form W-2 with California wages are eligible to participate in CalSavers.

CalSavers is completely voluntary for employees and solely funded by employee savings (no employer fees or contributions). In order for a covered California employer to comply, it must submit participating employee contributions to CalSavers through payroll deductions. The contributions are deposited into an individual retirement account (IRA) for each respective employee.

California employers that fail to comply with the mandate are subject to a penalty of $250 per eligible employee if noncompliance extends 90 days or more after receiving a notice from CalSavers and an additional penalty of $500 per eligible employee if found to be in noncompliance 180 days or more after the notice.

Additional information can be found here: [https://www.calsavers.com/](https://www.calsavers.com/)

**Illinois Secure Choice Savings Program (“Illinois Secure Choice”)**

Illinois’ requirement is found in the Illinois Secure Choice Savings Program Act. Illinois Secure Choice applies to
eligible employees (whether part time or seasonal) who are at least 18 years of age, employed by an Illinois employer, and have wages that are allocable to Illinois during a calendar year. Applicable Illinois employers include those that (1) have at no time during the previous calendar year employed fewer than 25 employees in Illinois, (2) have been in business at least two years, and (3) have not offered a qualified retirement plan in the preceding two years.

Participating employers automatically enroll eligible employees at a payroll deduction contribution rate of 5% of wages (subject to the employee opting out or changing the deduction amount). Amounts are deposited into a Roth IRA and – after 90 days – are invested in a target-date fund based on the employee’s age. Participating employers are not responsible for any fees or employer contributions.

The Illinois Secure Choice Program was rolled out in waves starting in November 2018 for employers with 500 or more employees. Employers with 100-499 employees must register by July 1, 2019; 25-99 employees by November 1, 2019. The State will notify employers directly when they will be required to register or indicate that they are exempt.

Noncompliant Illinois employers are subject to a penalty of $250 for each employee for each calendar year (or portion of a calendar year) during which a covered employee was not enrolled (or had not opted out of) Illinois Secure Choice. For each subsequent year, the penalty increases to $500.

Additional information can be found here: https://www.ilsecurechoice.com/home.html

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