State-Facilitated Retirement Programs

 **TILSON**

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## **State-Facilitated Retirement Programs**

As a means of addressing the retirement savings gap in the country, states have begun requiring certain private employers that do not offer a retirement savings plan to their employees to do so. Generally, businesses can comply with these laws by enrolling their employees into a state-sponsored retirement program or by sponsoring a plan of their own through the private market.

State-sponsored retirement plans are commonly Roth individual retirement accounts (IRAs), designed for low to moderate income wage earners working for small and midsize businesses. IRA means an individual retirement account or individual retirement annuity under 26 U.S.C. §§ 408(a), 408(b), or 408A. The programs are overseen and administered by the state, with investments managed by approved private companies.

Businesses that already offer a workplace retirement plan to their employees may register for an exemption from the state-sponsored retirement program.

Most state-facilitated retirement plans are designed to be covered under the 1975 U.S. Department of Labor (DOL) safe harbor rule and are not intended to create an employer sponsored retirement plan subject to the Employee Retirement Income Security Act (ERISA). On November 18, 2015, the DOL issued a final Interpretive Bulletin Relating to State Savings Programs that Sponsor or Facilitate Plans Covered by the Employee Retirement Income Security Act of 1974. The bulletin explains the conditions under which payroll deduction IRAs would be exempt under ERISA and also outlines the state facilitated retirement savings programs that would include ERISA-covered retirement plans such as marketplace, prototype plans, and state-facilitated multiple employer plans (MEPs).

# Retirement Savings Program Models

Currently, 18 states and two cities have enacted retirement savings programs for private

sector workers. The programs have adopted one or a combination of the following three models:

* Payroll deduction auto-IRA (employer participation is required if no qualified retirement plan is already offered)
* MEP (voluntary)
* Marketplace (voluntary)

While each program is different, the most popular type of program that states are enacting automatically enrolls employees in moderate-risk, low-cost retirement savings accounts, referred to as auto-IRAs. Typically, these programs require private sector employers that do not offer a qualified retirement plan to provide their employees with access to retirement savings accounts through payroll deductions.

# Individual Retirement Account (Auto-IRA)State-sponsored retirement plans are typically Roth IRAs. With this type of savings, employee contributions are deducted from after-tax income, which means withdrawals are generally tax free.

# State-administered payroll deduction auto-IRA programs share many features. A state board oversees each program and makes program decisions, such as contracting with an IRA provider. Some programs are mandatory for employers to adopt, while others are voluntary. Typically, eligible employees of participating employers are automatically enrolled in a state program but can opt out or change their contribution amount.

# The following states and cities have adopted the payroll deduction auto-IRA model:

# CaliforniaCalSavers is active, and participation is mandatory for certain employers. For program requirements and details, see CalSavers Retirement Savings Program.

# ColoradoThe Colorado SecureSavings Program is active, and participation for certain employers is mandatory. Employers will receive enrollment communications from Colorado SecureSavings when it is time to register or certify exemption from the program. For program requirements and details, see Colorado SecureSavings Program.

# ConnecticutThe Connecticut Retirement Security Program, MyCTSavings, is active, and participation for certain employers is mandatory. Employers will receive enrollment communications from MyCTSavings when it is time to register or certify exemption from the program. For program requirements and details, see Connecticut Retirement Security Program.

# Note: The program was renamed as the Connecticut Retirement Security Program (from the Connecticut Retirement Security Exchange Program) in July 2022.

# DelawareThe Delaware Expanding Access for Retirement and Necessary Saving (EARNS) program is currently in the rulemaking phase. To the extent practicable, the EARNS program board must implement the program by January 1, 2025. The program generally requires nongovernmental employers in Delaware to participate in the program if they:

* Employ at least five employees who would be subject to automatic enrollment in the program;
* Have been in business in Delaware for at least six months in the immediately preceding calendar year; and
* Do not maintain a plan under Internal Revenue Code §§401(a), 401(k), 403(b), 408(k) (SEP), or 408(p) (SIMPLE IRA) or a qualifying automatic enrollment payroll deduction IRA.

Program requirements and details will be provided when the EARNS program board completes the rulemaking phase and determines the implementation plan.

**Hawaii**The Hawaii Retirement Savings Act establishes a state-run payroll deduction IRAprogram for private sector employees who do not have access to employer-sponsoredretirement plans. The program is expected to be operational by July 1, 2024, facilitatedby a nine-member retirement savings board in consultation with the Department ofLabor and Industrial Relations and the Department of Budget and Finance. Participationis mandatory for certain employers. A unique feature of the program is that employeeparticipation is not automatic; employees will have to opt in to participate. Programrequirements and details will be provided as the board makes them available.

**Illinois**Illinois Secure Choice is active, and participation for certain employers is mandatory. Forprogram requirements and details, see Illinois Secure Choice Retirement SavingsProgram.

**Maine**The Maine Retirement Savings Program is in the development stage, with a phased-inimplementation approach expected to begin April 1, 2023 (delayed). The MaineRetirement Savings Board published updates on February 8, 2023, stating initialimplementation will not take place on April 1, 2023, due to the program not beingavailable in time to allow employers to meet the deadline. Program operation isanticipated to begin by December 31, 2024. Participation is mandatory for certainemployers. Program requirements and details will be provided as the Maine RetirementSavings Board makes them available.

**Maryland**MarylandSaves is active, and participation is mandatory for certain employers.Employers will receive enrollment communications from MarylandSaves when it is timeto register or certify exemption from the program. For program requirements anddetails, see Maryland Small Business Retirement Savings Program.

**Minnesota**The Minnesota Secure Choice Retirement Program establishes a state-run payrolldeduction IRA program for private sector employees who do not have access toemployer-sponsored retirement plans. Participation is mandatory for covered employerswith five or more eligible employees that do not provide an employer-sponsoredretirement program. The program is expected to be operational by January 1, 2025.

**Nevada**The Nevada Employee Savings Trust establishes a state-run payroll deduction IRAprogram for private sector employees who do not have access to employer-sponsoredretirement plans. Participation is mandatory for covered employers that employ six ormore individuals and do not provide an employer-sponsored retirement program. Theprogram is expected to be operational by July 1, 2025.

**New Jersey**The New Jersey Secure Choice Savings Program was initially scheduled to launch inMarch 2021 but was provided a one-year extension due to COVID-19. Once launched, allprivate sector employers that have been in business for at least two years and do notoffer a qualified retirement plan may participate, but certain employers must complywithin nine months or be subject to penalties. Program requirements and details will beprovided as the New Jersey Secure Choice Savings Board establishes guidelines, createsa website with up-to-date information, and implements the program.

**New York**The New York Secure Choice Savings Plan is in the development stage, and theimplementation timeline is unclear. Program requirements and details will be providedas the New York Secure Choice Savings Board makes them available.

**New York City**The Retirement Security for All Act (Int. Nos. 888-A and 901-A) creates a city-run, payrolldeduction auto-IRA savings program. The law became effective August 9, 2021, but theNew York City Retirement Savings Board has up to two years to establish the programdetails and an implementation schedule. The act ultimately may not take effect due tothe New York State Secure Choice Savings Plan, as the New York City act provides for itstermination if the state establishes a retirement savings program covering employersthat would otherwise be covered by the act. Additional information will be provided asthe Retirement Savings Board makes it available.

**Oregon**OregonSaves is active, and participation for certain employers is mandatory. Forprogram requirements and details, see Oregon Retirement Savings Program.

**Vermont**The VT Saves Program was enacted on June 1, 2023, to establish a state-run payrolldeduction IRA program for private sector employees who do not have access toemployer-sponsored retirement plans. Participation will be mandatory for coveredemployers that have five or more eligible employees and that do not provide anemployer-sponsored retirement program. The VT Saves Program will begin in phasesstarting on July 1, 2025. Program implementation, requirements, and details will beupdated as they become available.

**Virginia**RetirePath Virginia is active beginning on July 1, 2023, and is mandatory for certainemployers. Employers will receive communication from RetirePath Virginia when it istime to register or certify exemption from the program. For program requirements anddetails, see RetirePath Virginia.

**Seattle, Washington**The Seattle Retirement Savings Plan was scheduled to launch in 2021, but the SeattleRetirement Savings Plan Board has delayed implementation pending action by the stateto establish a statewide Secure Choice auto-IRA program. Additional information will beprovided as the Retirement Savings Plan Board makes it available.

**Voluntary Payroll Deduction IRA**One state has adopted the voluntary payroll deduction IRA model.

**New Mexico**The New Mexico Work and Save Act creates both a state-run, payroll deduction Roth IRAsavings program and a web-based retirement plan marketplace. Participation isvoluntary for employers and employees. Participating employers will not have fiduciary responsibility for the payroll-deduction IRA program, but plans offered through themarketplace will generally be subject to ERISA. Program designs and implementationschedules are expected by July 1, 2024. Requirements and details will be provided as theNew Mexico Work and Save Board makes them available.

# Voluntary Retirement Marketplace

Voluntary retirement marketplaces are online clearinghouses that provide small businesses and individuals the ability to comparison shop for savings plans from financial services providers. Participation is voluntary for employers and employees. The following two states have adopted the voluntary marketplace model:

**New Mexico**
In addition to the state-run, payroll deduction Roth IRA savings program shown above, the New Mexico Work and Save Act creates a voluntary web-based retirement plan marketplace. See above for more details.

**Washington**
The Washington Small Business Retirement Marketplace is active, and participation is voluntary for businesses and individuals, including sole proprietors, gig workers, and the self-employed. For program requirements and details, see Washington Small Business Retirement Marketplace.

# Voluntary Open Multiple Employer Plan

Voluntary open MEPs involve aggregating employers who elect to participate to offer a 401(k)-style retirement plan. This method allows businesses to jointly offer plans and is subject to ERISA.

The following two states have adopted the voluntary open MEP model:

**Massachusetts**

The Massachusetts Defined Contribution CORE Plan is active, and participation is voluntary for nonprofit businesses with 20 or fewer employees. For program requirements and details, see Massachusetts Defined Contribution CORE Plan.

**Vermont**

The Green Mountain Secure Retirement Plan was originally planned to launch in January 2019, but implementation was postponed by the state. The program is repealed under VT Saves legislation.



**EMAIL:** sales@tilsonhr.com
**PHONE:** 1(800) 276-3976

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