

New York Employer Alert: Updated State Retirement Program Enrollment Requirements for Private Employers

Article By:

Mitch Boyarsky

Ann E. Murray

P. John Veysey

Last month, New York Governor Kathy Hochul signed a new law requiring private employers that meet certain criteria to automatically enroll their employees in the State's Secure Choice Savings Program (the "Program"), a retirement plan overseen by the State for private sector and nonprofit employees similar to an IRA. Previously, the statute provided for voluntary participation in the Program. Employees may choose not to participate and opt-out, but covered employers must offer the Program.

Covered employers should begin assessing how to ensure they will comply — including proper notice and information resources to employees — before the New York Department of Taxation and Finance fully develops and implements the new Program. The new law, S.5395-A/A.3213-A, mirrors [similar requirements](#) that New York City enacted earlier this year for certain employers with 5 or more employees, and could determine whether the City implements a local version of the statute.

1. Covered Employers

The new State law applies to employers that:

- have employed at least 10 employees in the State, at all times, in the previous calendar year.
- have been in business in the State for at least 2 years.
- do not already offer qualified retirement options, such as a 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b) plan, as listed in the statute, or other pension benefit plan, in the preceding 2 years. Employers already offering such plans may not terminate those plans to participate in the Secure Choice program.

The law applies to both nonprofit and for-profit businesses and employers.

2. Program Details and Enrollment Requirements

The Program is an automatic payroll deduction IRA managed by the Program's board and its designees. The deduction is subtracted from an employee's paycheck on a pre-tax basis; employers do not contribute to the employee's account but are responsible for administering the Program along with the State.

Employees may opt out of the Program altogether or select a specific contribution amount to pay into the Program, either as a percentage of wages or a certain dollar amount within applicable annual IRS limits. Employees who do not opt out or select a specific contribution level will be subject to a 3% automatic contribution of their wages, starting no sooner than the thirtieth day after the employee becomes enrolled. Employees who opt out and later decide to enroll in the Program may only do so during designated open enrollment periods set by the Program itself.

Employers are responsible for automatically enrolling employees in the Program using forms to be published by the New York Department of Taxation and Finance. Employers must also handle the deposit process. The statute requires the Program to designate at least one open enrollment period each year.

3. Implementation Timeline and Employer Actions

No later than one month before a covered employer starts offering the Program, and for any new hires, the employer must provide a form to employees on which they may opt-out of participation in the Program or elect to participate at a level other than 3%. Employers also must provide employees with a disclosure form and other materials that include necessary information categories listed in the statute.

The statute reasserts that covered employers will not be liable for employees' participation decisions, or for any investment decisions made by the Program's board or any enrollee. The statute requires covered employers to set up payroll deposit retirement savings arrangements to enable employee participation no later than 9 months after the Program's board opens it for enrollment.

As of this post, the New York Department of Taxation and Finance has not yet issued the Program's compliance or enforcement requirements, so employers should regularly monitor developments or work with counsel to remain abreast of important updates, namely when the Program will officially take effect. Employers who are not yet covered by the Program's requirements for covered employers, but will be in the future — i.e. new or growing companies — should similarly assess their requirements and plan accordingly to ensure they are prepared to comply when necessary.

4. Effect on the New York City Mandatory Enrollment Law

As stated above, New York City previously enacted a similar law covering employers with five or more employees in the City. Section 20-1404(a) of the New York City law states that the City program's board will not implement the local program if "the state establishes a retirement savings program that requires a substantial portion of employers who would otherwise be covered employers to offer to their employees the opportunity to contribute to accounts through payroll deduction or another method of contribution." It is not clear whether this language means that the State's Program will displace the local statute entirely, or whether the City will decide to continue enforcing its requirements for employers with 5-9 employees in the City.

Employers with employees in New York should begin assessing whether, and when, they will qualify as covered employers under this New York law, and how to comply with the new law as soon as possible.

Copyright ©2025 Nelson Mullins Riley & Scarborough LLP

National Law Review, Volume XI, Number 313

Source URL: <https://natlawreview.com/article/new-york-employer-alert-updated-state-retirement-program-enrollment-requirements>