



STATE-SPONSORED RETIREMENT PLANS

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This *issue brief* provides an overview of state laws related to state-sponsored retirement plans and retirement plan marketplaces for private sector workers. The brief also includes a discussion of related federal laws, regulations, and current Congressional activity.

State-Sponsored Retirement Plan Laws

Five states — California, Connecticut, Illinois, Maryland, and Oregon — have enacted laws establishing state-sponsored retirement plans for private sector workers. The basic model used across these states is to automatically enroll private sector workers who do not have access to a retirement plan through their employer into a state-sponsored individual retirement account that is administered by an independent board. Most of the programs are expected to begin enrollment in 2018.

These state laws have several common provisions. The laws all require that private sector employers of a certain size either offer their employees the ability to enroll in a qualifying private employer-sponsored retirement program, or automatically enroll their employees in the state-sponsored retirement plan. Employees enrolled in the state-sponsored retirement plans have their contributions automatically withdrawn by their employer, who is then responsible for sending the contribution to the plan's administrators. All of the state laws include provisions allowing employees to set their contribution rate at a rate

that is different than the default rate, or to opt out of the program altogether.

California. In 2012, California became the first state to enact a law creating a state-sponsored retirement plan. The California Secure Choice Retirement Savings Program applies to all private sector employers with five or more employees. Employers with fewer than five employees may opt in to the program.¹

Connecticut. In 2016, Connecticut enacted the Connecticut Retirement Security Program, which applies to all private sector employers with five or more qualified employees. Employers with fewer than five employees may elect to offer the program to their employees.²

Illinois. In 2015, Illinois enacted the Illinois Secure Choice Savings Program, which applies to private sector employers with 25 or more employees that have been in business for at least two years. Small employers may choose to allow their employees to participate in the program.³

Maryland. In 2016, Maryland enacted the Maryland Small Business Retirement Savings Program, which applies to all employers that have been in business for two or more years.⁴

¹Cal. Gov. Code § 100000, *et seq.*

²Conn. Pub. Act No. 16-29.

³820 Ill. Comp. Stat. § 80/1, *et seq.*

⁴Md. Code, Lab. & Emp. Law § 12-101, *et seq.*

Oregon. In 2015, following a study by the Oregon Retirement Savings Task Force, Oregon created the Oregon Retirement Savings Plan, or OregonSaves. The program applies to all employers, regardless of size.⁵

State Retirement Plan Marketplace Laws

Two states — New Jersey and Washington — have enacted laws designed to establish a retirement plan marketplace for private sector employers. The marketplaces are intended to provide pre-screened private retirement plan options that employers with fewer than 100 qualified employees may choose to participate in. Participation in the marketplace is voluntary for both the employers and employees.

In 2016, New Jersey enacted legislation to establish the New Jersey Small Business Retirement Marketplace Act. The legislation provides incentives, given available funding, to eligible employers that choose to enroll in the marketplace.⁶ In 2015, Washington enacted legislation to create the Washington Small Business Retirement Marketplace, which is expected to start operating in 2017.⁷

Federal Laws and Regulations

The Employee Retirement Income Security Act (ERISA). ERISA sets standards for pension and retirement plans, and provides protections for consumers. ERISA specifically preempts state laws that address ERISA-covered employee benefit plans.⁸ Additionally, ERISA does not require employers to establish retirement plans.⁹ Under the new state-sponsored retirement plan laws, qualified employers must offer private retirement options, or the state will automatically enroll employees

in the state's plan, creating potential conflicts with ERISA.

Federal regulations. In August 2016, to address states' concerns, the U.S. Department of Labor issued rules determining that plans established through state-sponsored retirement programs do not fall under ERISA. These state plans must:

- be implemented and administered by the state or a governmental instrumentality;
- be responsible for investing employee savings or selecting alternatives;
- assume responsibility for the security of the payroll deductions and employee savings;
- adopt measures to ensure employees are notified of their rights and create enforcement mechanisms for those rights;
- be voluntary for employees; and
- ensure the involvement of the employer is limited to select circumstances, such as collecting and remitting payroll deductions.

In December 2016, the department expanded the rules to include plans established by local governments.

Recent Congressional Action

Two joint resolutions regarding the Department of Labor's regulations were recently introduced in Congress. House Joint Resolution 67, passed by Congress, declared that the regulations for local government sponsored plans will have no force or effect.¹⁰ House Joint Resolution 66, which includes similar language for the department's state regulations, passed the U.S. House of Representatives, but, at the time of this writing, has not passed the U.S. Senate.¹¹

⁵Or. Rev. Stat. § 178.200, *et seq.*

⁶N.J. Rev. Stat. § 43:23-1, *et seq.*

⁷Wash. Rev. Code § 43.330.730, *et seq.*

⁸29 U.S.C. § 1144.

⁹29 CFR § 2510.3-2 (h).

¹⁰H.J. Res. 67, <https://www.congress.gov/bill/115th-congress/house-joint-resolution/67?r=27>.

¹¹H.J. Res. 66, <https://www.congress.gov/bill/115th-congress/house-joint-resolution/66/text>.