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ALERTS

Labor And Employment Law Alert - Illinois Enacts Small Business Retirement Program Act [UPDATE]

February 16, 2015 | Atlanta | Chicago | Columbus | Delaware | Elkhart | Fort Wayne | Grand Rapids | Indianapolis | Los Angeles | Minneapolis | South Bend

UPDATE: *State interest in automatic IRA programs appears to be gaining traction and approximately 18 states (including, Connecticut, Indiana, Maryland and Oregon) have included the matter on their 2015 agendas for consideration. In the meantime, some employers seem to be leaning toward a federal policy, instead of varying state rules, to regulate an automatic retirement savings program. In Illinois, the program may not become effective if the U.S. Department of Labor determines that it is an employee benefit plan subject to ERISA or if it fails to qualify for favorable federal income tax treatment.*

The Illinois Secure Choice Savings Program Act (the Act) (S.B. 2758), which takes effect on June 1, requires certain employers to automatically enroll their employees in individual retirement accounts. The program under the Act will be implemented and enrollment of employees will begin within two years after June 1.

Employers (whether for-profit or non-profit) with at least 25 employees, who have been in business for at least two years and have not offered a tax-qualified retirement plan (such as a 401(k) plan) to their employees in the preceding two years, must implement the program under the Act. The program requires administration of payroll deductions and remittance of employee contributions into Secure Choice accounts for each covered employee using existing payroll systems.

Enrollment is automatic, though an employee may opt out at any time. Additionally, the default contribution rate to the Secure Choice account is set at three percent of the employee's pay, unless the employee designates a different amount. Secure Choice accounts are portable as employees change jobs.

Under the Act, a seven-member board shall be fiduciaries of the program for the benefit of enrollees and their beneficiaries. Employers shall not be a fiduciary or considered to be a fiduciary over the program. The duties of the board include, operating the program in accordance with best practices for retirement savings, appointing a trustee, establishing investment options, establishing a process by which interest, investment earnings and losses are allocated to accounts, contracting with investment managers, financial institutions, consultants, counsel, actuaries, auditors, third-party administrators and other professionals for services to the program, among other duties and functions in connection with monitoring and administering the program.

The seven board members shall include, the state treasurer (or designee) who shall serve as the chair of the board, the state controller (or designee), the director of the Governor's Office of Management and Budget (or designee), two public representatives with expertise in

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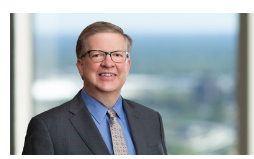

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retirement savings plan administration or investment (or both) appointed by the governor, a representative of participating employers (appointed by the governor), and a representative of enrollees (appointed by the governor).

Before the program is opened for enrollment, the board shall design and disseminate to all employers an employer information packet and an employee information packet, which will include, background information on the program, proper disclosures for employees and information regarding the vendor website.

Each employer to whom the act applies must establish a payroll deposit retirement savings arrangement to allow each employee to participate in the program no later than nine months after the board opens the program for enrollment. After initial implementation of the program, at least once every year, employers shall designate an open enrollment period during which employees who previously opted out may enroll in the program.

An employer who fails without reasonable cause to enroll an employee in the program within the time prescribed by the Act shall be subject to a penalty equal to (1) $250 for each employee for each calendar year (or portion thereof) during which the employee neither enrolled nor opted out of the program, or (2) for each calendar year beginning after the date a penalty has been assessed with respect to an employee, $500 for any portion of that calendar year during which such employee continues to be unenrolled without opting out of the program.

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