

New York State to Require Certain Private Employers to Automatically Enroll Employees in State Retirement Program

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New York Governor Kathy Hochul has [signed into law a bill](#) that will require certain private employers in the state to automatically enroll their employees in a state-administered retirement savings plan if the employer does not offer its own qualified retirement plan. The law took effect immediately upon signing on October 21, 2021, though employers will have time to establish their participation in the program once it is launched, as discussed further below. The New York Department of Taxation and Finance will oversee the development and implementation of the program.

Specifically, the law requires that employers with 10 or more employees in New York, who have been in business for at least two years, and who have not offered their employees a qualified retirement plan such as a 401(k) or 403(b) plan in the past two years, automatically enroll their employees in New York's Secure Choice Savings Program, which is a retirement savings program in the form of an automatic payroll deduction-funded individual retirement account. Employees shall initially be enrolled at a contribution rate of three percent of their wages (though they may voluntarily elect to modify their contribution level), and payroll deductions for such contributions shall not begin until after the 30th day after an employee has been enrolled in the program. Employers are not required to contribute to the program.

Employees will be able to choose to opt out of the program. Employees who opt out but who later wish to participate will need to wait until an annual open enrollment period to do so.

Each covered employer must have a payroll deposit retirement savings arrangement to allow each employee to participate in the program no later than nine months after the New York State Secure Choice Savings board opens the program for enrollment. Covered employers shall automatically enroll each of their employees who has not opted out of participation and shall deposit payroll contributions by employees into the program.

At least one month prior to the participating employer's facilitation of access to the program, employees must be provided with informational materials setting forth:

- the benefits and risks associated with making contributions to the program;
- the process for making contributions to the program;
- that they can opt out of the program either before enrolling or after they have been enrolled;
- how to opt out of the program;
- the process by which an employee can participate in the program with a level of employee contributions other than three percent;
- that they are not required to participate or contribute more than three percent;
- the process for withdrawal of retirement savings;
- the process for selecting beneficiaries of their retirement savings;
- how to obtain additional information about the program;
- that employees seeking financial advice should contact financial advisors, that participating employers are not in a position to provide financial advice, and that participating employers are not liable for decisions employees make pursuant to the law;
- information on how to access any available financial literacy programs; and
- that the program fund is not guaranteed by the state.

The employee informational materials must also include a form for employees to note their decision to opt out of participation in the program or elect to participate at a contribution level other than three percent. Newly hired employees must also be provided with the informational materials.

We will continue to monitor and report on further developments as this program moves toward implementation.

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