

Understanding the New Jersey Secure Choice Savings Program

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Certain New Jersey employers will be required to provide a retirement plan for their employees beginning next month. On March 28, 2019, Governor Murphy signed legislation passing the New Jersey Small Business Retirement Marketplace Act that requires employers to automatically enroll their employees in the New Jersey Secure Choice Savings Program ("Secure Choice Savings Program" or "the Program") if they do not already offer their employees a 401(k) or another qualified retirement plan. The Secure Choice Savings Program requires employers to establish a payroll-funded IRA savings plan for employees who are enrolled in the Program. Employee enrollment in the Secure Choice Savings Program is to begin on March 28, 2021, and employers must enroll their employees in the Program by the end of 2021.

Employers must participate in the Secure Choice Savings Program if they meet the following criteria:

- Are a profit or non-profit employer;
- Have employed 25 or more workers during the past calendar year;
- Have been in business for at least two years;
- Do not offer their employees the ability to participate in a qualified retirement plan such as a 401(k) or 403(b) plan.

Governmental employers are not required to establish a Secure Choice Savings Program. Employers also do not have to offer the Program to independent contractors (1099 employees) who do work for them.

How does the New Jersey Secure Choice Program Work?

All W-2 employees are eligible to participate. This includes part-time employees. Unless employees proactively opt-out, they will be automatically enrolled and contribute 3% of pre-tax income into the Secure Choice Savings Program through a payroll deduction. The annual contribution maximum is \$6,000 for those under 50 years old, and \$7,000 for those 50 or older. The Program does not allow for employer contributions.

What Actions Does an Employer Need to Take to Comply with the New Jersey Secure Choice Savings Program Mandate?

Employers must provide information about the Program to their employees. This includes providing enrollment packets to all new employees within 30 days of hire. Employers must track the eligibility status of their employees, and whether each employee has opted-in or opted-out. For any employees who do not opt-out within 30 days of notification and are eligible for the Secure Choice Savings Program, the employer must set up a 3% payroll deduction and deposit the deductions. Employers must hold an open enrollment period for the Program every two years. They must also auto-enroll any employee who has not participated for at least one year and track those employees. Employers must submit an employee census to New Jersey Secure Choice Savings annually.

Penalties for Employer Non-Compliance

Employers may incur a penalty if they do not comply with the Program. In the first calendar year, if the employer does not comply with the Program, the employer will receive a written warning from the State of New Jersey. If an employer does not comply with the Program for a second year, the employer may be fined \$100

for each employee who is not enrolled in the plan and has not opted-out. If an employer does not comply with the Program for a third and fourth year, the employer will be fined \$250 for each employee who is not enrolled and has not opted-out. If an employer still does not comply with the Program by the fifth year or any subsequent year, the employer may be subject to a \$500 per employee fine for each employee who is not enrolled in the Program, but has not opted- out of the Program. Employers that collect employee contributions, but do not deposit the contributions to the Program will be subject to a penalty of \$2500 for the first offense, and \$5000 for each subsequent offense.

TAKEAWAY: Employers must offer retirement programs for their employees ASAP.

If you are an employer and need help navigating the New Jersey Small Business Retirement Marketplace Act/New Jersey Secure Choice Savings Program or any other employment laws, contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team.

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