One Minute Memo®

Illinois Becomes First State To Adopt Mandatory Retirement Savings Law

By Marc R. Jacobs

On January 4, 2015, Governor Quinn signed into law the Illinois Secure Choice Savings Program Act. With this law, Illinois becomes the first state to mandate a retirement savings plan for private sector employees. The Governor stated that this law responds to the problems resulting from the fact that 1/3 of Illinois retirees rely on Social Security for 90 percent or more of their retirement income. The stated purpose of the law is "promoting greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner."

The law applies to private sector employers with 25 or more employees that have been in business for more than two years. Under the law, all employers subject to the Act must provide a retirement savings program for its employees (such as a 401(k) Plan) or auto-enroll employees through payroll deduction in the to-be-created Illinois Secure Choice Savings Program ("Program"). The Act mandates the initial (or default) contribution by the employee to be three percent of the employee's earnings. Once an employee is enrolled, the employee may opt out completely, or change the contribution amount. The funds will not be part of the state treasury and will be held as portable, individual retirement accounts in the names of the participants. Employers that do not provide a retirement savings plan or participate in the Program will be subject to an annual fine of $250 per employee.

The Act is effective on June 1, 2015; however, because of the work necessary to create the Program (including appointment of the Board of Trustees ("Board") that will manage the Program and the need to select investment providers), implementation of the Program and enrollment of employees will begin within 24 months of the effective date, and the employer mandate will not begin until the Board opens the program for enrollment.

Although Illinois is the first state to adopt this law, proposals are in various stages of consideration in several states including California, Connecticut, Maryland, Massachusetts, Minnesota and Oregon.

Finally, it is noteworthy that the Act provides that before implementation of the Program, the Board must request an opinion or ruling from the United States Department of Labor regarding the applicability of the federal Employee Retirement Income Security Act (ERISA) to the program and to confirm that the an individual's contributions under the Program would receive the same favorable tax treatment as contributions to IRAs generally. There also may be a legal challenge to the Program claiming that it is preempted by ERISA.

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