

NEW YORK CITY ENACTS MANDATORY AUTO-IRA LAW

Hodgson Russ Employee Benefits Newsletter
May 26, 2021

In an effort to assist more of its residents to save for retirement, New York City recently passed a law requiring most employers to offer a qualified retirement plan or participate in the newly created city-run retirement savings program. While a number of states have enacted similar legislation, NYC joins Seattle as the only cities to take this leap. It seems likely, however, that more states and cities will follow suit. Below is a description of many of the key features in this new law.

Which employers does this apply to?

This law applies to employers who meet the statutory definition of a “covered employer.” As defined in the statute, “covered employers” are employers who: 1) employ five or more employees whose regular duties occur in New York City; 2) has employed five or more employees without interruption in the previous calendar year; 3) has been in continuous operation for two or more years; and 4) has not offered or maintained a qualified retirement plan in the preceding two years.

What must covered employers do?

Covered employers have two primary duties: enroll covered employees in the retirement savings program and, if the covered employer is a participating employer, remit funds deducted from the earnings of each participant.

Is there a penalty for covered employers who do not comply?

Yes. Depending on the violation, employers could be liable for a civil penalty ranging from \$100 to \$1,000 for each violation.

Who are covered employees?

“Covered employee” means any employee: 1) who is 21 years old or older; 2) who is employed by a covered employer and regularly scheduled to work at least 20 hours per week; and 3) whose regular duties occur in New York City. Covered employees must be automatically enrolled in the program, however, they do have the ability to opt out.

Attorneys

Peter Bradley
Michael Flanagan
Richard Kaiser
Ryan Murphy
Amy Walters

Practices & Industries

Employee Benefits

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Where are employee contributions invested and how much is permitted?

All participants will contribute to their own IRA, which may be traditional or Roth. The comptroller of New York City and the retirement savings board are tasked with establishing an investment strategy and policy. While specific investment details are not known yet, the statute expressly permits investments to include shares of mutual funds and exchange-traded funds, publicly-traded equity, and fixed-income securities. Nonetheless, this list is not exclusive and other investments may be chosen by the comptroller and the board. Lastly, participants are permitted to allocate the assets of their IRAs among the investment options available, but a default investment option will be designated by the board for participants who do not make an investment choice.

The default contribution rate is set at 5% of a covered employee's wages, but employees can increase or decrease this amount at any time. Contribution amounts are subject to limitations established by federal law for the respective type of account.

Who is running this program?

The newly formed retirement savings board, which consists of three mayoral appointees, and the comptroller of New York City share responsibility for administering this program. Additionally, they both have the authority to promulgate rules to implement this program.

Who is paying for this?

Administrative fees associated with this program will be borne by the participants and not by employers.

When must covered employers comply?

This statute goes into effect on August 9, 2021 (90 days after the enactment date). Nonetheless, the board has up to two years to get the program up and running. If a covered employer does not want to participate in the program, it should adopt a qualified retirement plan so it no longer meets the definition of a covered employer.

Is it a good idea for cities to enact this type of legislation?

Time will tell.