

## Oregon Rolls Out Retirement Savings Program

Oregon's state-run automatic IRA retirement program for private sector employees goes into effect for employers of 100 or more workers in Oregon in 2018. These employers must register with the OregonSaves program unless they sponsor a qualified retirement plan, in which case they must certify exempt status every three years. Federal courts may ultimately consider whether ERISA preempts OregonSaves and other state-based retirement programs. In the meantime, employers that have workers in Oregon should expect to receive information from OregonSaves in the coming months on how to register for the program or file a certificate of exemption.

### Background

Lack of access to employer-based retirement savings programs has prompted several states and municipalities to enact workplace savings programs for private employers. In 2016, DOL finalized parameters for an IRA established and maintained under a state or municipal payroll deduction savings program to be exempt from ERISA coverage – but this spring, President Trump signed legislation dismissing these regulatory safe harbors. (See our [May 5, 2017 For Your Information.](#))

Nevertheless, some states and localities are moving forward with these programs.

### OregonSaves Requires Plan Sponsor Action

In April 2017, Oregon [finalized rules](#) for OregonSaves – its state-run automatic IRA retirement program for private-sector [employees](#). The program requires covered employers to automatically enroll their employees – who may opt out at any time. Under [OregonSaves](#), an employer with workers in Oregon must register with the program unless it sponsors a [qualified retirement plan](#). OregonSaves will kick off in July 2017 with a small pilot group of employers and is scheduled to roll out in phases beginning with larger employers (100 or more employees working in Oregon) in 2018. The registration deadline for larger employers is November 15, 2017.



An employer that sponsors a qualified retirement plan is eligible for an exemption from registration. This exemption is available even if the employer imposes a waiting period for entry to that plan and/or offers the plan only to some, but not all, of its employees. To claim the exemption, the employer must file for an exemption with OregonSaves and renew it every three years.

According to the [information for businesses](#) that OregonSaves released earlier this month, employers with more than 100 employees in Oregon should expect to receive a general notice about OregonSaves in July 2017. The program will send another notice in October with instructions on how to register or file a certificate of exemption.

## Activity in Other Jurisdictions

Oregon is the first state-based retirement program scheduled to become effective in 2018, but several other states and localities have them in the works.

As of June 2017, eight other states – California, Connecticut, Illinois, Maryland, Massachusetts, New Jersey, Vermont and Washington – have enacted a program designed to expand retirement savings options for workers in the private sector. These programs come in various forms and are in different stages of implementation. (See our [August 29, 2016 For Your Information.](#)) Several other states have introduced (but not enacted) legislation aimed at improving retirement savings options for private-sector workers.

New York City, Philadelphia and Seattle have also considered possibilities for city-run retirement plans.

## The ERISA Preemption Question

ERISA's preemption provision declares that (with some important exceptions) ERISA supersedes state laws that "relate to any employee benefit plan." Courts have held that state and local laws that "conflict with" ERISA's substantive provisions are preempted – meaning, invalid. For employers operating in more than one state, or with employees residing in more than one state, ERISA preemption permits streamlined administration of ERISA-governed retirement savings plans.

Does the compliance burden that OregonSaves imposes on plan sponsors violate ERISA preemption principles, as some plan sponsors argue? Specifically, does the requirement to certify an exemption every three years impermissibly interfere with uniform plan administration? How about compliance requirements that other states and municipalities impose on plan sponsors? It remains to be seen how the federal courts will handle these issues in the case of an ERISA preemption challenge – especially now that Congress has repealed DOL's regulatory safe harbors.

### OregonSaves Definitions

"Employee" means any person 18 years of age and older working in employment that is generally subject to unemployment insurance.

"Qualified retirement plan" means a defined benefit or defined contribution plan qualified under IRC Section 401(a) (including a 401(k) plan), qualified annuity plan under Section 403(a), tax-sheltered annuity plan under Section 403(b), Simplified Employee Pension plan under Section 408(k), SIMPLE IRA plan under Section 408(p) or governmental deferred compensation plan under Section 457(b). This term does not include payroll deduction IRAs.

## In Closing

Employers should watch for retirement savings program developments in states and municipalities where their employees live and work to monitor any emerging requirements that may apply to them. Employers with workers in Oregon who sponsor a qualified retirement plan should look out for information from OregonSaves on how to register or certify an exemption.

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