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Employer Filing for Exemption from Oregon-Sponsored Retirement Plan Due Soon

Employers with 100 or more employees in Oregon have until November 15, 2017 to register with the new state-run retirement program, OregonSaves – or file a certificate of exemption if they already sponsor a retirement plan. Registration is now open.

Background

Lack of access to employer-based retirement savings programs has motivated several states and municipalities to enact such programs for private employers. These arrangements generally come in the form of:

- An "auto-IRA," where employers deduct amounts selected by employees from their paychecks to remit to state-administered IRAs. California, Illinois and Oregon have taken this approach.
- A marketplace, where a state program connects employers with private-sector savings plan providers. Washington state has adopted this framework.
- A prototype plan, where an employer adopts a plan developed and administered by a state. Massachusetts has followed this model.

The Obama administration's Labor Department finalized parameters for an IRA established and maintained under a state or municipal payroll deduction savings program to be exempt from ERISA coverage – but, earlier this year, Congress passed legislation disapproving these rules. (See our May 5, 2017 *For Your Information*.) Some states and municipalities have continued the move forward, even without the DOL's safe harbor, with Oregon's program – OregonSaves – as the first to be effective.

Employer Registration, Certificates of Exemption

Starting November 15, 2017, OregonSaves requires employers with more than 100 employees in Oregon to either register with the program or file a certificate of exemption if the employer sponsors a retirement plan – even if that plan does not cover all employees. The program is scheduled to expand in phases according to the following deadlines:

- Employers with 50-99 employees in Oregon – May 15, 2018
- Employers with 20-49 employees in Oregon – December 15, 2018
- Employers with 19 or fewer employees in Oregon – sometime in 2019-2020 (no specific date has been set)

What counts as an employer-sponsored retirement plan?

For purposes of OregonSaves, an employer-sponsored retirement plan includes "a plan qualified under Internal Revenue Code sections 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), a SIMPLE IRA plan under section 408(p) or governmental deferred compensation plan under section 457(b). It does not include payroll deduction IRAs."

Next Steps

According to the OregonSaves employer handbook, employers will receive notice though email or U.S. mail once it is time to register or certify an exemption. OregonSaves sent employers with 100 or more employees in Oregon notices in late July and early August. We understand that another notice will be sent in October.

Once employers who sponsor qualified plans receive the notice, they should then go to www.employer.oregonsaves.com, enter the access code provided in the notice and complete the certification. The form requires the employer's EIN/TIN, address, type of qualified plan sponsored, and the name of the employer's officer who is certifying the exemption. The appropriate address to use here is the address the employer has on file with the state for purposes of unemployment insurance.

> **Comment.** An employer that has not received notification prior to the applicable deadline should contact the OregonSaves call center at 844-661-1256 or email ClientServices@oregonsaves.com.

Unless the program changes the current renewal rules, employers will have to renew their OregonSaves exemption every three years. A recertification process is scheduled to be established by the end of 2019.

Employees in Oregon are those listed as covered by Unemployment Insurance on the employer's Oregon Quarterly Tax Report (Form OQ).

In Closing

It remains to be seen if OregonSaves will face legal challenges on the grounds that it interferes with ERISA's goal of uniform national regulations for the administration of employee benefit plans. For the time being, employers of Oregon employees should register or file an exemption within the specified deadlines.

Authors
Julia Zuckerman, JD
Joanne Jacobson, JD, LLM

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