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Oregon Set to Penalize Noncompliant Employers Without Retirement Plans

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Now that OregonSaves – the country's first state-run retirement plan for employers who do not sponsor a qualified retirement plan – is in full swing, effective January 1, 2020, penalties of up to $5,000 per calendar year may be imposed on noncompliant employers.

Background

Beginning in 2017, Oregon implemented OregonSaves, a state-run retirement savings program for private-sector employees. The program requires mandatory registration, employee enrollment, and payroll deductions by employers who do not sponsor a qualified retirement plan. Employers who do sponsor a qualified retirement plan must either certify exemption every three years or claim it through membership with the ERISA Industry Committee. Employers may use OregonSaves' online tool for this purpose. (See our September 27, 2017 *For Your Information.*)

Enforcement

Until last month, there was no enforcement mechanism for ensuring compliance. On May 22, Gov. Kate Brown (D) signed into law SB 164 to authorize employees to file a complaint and the Oregon Retirement Savings Board to request the commissioner of the Bureau of Labor and Industries to investigate possible violations of the Oregon law. If found to be noncompliant, the commissioner may impose a civil penalty in the amount of $100 per employee eligible to participate, not to exceed $5,000 per calendar year.

Effective date

Although the effective date of the law is January 1, 2020, employees may not file a complaint earlier than two years after the employer's registration deadline and the Oregon Retirement Savings Board may not request an investigation until it has tried three times to bring the employer into compliance.

Another way to claim exemption

Another bill related to OregonSaves that is likely to be signed into law in the near future is SB 165, which directs an employer to indicate whether a qualified retirement savings plan is offered on the annual state tax withholding returns submitted to the Department of Revenue on or after January 1, 2020. This would allow employers to claim exemption from participation in the program, eliminating the need to monitor the triennial certification.

In closing

Employers with employees in Oregon will want to ensure compliance with the registration or exemption requirements to avoid potential penalties.

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