

June 11, 2019

Analysis

CalSavers Retirement Savings Program (“CalSavers” or “Program”) is a new California-sponsored individual retirement program. Senate Bill 1234 mandated that all California employers with five or more employees offer a retirement savings vehicle or facilitate their employees’ access to CalSavers. The Program is designed for employees whose employers have chosen not to offer a retirement plan as a simple and effective way for employees to save with minimal action and no fees or liability for employers. *ERISA Compliance Center* has prepared the following to assist in an employer’s understanding of their role in CalSavers.

Beginning July 2019, California will offer employees of employers with five or more employees and do not have an employer-sponsored retirement plan, the opportunity to enroll in CalSavers.

California employers are required to facilitate CalSavers by registering at <https://employer.calsavers.com/californiaertpl/enroll/createEmp/viewCollectEmpPreRegDetails.cs>. Registration requirements are staggered based on employer size; however, all eligible employers can join at any time prior to their registration deadline. The deadlines are as follows:

- More than 100 employees: June 30, 2020
- More than 50 employees: June 30, 2021
- Five (5) or more employees: June 30, 2022

Registration begins July 1, 2019. In order to register, the employer will need:

- 1) Federal Employer Identification or Tax Identification Number (EIN/TIN)
- 2) California Employer Payroll Tax Account Number
- 3) CalSavers access code from your notification

In addition to registering, employers will be responsible for providing basic employee roster information to the Program for eligible employees. The information must include the employee’s name, Social Security Number or Tax Identification Number and contact information). The Program has templates to assist employers in gathering and submitting the appropriate information and is attached to this memorandum. Employers are also responsible for facilitating by payroll deductions the appropriate contributions each pay cycle.

Employees are automatically enrolled in CalSavers – eligible employees who do not choose to opt out will be enrolled automatically in the program. Once the employer has provided CalSavers with their employee roster information, the Program contacts employees directly to make them aware of the Program and provide the opt-out method. If an eligible employee takes no action within thirty (30) days, they will be automatically enrolled in the Program. If the employee wishes to make changes,

the employer should direct them to contact CalSavers.

Employers are also responsible to add new eligible employees to the Program within thirty (30) days of their date of hire or date of eligibility. There is no waiting period for CalSavers and no vesting period.

Employers may add their payroll service provider as a delegate. Information on adding payroll vendors can be found at: <https://employer.calsavers.com/home/employers/payroll-providers.html?language=en#>.

Employers are to remain neutral about the Program; meaning, the employer may not encourage or discourage participation. Moreover, employers are not allowed to make contributions on behalf of, or as a match to, employee contributions in this program.

According to state law, employers shall not have any liability for an employee's decision to participate in CalSavers, for their investment decisions, or for the performance of those investments.

Under California state statute (Section 100034) employers are not a fiduciary and have no responsibility or liability to Program participants for the choice of investment options or providers for the program. Employers have no civil liability, and no cause of action shall arise against an employer, for acting pursuant to the regulation prescribed by the Board defining the roles and responsibilities of employers that participate in CalSavers. Employers are responsible for meeting their facilitation requirements.

Penalties

Per Unemployment Code Section 1088.9(c), each eligible employer that, without good cause, fails to allow its eligible employees to participate in CalSavers, on or before ninety (90) days after service of notice of its failure to comply, shall pay a penalty of \$250 per eligible employee if noncompliance extends 90 days or more after the notice, and if found to be in noncompliance one-hundred and eighty (180) days or more after the notice, an additional penalty of \$500 per eligible employee.

ERISA Compliance Center will be available to assist with the implementation and management of the CalSavers Program. For questions or assistance please call us at (760) 468-4082.

FAQs

As an employer, do I have to facilitate CalSavers? Who is an eligible employer?

State law requires employers to either offer their own retirement plan or register to facilitate CalSavers. If you have at least five employees and don't sponsor a qualified retirement plan, your business is required to register for CalSavers.

Qualified retirement plans include:

Qualified pension plans;

401(k) plans;

403(a) plans;

403(b) plans;

Simplified Employee Pension (SEP) plans;
Savings Incentive Match Plan for Employees (SIMPLE) plans;
Payroll deduction IRAs with automatic enrollment.

What about non-profit employers?

The requirements are the same for non-profit and for-profit employers.

Are all employees eligible for the program? When do employees become eligible?

Any employee of a participating employer who is at least age eighteen and has the status of an employee under Unemployment Insurance Code Sections 621 et seq, receive an Internal Revenue Service Form W-2 with California wages from such employer, is a sole proprietor or partner in a partnership that is an eligible employer, then you are likely to be eligible to participate in the Program subject to California law and the federal rules governing Roth IRAs.

Please note that employee contributions to the Program would not begin until the first payroll following the 30 day notification period, so depending on the length of employment, short term employees may not be able to make contributions.

Are business owners eligible to participate?

Business owners that are also employees of their business are eligible to participate. Business owners that are not employees may enroll as an individual and make automatic contributions from their bank account.

Who will be responsible for monitoring contribution limits?

It is the responsibility of program participants to monitor their own annual contribution limits across all Individual Retirement Accounts (IRA) they maintain, including their CalSavers account. CalSavers intends to notify employees when their CalSavers account is close to reaching the federal annual contribution limits for an IRA and will instruct employers to stop contributions when employees' contributions reach the limit. Note that limits apply across all IRAs maintained by an individual and CalSavers will not know of other IRAs that program participants maintain elsewhere.

It is also the responsibility of the program participant to determine if they are eligible to contribute to a Roth IRA, and to comply with any other IRA rules. However, CalSavers will provide program participants with educational materials to help participants understand the rules.

For 2019, the annual contribution limits are \$6,000 for individuals under the age of 50. Individuals over the age of 50 will be able to contribute another \$1,000 in "catch-up" contributions for a total of \$7,000.

Who manages this program?

Administration of program participant accounts is handled through a contract with Ascensus College Savings Recordkeeping Services, LLC. Investments are managed by State Street Global Advisors.

The CalSavers Program is overseen by the California Secure Choice Retirement Savings Investment Board, consisting of nine members, with the State Treasurer serving as chair.

In addition to Board oversight, the CalSavers program has a small staff of employees, and contracts

with professional consultants to advise the Program.

How do I communicate to our employees about CalSavers?

Employers must remain neutral about their employees' participation in CalSavers. You will be provided an email template at the time of your registration that you may share with your employees to inform them that CalSavers will reach out to them. Your employees will be contacted directly by the Program with all necessary information. If they have any questions, or wish to make any changes to their account, they should contact the Program directly (Client Services) at www.calsavers.com, at [855-650-6918](tel:855-650-6918) or clientservices@calsavers.com.

What should I do if an employee asks me for information or advice?

Do not provide advice. Simply direct them to the CalSavers website at www.calsavers.com or have them contact Client Services at [855-650-6918](tel:855-650-6918) or clientservices@calsavers.com for any information.

Will CalSavers materials be available in multiple languages?

The Program website is currently available in English, Spanish, and simple Chinese, with plans to expand to more languages. All program documentation will be available in English and Spanish. Certain materials will be available in other languages as well. In addition, customer service phone support is available in nearly all languages by calling Client Services at 855-650-6918.

Resources: Employers may find any of the following resources at:

<https://employer.calsavers.com/home/employers/resources.html>

Program Disclosure Booklet

Employer Overview

Communication to Your Employees

Account Setup Resources: Employers may find any of the following resources at:

<https://employer.calsavers.com/home/employers/resources.html>

Employer Account Setup Information

Employee Information Template *(Also included with this memorandum)*

Employee Contribution Information Template

Employee Information Template Formatting Tips

THIS INFORMATION IS CURRENT AS OF THE DATE OF THE MEMORANDUM. CERTAIN PPACA-RELATED ISSUES WILL CONTINUE TO BE ADDRESSED BY THE RELEVANT AGENCIES. FUTURE REGULATIONS, GUIDANCE OR OTHER FORMAL NOTICES.

THE MEMORANDUM PROVIDED ABOVE IS A COMPLIANCE REPORT AND IS NOT A LEGAL OPINION OR TO BE CONSTRUED AS LEGAL ADVICE. THE CLIENT IS URGED TO SEEK A LEGAL OPINION BEFORE PROCEEDING WITH ANY ACTION.