

# Future of Illinois' Mandatory Retirement Program Uncertain

## Labor & Employment Law Update

By Kelly Haab-Tallitsch on September 12, 2018

The future of Illinois' mandatory retirement savings program, Illinois Secure Choice, is up in the air after Governor Bruce Rauner issued an amendatory veto to change the word "shall" to "may" in key passages of the law, making the program optional, instead of mandatory. The program is scheduled to roll-out in a series of "waves" starting this November.

The Illinois Secure Choice Savings Act (Secure Choice Act), enacted in 2015, requires private employers with more than 25 employees that have been operating in Illinois for at least two years to participate in the Illinois Secure Choice program or offer another qualified retirement plan. Covered employers will be required to automatically enroll employees in the program and withhold five percent (5%) of an employee's compensation (up to an annual IRS maximum), unless the employee elects a different amount or opts out of the program. Employers then remit employees' contributions to the state-run program. Employer contributions are not permitted.

In his veto message, issued August 14, 2018, Governor Rauner pointed to concerns that the mandatory program could lead to fewer small employers offering retirement plans and the termination of existing small plans and changes in federal guidance on the relationship of state-run retirement programs with the Employee Retirement Income Security Act of 1974 (ERISA), as reasons behind his veto. He also cited the Secure Choice program's history of delays and poor implementation.

It is unclear whether the veto will stand, or whether the Illinois Legislature will override it. A vote may not occur until November, when the legislature is scheduled to be in session next. Illinois State Treasurer Michael W. Frerichs, the state official responsible for implementation of the program, opposes the Governor's action and has vowed to work with both parties to override the veto.

The Secure Choice program is set to roll out in a series of "waves" beginning November 1, 2018 with larger employers. Under current rules employers with 500 or more employees have until December 2018 to enroll employees, with payroll deductions beginning in January 2019. Implementation is scheduled to begin July 1, 2019 for employers with 100-499 employees and November 1, 2019

for employers with 25-99 employees.

### **What Should You Do?**

For now, Illinois employers will have to sit tight and wait for more information. Those most likely to be affected by mandatory participation in the Secure Choice program – employers with less than 500 employees – have until at least July 1, 2019 to comply. If you do not currently offer a retirement plan you should examine alternatives, including traditional savings plans (i.e. 401(k)) and plans designed for small employers, such as a SIMPLE IRA or SEP, to determine the best option for your business. Employers with 500 or more employees (who do not offer another retirement plan) should be prepared to enroll employees later this year, if necessary.

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