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New York City Mandates Private Employers to Provide Retirement Savings Plans for Employees; Similar Statewide Law Not Far Behind

Effective August 9, 2021, New York City passed two bills, Bill No. 888-A and Bill No. 901-A, collectively referred to as the Retirement Security Act for All, or RSA, requiring all private-sector New York City employers with five or more employees to establish individual retirement accounts. Bill No. 888-A creates a mandatory, auto-enrollment payroll deduction IRA program for private-sector employers, and Bill No. 901-A establishes a retirement savings board to facilitate the implementation of the program. While the RSA became effective August 9, the Retirement Savings Board (along with the New York City comptroller) has up to two years to complete the final rules for this process and set a formal commencement date. In addition, New York State is on the verge of passing similar legislation that applies to all New York employers with 10 or more employees.

The RSA's Requirements

The RSA applies to all private employers with at least five employees who work in New York City, have been in continuous operation for two years and have not had a retirement plan during that time period. Eligible employees include those who are at least 21 years old and work at least 20 hours a week. Eligible employees also must engage in their regular job duties within New York City.

The RSA will require covered employers to:

- automatically enroll eligible employees in individual retirement savings accounts (IRAs);
- deposit employee funds into the IRA accounts; and
- maintain records confirming compliance for at least three years.

The IRAs will be funded with deductions from employees' wages, with a default employee contribution rate set at 5 percent and a cap of $6,000 for employees under the age of 50 and $7,000 for employees over the age of 50. Eligible employees can adjust their contribution rates up or down. They also do not have to participate and are permitted to withdraw from the program. Further, the plan is portable so that employees who change jobs can continue to contribute to their IRAs or roll over their IRAs into other retirement savings plans.

Significantly, covered employers do *not* have to make contributions to the employee IRAs. However, covered employers *will* be subject to penalties if they violate the various terms of the RSA. Those penalties could include:

- $250 per employee for the first violation;
- $500 per employee for the second violation;
- $1,000 per employee for any subsequent violation within a two-year window; and
- an additional $100 per violation in the case of covered employers that fail to maintain compliance records.

In addition, employees may file private lawsuits for any damages they might suffer due to employer violations of this program, and they may also seek attorney fees and costs.

What Employers Need to Do Next

While a formal start date has yet to be announced, it is unclear how much lead time will be given. Therefore, New York City employers that do not have current retirement plans for their employees should familiarize themselves with the new law and consider their options.

Finally, the RSA currently applies only to employers in New York City. However, on June 7, the New York State Senate approved statewide legislation, previously approved by the New York State Assembly (Bill No. A03213A), that converts the state's existing voluntary IRA program into a mandatory program for employers with 10 or more employees throughout the state. While similar to the RSA, the proposed state law sets the contribution rate at 3 percent and prohibits employers already offering a "qualified retirement plan" from terminating that plan to participate in the state program. We expect the governor to sign the statewide legislation, and we will continue to monitor and provide guidance when this new legislation is enacted.

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