

Mandatory Retirement Plans in Illinois

[Karen N. Brandon](#) and [Aimee E. Dreiss](#) | January 5, 2015

Is Illinois the precursor to mandatory retirement savings programs across the country the way that Massachusetts was for mandatory health care? Illinois has become the first state to require that private-sector employers offer their employees retirement benefits. The [Illinois Secure Choice Savings Program Act \(S.B. 2758\)](#), signed into law by Illinois Governor Pat Quinn on January 4, 2015, requires employers to offer their employees a state-run automatic enrollment payroll deduction Individual Retirement Account (IRA) program (a Roth IRA) known as the "Illinois Secure Choice Savings Program Fund." The Act's stated purpose is to promote greater retirement savings for private-sector employees in a convenient, low-cost, and portable manner. Penalties for noncompliance may be assessed on employers by the Illinois Department of Revenue at \$250 per employee per year, or \$500 per employee for subsequent years.

The Act applies to both for-profit and not-for-profit employers, with 25 or more Illinois employees, that do not already offer their employees retirement benefits. (Note that the program is available to employers with fewer than 25 employees, but their participation is not required.) In general, the program requires employers to automatically enroll employees, aged 18 or older, in the program at a 3 percent payroll deduction. Employees can affirmatively opt out of the program, or elect to defer a different percentage of wages or dollar amount. Investments for the program will be directed by enrolled employees, selected from investments approved by a seven-member board which will oversee the program, including a default life-cycle fund.

The Illinois Secure Choice Savings Program is not intended to be an employer-sponsored retirement plan; rather, it is a state-run program that employers facilitate by offering to their employees and depositing payroll deductions. Also, the program does not require an employer to make any contributions (or match contributions); it just requires an employer to deposit employee payroll deductions into the program's trust fund. A participating employer is not a fiduciary under the program, and is not intended to be responsible for the program's administration or investments.

The [Illinois Secure Choice Savings Program Act](#) directs the newly-created Illinois Secure Choice Savings Board to implement the program within 24 months after the Act is signed into law. That being said, the program faces operational hurdles before it can become effective. The Act directs the Board to seek the opinion of the Internal Revenue Service as to whether the IRA arrangements offered under the program qualify for tax-favored status, and to seek the opinion of the U.S. Department of Labor (DOL) as to whether the program is subject to the Employee Retirement Income Security Act of 1974 (ERISA). The Board may not implement the program if it is determined that the IRA arrangements do not qualify for favorable federal tax treatment, or that the program is an ERISA employee benefit plan and state or employer liability is established under ERISA. While the DOL has recently opined that the *myRA* program is not an ERISA plan, the Illinois program is distinguishable and provides for mandatory automatic enrollment which could lead the DOL to find too much employer involvement and thus an ERISA plan.

The program appears to be designed so that most of the heavy-lifting associated with retirement plan sponsorship is borne by the Board, and not by the participating employers or by the state. The duties for participating employers appear to be limited to offering the program (using materials provided by the Board) to new employees, providing an annual enrollment period for ongoing employees, automatically enrolling employees that do not opt out, and facilitating employees' payroll deductions.

[Karen N. Brandon](#) is a shareholder in the Chicago office of Ogletree Deakins.

[Aimee E. Dreiss](#) is an associate in the Chicago office of Ogletree Deakins.

January 5, 2015 | TAGS: [DOL](#), [Employee Retirement Income Security Act of 1974](#), [ERISA](#), [Governor Pat Quinn](#), [Illinois private-sector retirement savings programs](#), [Illinois Secure Choice Savings Board](#), [Illinois Secure Choice Savings Fund](#), [Illinois Secure Choice Savings Program Act](#), [Individual Retirement Accounts](#), [Internal Revenue Service Section 408A](#), [mandatory employee retirement benefits](#), [Roth IRAs](#).

Related Posts:

1. **New and Improved Retirement Plan Correction Program Includes Crucial 403(b) Relief**
2. **Illinois Permits Employer Use of Payroll Cards**
3. **Same-Sex Marriages and Windsor: IRS Issues Notice on Retirement Plan Amendments and Retroactivity**
4. **Illinois Department of Labor Relaxes Rule Requiring Contemporaneous Authorization for Employee Wage Deductions**

Posting and viewing of the information on this website is not intended to constitute legal advice or create an attorney-client relationship.
©2015, Ogletree, Deakins, Nash, Smoak & Stewart, P.C., All rights reserved.

Source URL: <http://blog.ogletreedeakins.com/mandatory-retirement-plans-in-illinois/>