

What's new with retirement legislation

Only 11% of private-sector workers participate in a traditional defined-benefit pension plan, according to new data from the Employee Benefit Research Institute.

That's a dramatic drop in a very short time—a 71% decline since 1979, when about four in 10 workers could count on receiving a monthly check directly from an employer-funded pension when they retired.

Almost all American workers now depend on defined-contribution plans such as 401(k)s and 403(b)s to fund their retirements. State and the federal government have been taking significant steps to make it easier for more employers to set up 401 (k) retirement plans. Here are a few highlights.

Small businesses can soon offer association retirement plans

Small businesses will be able to offer retirement savings plans to their workers through association retirement plans under a final rule issued July 29 by the U.S. Department of Labor.

Association retirement plans—or ARPs—could be offered by associations of employers in a city, county, state or a multi-state metropolitan area, or in a particular industry nationwide. In addition to groups of small businesses, the plans could also be sponsored through professional employer organizations such as staffing and temp employment agencies.

According to a DOL statement, the rule enables small businesses to offer benefit packages comparable to those offered by large employers. An estimated 38 million American workers don't currently have access to an employer-sponsored retirement plan.

The DOL expects ARPs to reduce administrative costs through economies of scale and to strengthen small businesses' hand when negotiating with retirement providers. The final rule goes into effect Sept. 30, 2019.

Retirement reform bill stalls in Senate

Legislation that would make it easier for more employers to set up 401(k) retirement plans for their employees, which easily passed the House of Representatives in May, is languishing in the Senate. Two senators, Ted Cruz (R.-Texas) and Patrick J. Toomey (R.-Pa.), have put holds on the measure, preventing it from being fast-tracked.

would allow unrelated small businesses to band together to sponsor open 401(k) multi-employer retirement savings plans, reducing the costs and simplifying the administrative burdens that would otherwise fall to each employer. Currently, multi-employer plans are only available to employers that are somehow related, such as being in the same industry or belonging to a trade association.

The bill contains other technical measures designed to make defined-contribution retirement plans such as 401(k)s a viable benefit for more employers to offer their employees.

"With passage of this bill, the House made significant progress in fixing our nation's retirement crisis and helping workers of all ages save for their futures," said House Ways and Means Committee Chair Richard E. Neal

(D.-Mass.), who sponsored the legislation. “The legislation closes loopholes and makes it easier for small business employees, home care workers, and long-term part-time workers to save for retirement.”

It aligns closely with the Retirement Enhancement and Savings Act of 2019, a companion bill currently working its way through the Senate. That bill is on track for a floor vote before the full Senate in coming weeks, and is expected to pass.

“We’re providing new incentives for employers to adopt retirement plans,” said Senate Finance Committee Chairman Chuck Grassley (R.-Iowa). “The bill also helps reduce costs of operating these plans, and creates new provisions to encourage workers to plan and save for retirement.”

Capitol Hill watchers say differences between the two bills should be easy to reconcile in a joint House-Senate conference committee.

President Trump could sign the resulting legislation into law this summer.

In addition to making it easier to set up multi-employer plans, both bills would:

- Encourage employers to automatically enroll new employees in defined-contribution retirement plans by offering a series of tax credits, up to \$500 for up to three years.
- Provide portability of lifetime investment products for workers who change plans.

Court rules California’s auto-IRA program is legal

A federal trial court has ruled that California’s Secure Choices law—which mandates that small employers that don’t already have retirement plans enroll employees into auto-deduction IRAs and withhold the contributions from their pay—isn’t an ERISA-covered retirement plan. This decision may motivate other states to sign onto the auto-enrollment IRA movement. (*Jarvis v. California Secure Choice Retirement Savings Program*, No. 2:18-cv-01584-MCE-KJN, D.C. E. Cal., 2019)

Crux of the case. California’s Secure Choice Retirement Savings Trust Act, called CalSavers, went on the books in 2012. It requires employers that don’t offer tax-qualified retirement plans to automatically enroll employees into IRAs and withhold their contributions. Employees can opt out of the program if they choose.

The plaintiffs sued, arguing that CalSavers’ auto-enrollment feature created an ERISA-covered plan because employees’ participation wasn’t completely voluntary. A federal trial court disagreed and ruled that CalSavers wasn’t preempted by ERISA. *Court:* A state law isn’t preempted simply because it has a literal connection with an ERISA plan. Instead, the court said, a state law must actually govern a central matter of plan administration or interfere with nationally uniform plan administration. Here, eligible employers must adhere to CalSavers’ administrative requirements, but because the program only applies to employers without existing retirement plans, no ERISA plans are governed or interfered with, the court concluded.

CalSavers by another name may be coming to your state soon. California was the first state to enact a secure choices law; New Jersey, which enacted its secure choices law this spring, is the latest. Connecticut, Illinois, Maryland, New York and Oregon all have auto-enrollment IRA laws similar to CalSavers and all are in various states of implementation. These laws have the following features in common:

- A board establishes the program, the IRA products, the default IRA and the default percentage that’s withheld from participating employees’ pay. It creates information packets for participating employers.
- Small employers (each state’s law defines small employers differently) must enroll in the program and then automatically enroll employees.
- Employees may choose the IRA and their contribution amount (either as a percentage of their pay or a flat dollar amount); if no fund or contribution is indicated, employers must use the default options.

- Employees must take affirmative steps to opt out of the program.
- Employers that fail to enroll in the program, fail to enroll employees or fail to withhold and deposit the contributions are penalized.
- Employers must hold one open enrollment period annually.