

GEORGETOWN
UNIVERSITY

McCourt School *of Public Policy*

**CENTER FOR
RETIREMENT
INITIATIVES**

**State-Facilitated Retirement
Savings Programs**

**Auto-IRAs
Compliance Policies**

As of October 25, 2024

Programs

1. CalSavers
2. Colorado Secure Savings Program
3. MyCTSAVINGS
4. Delaware EARNs
5. Hawaii Retirement Savings Program
6. Illinois Secure Choice Retirement Savings Program
7. Maine Retirement Investment Trust (MERIT)
8. MarylandSaves
9. Minnesota Secure Choice Retirement Savings Program
10. Nevada Employee Savings Trust (NEST)
11. New Jersey Secure Choice Retirement Savings Program (RetireReadyNJ)
12. New York Secure Choice Retirement Savings Program
13. OregonSaves
14. RetirePathVA
15. Rhode Island Secure Choice Retirement Savings Plan
16. Vermont Green Mountain Secure Retirement Plan
17. Washington Saves

CalSavers

- California Code of Regulations CalSavers Retirement Savings Board Master Regulations, Sec. 10008 <https://www.treasurer.ca.gov/calsavers/regulations/final-regulations.pdf>
- CalSavers "News Release: CalSavers to Impose Penalties for Non-compliant Employers Beginning this Month" (2022). <https://www.treasurer.ca.gov/calsavers/penalties.pdf>.
- California "The CalSavers Retirement. Savings Trust Act" Title 21 Code 100033 (2016) as amended by Chapter 21 Section 79 (2022).
https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=GOV§ionNum=100033.

Employers are subject to an initial fine of \$250/employee for non-compliance and an additional fee of \$500 for sustained non-compliance if the non-compliance persists for each subsequent calendar year. CalSavers began imposing these penalties in January 2022. Penalties collected in error will be refunded by the Board.

The Board may delegate enforcement of employer compliance to the Board staff. Staff shall exercise due diligence to ensure reasonable attempts are made to bring employers into compliance prior to issuing a final notice of penalty application to a noncompliant Employer. Enforcement efforts by Board staff shall include email and letter notifications of penalty application to the noncompliant Employers identifying the cause of their noncompliance and the methods available to Employers to comply.

When the process starts, employers will receive a series of three 'due process' notices, which inform the employer that they will be subject to a penalty if they do not come into compliance. The notices are sent out within a 90-day period. Any employer from that group who remain out of compliance will be referred to the Franchise Tax Board, which sends them a formal notice of penalty imposition. At that point, employers can still come into compliance and avoid the penalty.

Employers may also be subject to non-compliance penalties for failure to register or for failure to ensure employees are eligible to participate.

Colorado SecureSavings

- Colorado SB 20-200 Section 7, 4-54.3-107, i(I)-(III) (2020).
https://leg.colorado.gov/sites/default/files/2020a_200_signed.pdf.

Employers are subject to fines of up to \$100 per eligible employee for non-compliance, not to exceed an aggregate amount of \$5,000 per calendar year.

Non-compliance fines will only be enforced at least one year after the establishment of the program or one year after an employer is scheduled to enter the program, whichever comes last. Additionally, an employer will not be fined until three months after they have received a notice of noncompliance.

MyCTSavings

- Connecticut "An Act Concerning the Connecticut Retirement Security Program." HB 5591: Public Act 16-29 (2016). <https://www.cga.ct.gov/2016/ACT/pa/2016PA-00029-R00HB-05591-PA.htm>
- MyCTSavings "What if a business doesn't register for the program as required by law?" <https://myctsavings.com/faqs/what-if-a-business-doesn-t-register-for-the-program-as-required-by-law>.

Employers that fail to comply with facilitating the MyCTSavings program may be subject to an investigation and related penalties.

Delaware EARNs

- An Act to Amend Titles 19 and 29 Of the Delaware Code Relating To Establishment And Management Of The Expanding Access For Retirement And Necessary Saving Program. HB 205 (2022)
<https://legis.delaware.gov/json/BillDetail/GenerateHtmlDocumentSessionLaw?sessionLawId=78751&docTypeId=13&sessionLawName=chp405>

If an employer is not in compliance, the board will issue a notice outlining the nature and extent of their noncompliance and providing instructions for compliance.

If the employer does not come into compliance within 90 days, the Board may, in final order, impose penalties. Penalties may not be imposed until one year after an employer has been required to comply for the first time.

Penalties for non-compliance may not exceed \$250 per employee per year, up to a maximum total penalty of \$5,000 a year. Covered employees or participants may compel compliance through the filing of a civil action in any court of competent jurisdiction.

Hawaii Retirement Savings Program

- Hawaii Act 296 §14 (2022).

https://www.capitol.hawaii.gov/sessions/session2022/bills/GM1425_.PDF.

Employers that have failed to comply will be liable to making up missed contribution amounts with a 6% interest rate per year on the contribution amount, beginning from the date the contribution amount would have been made into the account to the covered employee, provided that the sum of the contribution amount and interest rate thereto shall be transmitted by the covered employer to the program to be paid into the covered employee's IRA.

There will also be a penalty to the employer of \$25 per employee for each month the employee was not enrolled and may increase to \$50 for each additional month that the employee continues not to be enrolled after the date a penalty has been assessed, provided that the employee has not opted out of participation.

Covered employers who fail to comply with any chapter provisions will be liable to a penalty of no less than \$500 for each violation or failure.

No penalties will be imposed for covered employers that can establish a preponderance of evidence that they exercised reasonable diligence to meet the section requirements,

did not know that the failure existed, corrected the failure within 90 days of the day that the employer came to know or should have known of the failure.

Illinois Secure Choice Retirement Savings Program

- Illinois Secure Choice "Employer Registration Deadlines (2023).
<https://www.ilsecurechoice.com/>.
- Illinois SB 2758 Public Act 098-1150 § 85 (2015).
<https://www.ilga.gov/legislation/publicacts/fulltext.asp?Name=098-1150>.

Employers who fail without reasonable cause to enroll in the Program within the allotted time will be subject to a penalty equal to \$250 per employee for the first calendar year that an employer is non-compliant. For each subsequent year of noncompliance, the employer will receive a penalty of \$500 per employee. The non-compliance does not need to be consecutive to qualify for the \$500 penalty.

Employee count will be determined using the annual average from employer-reported quarterly data. After it is determined that an employer is subject to a penalty, they will receive a notice of proposed assessment, which states the number of employees for which the penalty is proposed. A protest of a notice of proposed assessment must be filed within 120 days after the notice of proposed assessment is issued. The proposed assessment will be reconsidered, and penalties will be deemed assessed once a final decision is made on the protest. If the employer fails to pay the entirety of the penalty, the unpaid portion will be used as a lien in favor of the State of Illinois upon all property belonging to the employer. An employer that has overpaid an assessed penalty may file a claim for a refund.

Maine Retirement Investment Trust

- Maine "An Act to Advance the Maine Retirement Savings Program" Sec. 7. 5 MRSA §173, sub-§4, ¶A, (2023).
<https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0451&item=6&snum=131>

- Maine "An Act to Promote Individual Retirement Savings through a Public-Private Partnership," Chapter 7-A §173- 4 (2021).
<https://legislature.maine.gov/legis/bills/getPDF.asp?paper=SP0515&item=1&snum=130>.

Covered employers that fail to enroll a covered employee will be subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the program.

- From July 1, 2025 to June 30, 2026, the maximum penalty per covered employer is \$20.
- From July 1, 2026 to June 30, 2027, the maximum penalty per covered employee is \$50.
- On or after July 1 2027, the maximum penalty per covered employee is \$100.

Penalties may not be imposed on a covered employer for failure to enroll if the employee exercised reasonable due diligence to meet the program requirements and comply with the requirements by the end of the 90 days after which they were aware that a failure existed. Covered employers are deemed to have known that a failure existed after three communications from the program.

In case of a failure that is due to reasonable cause and not willful neglect, all or part of the penalty may be waived to the extent that the penalty would be excessive or inequitable relative to the failure involved.

Maryland\$aves

- Maryland "Article-Corporations and Associations." §1-203
<https://mgaleg.maryland.gov/mgaweb/Laws/StatuteText?article=gca§ion=1-203&enactments=false>.
- Maryland\$aves "Do employers have to sign up their employees for MarylandSaves?" 2023. <https://marylandsaves.com/faqs/do-employers-have-to-sign-their-employees-up-for-marylandsaves>.

- An Act Concerning Maryland Small Business Retirement Savings Program and Trust; HB 1378 Chapter 324 (2016)
https://mgaleg.maryland.gov/2016RS/chapters_noln/Ch_324_hb1378E.pdf

No non-compliance penalties. However, program participants will receive \$300 per year via a waiver of the Maryland business annual filing fee.

Minnesota Secure Choice Retirement Program

- Minnesota HF 782 Chapter 187 § 5-6 (2023).
https://www.revisor.mn.gov/bills/text.php?number=HF782&type=bill&version=4&session=ls93&session_year=2023&session_number=0.

The Board of Directors of the Minnesota Secure Choice Retirement Program must establish monthly or quarterly penalties for employers that fail to comply with the program. The Board's recommendations must be made no later than December 31, 2024, and the Legislative Commission on Pensions and Retirement must accept or modify the legislation for passage during the 2025 legislative session. The Board may impose statutory civil penalties against any covered employer that fails to comply with requirement to enroll employees, remit contributions, or provide required information. The Board must provide covered employees with written warnings for the first year of non-compliance before assessing penalties.

Non-compliance penalties must be commensurate with penalties for failure to remit state payroll taxes and commensurate with penalties from similar programs in other states. Penalties will be enforced by the attorney general. Proceeds from the penalties, after deducting enforcement costs, must be deposited in the Secure Choice administrative fund, and appropriated into the program.

Nevada Employee Savings Trust Program

- Nevada SB 305 § 20. 8-9 (2023).
<https://www.leg.state.nv.us/App/NELIS/REL/82nd2023/Bill/10184/Text>.

Determine the number of days during which a covered employer must make the Program available to a covered employee upon first becoming a covered employer or covered employee. Penalties will be determined by the Board.

New Jersey Secure Choice Savings Program

- New Jersey. "New Jersey Secure Choice Savings Program Act." C.43:23-31 (2019). https://pub.njleg.gov/bills/2018/PL19/56_.HTM.

Employers who fail without reasonable cause to enroll any employee who has not chosen to opt-out of the program will be subject to penalty.

- For the first calendar year of non-compliance, employers will receive a written warning from the department.
- For the second calendar year of a violation, a fine of \$100 will be given.
- For the third and fourth year, a fine of \$250 for each employee who was neither enrolled nor opted out of the program will be given.
- For the fifth calendar year and any subsequent calendar year, a fine of \$500 will be given to each employee.

An employer that collects employee contributions but fails to remit any portion of them to the fund shall be subject to a \$2,500 penalty for a first offense, and \$5,000 for each subsequent offense.

After identifying that an employer is subject to a penalty, they will receive a notice of the proposed penalty. A written protest of the proposed penalty shall be filed in a form within 90 days for reconsideration. The resulting decision shall be final. An employer that has overpaid an assessed penalty may file a claim for a refund.

New York Secure Choice Savings Program

- New York "General Business Law Article 43, New York State Secure Choice Savings Program" §1304 (2023). <https://www.securechoice.ny.gov/legislation.htm>.
- A Budget Bill pertaining to the New York State Secure Choice Savings Program. A 9505: Chapter 55 (2018)
https://assembly.state.ny.us/leg/?default_fld=&leg_video=&bn=A09505&term=2017&Summary=Y&Actions=Y&Committee%26nbspVotes=Y&Floor%26nbspVote=s=Y&Memo=Y

There are currently no penalties for non-compliance, but the board will facilitate compliance with all applicable requirements for the program under the Internal Revenue Code. This includes tax qualification requirements or any other applicable legal, financial reporting and accounting requirements.

OregonSaves

- OregonSaves "Is there a penalty for businesses that fail to facilitate OregonSaves as required by law?" (2023). <https://www.oregonsaves.com/faqs/is-there-a-penalty-for-businesses-that-fail-to-facilitate-oregonsaves-as-required-by-law>.
- Oregon Chapter 178.990 (2019).
<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/SB164/Enrolled>
- Oregon Chapter 557 (2015)
https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2015orLaw0557.pdf

Employers that are not in compliance may be subject to enforcement action that may include penalties and fines. These penalties may be up to \$100 for each employee that is eligible for the program but must not exceed an aggregate amount of \$5,000 per calendar year.

Recovered penalties will be applied first toward reimbursing costs incurred by the Commissioner of the Bureau of Labor and Industries in conducting inquiries and

investigations. The remaining amounts shall be deposited in the Oregon Retirement Savings Plan.

RetirePathVA

- RetirePathVA "Is my business required to register for RetirePath Virginia?" (2024). <https://www.retirepathva.com/resources/faqs?t=employer>
- Virginia Chapter 27.1 § 2.2-2747 (2021). <https://lis.virginia.gov/cgi-bin/legp604.exe?212+ful+CHAP0556&212+ful+CHAP0556>.

Businesses and employers that fail to register for RetirePathVA or to certify an exemption may face an annual penalty not to exceed \$200 per eligible employee.

Rhode Island Secure Choice Retirement Savings Plan

- Rhode Island, "An act relating to public finance – Rhode Island Retirement Savings Program Act" Chapter 23 (2024) <https://webserver.rilegislature.gov/BillText/BillText24/SenateText24/S2045aa.pdf>

Covered employers that fail, without good cause, to allow eligible employees to participate in Rhode Island Secure Choice will be issued a notice of noncompliance by the state treasurer. If the employer fails to allow eligible employees to participate in the program 30 days after the notice is issued, the employer shall be subject to a penalty of \$250 per eligible employee. The net proceeds of such penalties, after deducting enforcement expenses, shall be deposited for the benefit of the program.

Vermont Green Mountain Secure Retirement Plan

- Vermont. "An act related to fiscal year 2024 budget adjustments." No. 87 § 535 (2024) <https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT087/ACT087%20As%20Enacted.pdf>
- Vermont. "An act relating to the establishment of VT Saves" Chapter 18 § 535 (2023).

<https://legislature.vermont.gov/Documents/2024/Docs/ACTS/ACT043/ACT043%20As%20Enacted.pdf>.

Covered employers that fail to enroll a covered employee without reasonable cause will be subject to a penalty for each covered employee for each calendar year or portion of a calendar year during which the covered employee was not enrolled in the Program or had not opted out of the Program.

- Before October 1, 2025, the maximum penalty per covered employee is \$10. Starting on October 1, 2025, and ending on September 30, 2026, the maximum penalty per covered employee is \$20.
- On or after October 1, 2026, the maximum penalty per covered employee is \$75.

The state treasurer is authorized to establish a rule that waives the penalty for a covered employer for failure to comply with the chapter if it can be established that the covered employer did not know that the failure existed and exercised reasonable diligence to meet the requirement. No penalty should be given if the covered employer did not know the failure existed. No penalty should be given if the employer exercised reasonable diligence to meet requirements, did so within 90 days of knowing the failure existed, and that the failure was unrelated to willful neglect.

Washington Saves

- Washington, "An act relating to improving private Washington workforce retirement security standards by establishing Washington saves," Chapter 327 (2024) (Section 7) <https://lawfilesext.leg.wa.gov/biennium/2023-24/Pdf/Bills/Session%20Laws/Senate/6069-S.SL.pdf?q=20240702122936>

If a noncompliance complaint against a covered employer is filed before January 1, 2030, the Department of Labor and Industry will offer technical assistance to bring them into compliance. Civil penalties may not be assessed before January 1, 2030. If the complaint is filed on or after January 1, 2030, educate the employer on how to come into compliance and enforce penalties for willful violations if necessary. The Department

may not investigate alleged violations of rights that occurred more than three years before the complainant filed the complaint.

If the Department finds an employer administrative violation, the department must first provide an educational letter outlining violations and providing 90 days for the employer to remedy the violations. The employer may ask for an extension for good cause. If the employer fails to remedy the violation within 90 days, the Department may issue a citation and notice of assessment with a civil penalty. The maximum penalty for a first-time willful violation is \$100 and \$250 for a second. For each subsequent violation, the employer is subject to a maximum penalty amount of \$500 per violation. The Department may, at any time, waive or reduce a civil penalty assessed under this section if the director of the Department determines that the employer has taken corrective action to resolve the violation. The Department shall deposit all civil penalties in a supplemental pension fund.