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# LEGAL ALERT

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## Illinois Employers Must Offer Retirement Savings Program

Illinois has become the first state in the nation to enact a law requiring businesses to offer their employees a retirement savings plan. Signed into law recently by Gov. Pat Quinn, the new law, entitled “Illinois Secure Choice Savings Program,” is intended to encourage more retirement savings among workers who do not otherwise have access to retirement accounts through their employer. Although several other states have similar legislation pending, Illinois is the first state to pass such a provision.

### Coverage Mandated By The Secure Choice Program

The Secure Choice program will apply to all businesses in Illinois that:

- have 25 or more employees;
- have been in business for at least two years; and
- do not already offer a qualified retirement plan.

Under the program, each employee of a qualifying business will be automatically enrolled in a retirement plan unless the employee affirmatively chooses to opt-out. Three percent of each participating employee’s pay will be automatically deferred and invested in a default retirement plan fund unless the employee chooses to invest a different percentage of income or chooses another retirement plan.

Employee contributions will be deposited to the fund through standard payroll deduction. Employers will not be required to contribute to the retirement plan. The only cost to employers will be the administrative cost of facilitating the payroll deduction.

Under the law, employers are expressly insulated from any liability relating to the retirement plan or the employees’ investment choices. Employers also will not be deemed fiduciaries.

### Employer Notification Requirements

When it becomes operative, employers will be required to provide notice of the program to their employees and to all new hires. Information packets on the program will be provided to employers by the state.

### Program To Start By 2017

It is important to note that the Secure Choice program is not up and running at this time. It is slated to become operative within two years.

First, seven members must be appointed to the Illinois Secure Choice Savings Board (Board) which will administer the program. None of the



program’s requirements will take effect until after the Board opens the program for enrollment. Once the program becomes operative, any employer that fails, without reasonable cause, to enroll an employee in the program shall be subject to potential monetary penalties.

The Secure Choice program also must surmount an additional hurdle on the federal level before it becomes operative. The Board must request a written opinion from the appropriate federal agencies to determine whether the program will qualify for favorable IRA tax treatment and whether it will be deemed covered by ERISA. In the event the program does not receive favorable tax treatment or is deemed subject to ERISA, the Board may not implement the program. Both of these questions are unanswered at this time.

### Next Steps for Illinois Employers

The takeaway for Illinois businesses is to be aware of the upcoming potential administrative requirements for providing employees with information packets about the Secure Choice program and processing payroll deferrals for employees participating in the program. If your business utilizes a third-party payroll service, then the impact of this new program upon operations or costs may be minimal, as employers are envisioned to be a mere pass-through under the program. Regardless, it is likely that no tangible impact from passage of this law will be felt until at least 2017, with the possibility that the program could be scuttled or revised in the interim based upon the opinions of federal agencies on tax treatment and ERISA coverage.

If you have any questions about this new law, please contact your regular Fisher & Phillips attorney or any attorney in our Chicago office at (312) 346-8061.

*This Legal Alert provides an overview of a new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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