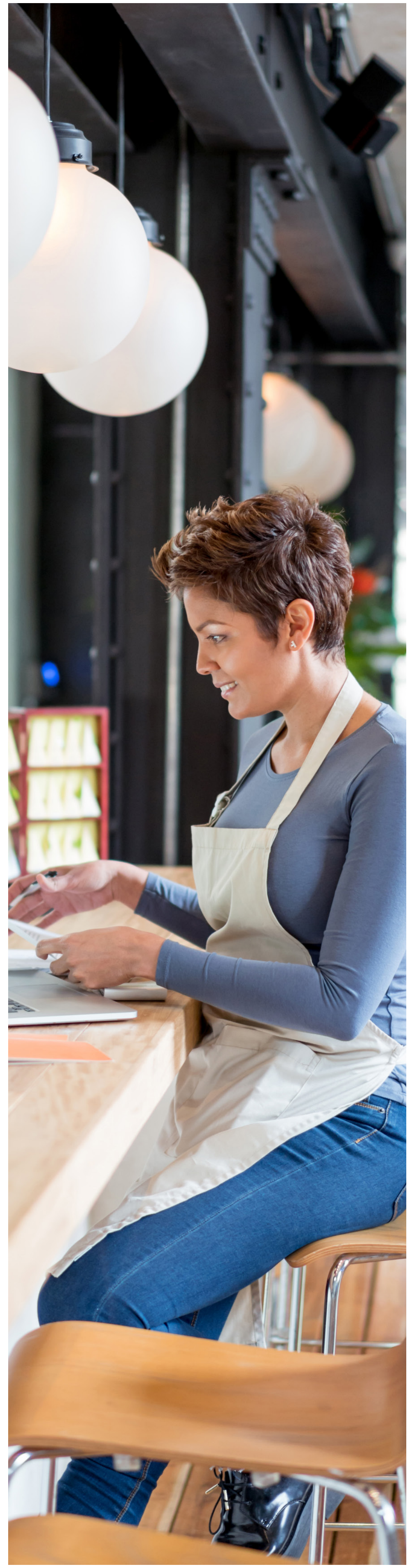
Legislative/regulatory alert—April 2021

A look at CalSavers—California's state-mandated retirement program



Retirement security is a perpetually important issue among workers, employers, and various government entities. But as those of us in the retirement industry focus on workplace plans governed by ERISA, seven U.S. states[1] have taken their own proactive stance by introducing mandated IRA programs with automatic enrollment (and an additional four have enacted retirement programs without automatic enrollment). This paper provides a brief look at one of those programs, the state of California's CalSavers Retirement Savings Program (CalSavers), including its impact on employers and how it compares with a 401(k) plan.

1 These states are California, Colorado, Connecticut, Illinois, Maryland, New Jersey, and Oregon. In addition, the City of Seattle, Washington, has also adopted an automatic IRA program. As of 2/27/2021, the Virginia General Assembly approved legislation creating an IRA program with automatic enrollment, and it is expected to be signed by the state's governor in April 2021.

A brief overview

Passed into law in 2016 and originally called the California Secure Choice Retirement Program, CalSavers launched statewide on July 1, 2019. The program is mandated for all private employers in California that have more than five full- or part-time employees over the age of 18 (with at least one employee working in the state) and don't already sponsor a retirement plan for their business.

	Effective date	Number of employees
The effective dates for CalSavers' implementation are based on employee headcount, with bigger employers listed first.	Went into effect on September 30, 2020[2]	More than 100
	June 30, 2021	More than 50
	June 30, 2022	5 or more

How a CalSavers plan is structured

Technically speaking, CalSavers is a Roth IRA with automatic enrollment. Deductions are taken from eligible employees' pay on an after-tax basis and deposited into a Roth IRA on their behalf. The initial default contribution rate is 5%, with an annual automatic-escalation feature of 1% per year, up to a maximum contribution rate of 8%.

Eligible employees may select a different contribution rate, refuse the auto-escalation feature, or opt out of the program altogether.

Under CalSavers, the first $1,000 of an eligible employee's contributions is invested in a capital preservation fund. Subsequent contributions are invested in a target-date fund (TDF) based on the employee's age and an assumed retirement age of 65.

Because the program uses a Roth IRA, earnings on employee savings and distributions in retirement are tax free. CalSavers has promised a traditional IRA option in the future.

Employer requirements

While employees who participate in CalSavers aren't required to make any enrollment or investment decisions, an employer subject to CalSavers is required to do the following:

- Register its businesses to participate by the required effective date.
- Track eligible employees and send required employee data to CalSavers' program administrator.
- Annually distribute to eligible employees an employee information package, including an opt-out form, opt-out instructions, and other information required by CalSavers' regulations.
- Auto-enroll new employees and those who are eligible during the plan's annual open enrollment period.[3]
- Adjust contributions on January 1 each year for all active participants who've retained the auto-increase feature.
- Set up arrangements with payroll providers to withhold contributions and submit them to CalSavers' program administrator.

Proposed fees for noncompliance with CalSavers' requirements—or for not offering an alternative retirement plan—within 90 days of notice start at $250 per eligible employee. They increase to $500 after 180 days or more of receiving notice.

2 Originally, 6/30/2020, but postponed due to the COVID-19 pandemic. **3** Under CalSavers' rules, new employees who do not opt out within 30 days, and any other employee who opts out more than 60 days before the start of an annual enrollment period (e.g., October 1 through November 30), must be auto-enrolled.

Comparing CalSavers to a 401(k)

An employer subject to CalSavers has the option of establishing a plan that might better meet its own and its employees' goals and objectives, with the primary focus on increasing savings for retirement.

Key points of comparison include:

Allowable employee contributions—The announced CalSavers maximum is $6,000 per year (or $7,000 for employees age 50 or older). The 401(k) limit for 2021 is considerably higher, at $19,500 (pretax or Roth) and $26,000 for those age 50 or older.

Automatic enrollment and auto-escalation—These features are important for building retirement savings and are available with both types of plans.

Employer contributions—The CalSavers program doesn't allow employer contributions; however, matching and profit-sharing contributions are allowed with a 401(k) plan, and both are deductible to employers, up to IRS limits.

Tax status of contributions and earnings—Initially, the CalSavers plan will offer only a Roth IRA, which calls for after-tax saving and the potential for tax-free growth[4] on earnings. A 401(k) plan can provide pretax savings (with tax-deferred earnings), as well as a Roth option.

Administrative responsibilities—Both plans involve some administrative work. A 401(k) is also subject to ERISA requirements—including reporting and disclosures that create fiduciary responsibilities, some of which can be delegated to qualified professionals.

Investment options—While the CalSavers plan provides limited investment options (currently, a TDF, a money market fund, a core fund, and two global equity funds), a 401(k) plan allows an employer and its financial professionals to select an investment offering of their choice.

Legal update

In March 2020, a federal court ruled for the second time that ERISA, as the federal law governing retirement plans, doesn't preempt CalSavers, as CalSavers doesn't create an "employee benefit plan" under ERISA. This lawsuit follows one[5] that was originally brought in March 2019, but was dismissed without prejudice. The plaintiff, Howard Jarvis Taxpayers Association, filed an appeal in June 2020. Also, in June 2020, the U.S. Department of Labor (DOL) filed a brief of amicus curia (i.e., "friend of the court" brief) requesting a reversal of the court's decision; however, following the change in administration, the DOL submitted a new filing in February 2021 stating that it "no longer wishes to participate as amicus in this case and he (the Acting Secretary of Labor) does not support either side." Although the fate of the lawsuit is unknown, the September 30, 2020, registration deadline for California employers has passed.

California employers should continue to take time to understand the CalSavers program and other retirement plan options and decide whether the CalSavers program or another retirement plan program (such as a 401(k) plan) is better suited to meet company goals and employee needs.

At John Hancock, we believe in the power of partnership

For the details you need on CalSavers or other government-mandated IRA programs, how they compare to 401(k) plans, and which might be for you, talk to your plan consultant or John Hancock contact.

And for perspectives on legislation and regulation important to your retirement practice, visit **retirement.johnhancock.com.**

4 Earnings become tax free once the IRA owner attains age 59½ and has met the five-year holding period. **5** Howard Jarvis Taxpayers Association vs. The California Secure Choice Retirement Savings Program.

Consultative.

Easy.

Personal.

Proven.

We make retirement plans *work*.

For 50 years, we've helped people plan and invest for retirement; today, we're one of the largest full-service providers in the United States. (Source: "2020 Defined Contribution Recordkeeping Survey," PLANSPONSOR, 2020.)

John Hancock Retirement Plan Services, LLC, 200 Berkeley Street, Boston, MA 02116

MGTS-PS 39707-GE 04/21-44452 MGR0310211554065 | 23548