

## **New York State – Mandatory Auto-IRA Program**

In 2021, New York Governor Kathy Hochul signed into legislation a law that requires certain private sector employers without a current retirement plan to automatically enroll their employees in New York State’s Secure Choice Savings Program (“SCSP” or the “Program”), an automatic enrollment payroll deduction Roth IRA program. The law is intended to provide an opportunity to private sector workers to save for retirement in a convenient, low cost, and portable manner. After several years of planning, covered employers are now required to register for the Program beginning in 2026.

### **What Employers are Covered?**

The law applies to all private New York State for-profit and non-profit employers who do not offer their employees an employer sponsored retirement plan (such as a 401(k) plan, profit sharing plan, pension plan, or 403(b) plan), and who also meet all of the following requirements<sup>1</sup>:

- Had at all times during the previous calendar year at least ten (10) employees in New York State,
- Has been in business for at least two (2) years, and
- Has not offered, in the preceding two (2) years, an employer sponsored retirement plan (such as, a 401(k) plan, profit sharing plan, pension plan, or 403(b) plan).<sup>2</sup>

If an employer does not meet one of the above requirements (e.g., if they employed fewer than 10 employees in New York State at any point in the previous calendar year), they would not be required to participate in the Program. Further, the law contains a provision that does not permit employers who currently sponsor their own retirement plans to terminate those plans for purposes of participating in the SCSP. Employers who offer the Program to employees may decide to offer a qualified retirement plan later. Employers that choose to offer a qualified retirement plan after enrolling employees in the Program should exempt their business and must provide notice to enrolled employees at least 60 days before payroll contributions cease.

Under guidance issued by the SCSP, covered employers are required to register with the Program by the following deadlines:

---

<sup>1</sup> If an employer meets all of the requirements, but does not meet the threshold number of employees in the current calendar year, Program guidance indicates such an employer can certify its exemption from the Program.

<sup>2</sup> If a professional employer organization offers a qualified retirement plan to the worksite employee, the client employer is considered as offering a qualified retirement plan.

- Employers with 30 or more employees: **March 18, 2026**
- Employers with 15 to 29 employees: **May 15, 2026**
- Employers with 10 to 14 employees: **July 15, 2026**

The Program states that it will send a series of emails or letters to covered employers. Employers required to facilitate the Program will be notified by the third-party administrator selected by the Board to provide services for the Program in carrying out the requirements of the governing statute (the “Program administrator”) how and when to register with the Program and shall provide all necessary registration information to the Program administrator. The Program administrator will send onboarding and other information to employees.<sup>3</sup>

### How Does Employee Enrollment Work?

- Where a covered employer has employees in multiple states, covered employers need to facilitate the Program only for employees with income in New York (including out of state residents who have income in New York). Employee contributions are made into a Roth IRA (on a post-tax basis) under the SCSP.<sup>4</sup>
- All employees of covered employers who are at least age 18 and have New York state wages from a participating employer are eligible for and will be automatically enrolled (without the need to fill out any paperwork) in the Program.<sup>5</sup>
- After registering for the Program, participating employers provide certain onboarding information for each employee to the Program administrator, including but not limited to full legal name, social security number or individual taxpayer identification number, physical and mailing address (if different), and any additional information identified by the Program administrator that is necessary to complete the onboarding.

---

<sup>3</sup> For employee communications, notwithstanding Section 1309 of the governing statute, subsequent Program guidance indicates that upon receiving the employee’s onboarding information from the employer, the Program administrator shall send informational materials to each employee as soon as administratively practicable. For new employees hired after an employer’s registration with the Program, the necessary onboarding information for the new employees shall be provided to the Program administrator as of the new employee’s hire date, but no later than 30 days after the date of employment.

<sup>4</sup> Contributions to IRAs are subject to annual limits (which, for 2026, is generally \$7,500, plus an additional \$1,100 for individuals who are age 50 or over), which are subject to phase-out at higher income levels. Under Program guidance, it shall be the responsibility of the enrollee to determine whether they are eligible to make contributions to an IRA and whether the amount of their contributions to an IRA complies with the contribution limits established under the Internal Revenue Code.

<sup>5</sup> This includes full-time, part-time, temporary, and seasonal employees (if they earned wages in the calendar year of enrollment).

- Employees will subsequently receive information directly from the Program administrator and can choose to stay automatically enrolled in the Program or opt out; they have 30 days to decide after employers add them to the Program.
  - Employees are automatically enrolled at a contribution rate of 3% of their wages, however, employees may voluntarily elect to opt out of making contributions or change their contribution levels.
  - If the employee does not opt-out during the opt-out period, the Program administrator shall subsequently notify the employee that they have been automatically enrolled in the Program, and that a Roth IRA account has been established for that employee under the Program.<sup>6</sup>
  - If an employee opts out within 30 days after they are notified about enrollment, no payroll deductions will be made from the employee's paycheck.
- After the 30-day enrollment period, participating employers will need to update their contribution rates within their payroll. From that point on, participating employers will need to keep their employees' payroll contributions and staff list up to date.
- Employee IRA accounts are individual accounts and, therefore, are portable – if an employee changes jobs and works for a subsequent employer who is also a covered employer for purposes of the SCSP, the employee can also make contributions to the employee's IRA account under the SCSP (as facilitated by the subsequent employer). If a subsequent employer is not an SCSP covered employer, the employee can make contributions directly from the employee's bank account.

### **What Obligations Do Employers Have?**

The Program is not subject to ERISA, and participating employers will not be considered fiduciaries relating to Program accounts or investments, or other aspects of the Program. This means they will not be responsible and will not have liability for the Program's administration, investment fund line up, investment performance, Program design, or benefits paid to participants.

Participating employers' duties are to facilitate the Program (generally limited to initial actions to set up the Program, such as registering, providing a list of employees, and setting up automatic payroll deposits, and ongoing actions to keep employee lists and contributions up to date). The Program monitors annual IRA contribution limits and notifies employers to stop contributions as employees

---

<sup>6</sup> Employees may opt out at any time by giving notice to the Program administrator in an accepted method established by the Program (and may subsequently elect to participate at any time by following the Program's enrollment procedures).

approach IRS limits (without regard to any Roth IRA income limits or any IRA employees may contribute to outside of the Program). If employees have questions about the Program, employers may refer the employee to visit the Program's website.

Participating employers are not required to, and in fact cannot, make employer non-elective or matching contributions in the Program.

## **Next Steps**

Covered employers who are required to facilitate the Program for their New York-based employees should register for the Program (currently, at the following website: <https://newyorksecurechoice.vestwell.com/setup/account>) by the applicable deadline and monitor information from the SCSP.

Employers notified by the Program administrator to register with the Program who believe they are not an eligible employer may certify their exempt status by submitting an exemption certification with the Program administrator (currently, at the following website: <https://newyorksecurechoice.vestwell.com/register/employer>). Such exemption certification shall remain in effect so long as the criteria for exemption continue to be met.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

[Douglas L. Tang](mailto:dtang@pbwt.com)  
[Jessica S. Carter](mailto:jcarter@pbwt.com)  
[JoAnn Kim](mailto:jokim@pbwt.com)

212.336.2844  
212.336.2885  
212.336.2221

[dtang@pbwt.com](mailto:dtang@pbwt.com)  
[jcarter@pbwt.com](mailto:jcarter@pbwt.com)  
[jokim@pbwt.com](mailto:jokim@pbwt.com)

To subscribe to any of our publications, call us at 212.336.2000, email [mktg@pbwt.com](mailto:mktg@pbwt.com) or sign up on our website, <https://www.pbwt.com/subscribe/>.

This publication may constitute attorney advertising in some jurisdictions.  
© 2026 Patterson Belknap Webb & Tyler LLP

**Patterson Belknap Webb & Tyler LLP**  
1133 Avenue of the Americas  
New York, NY 10036-6710  
212.336.2000  
[www.pbwt.com](http://www.pbwt.com)