

**State Retirement Savings Programs
EMPLOYER COMMUNICATIONS REPORT**

OVERVIEW

The American Payroll Association (APA) is a nonprofit professional association serving the interests of more than 20,000 payroll professionals in the United States. Our primary mission is to educate members and the payroll industry about the best practices associated with paying America's workers while complying with all applicable federal, state, and local laws.

APA's Government Relations Task Force (GRTF) works with legislative and executive branches of government to educate policymakers about best practices and the administrative burdens and other impacts of proposed policy changes on government, employers, and individual workers.

APA and its members agree that facilitating retirement savings and improving retirement preparedness for workers are important and laudable goals. We are not encouraging or discouraging nor endorsing any state approach to employer retirement plan mandates.

Instead, APA recognizes the significance of retirement savings coverage and the ability to save regularly through payroll deductions. We also understand that states are interested in exploring alternatives that would broaden and facilitate basic retirement savings programs for workers who may not have a qualified employer-sponsored retirement plan available to them. The financial burden on state budgets for services to assist retirees who do not have savings may be significant.

This report on employers' participation in state retirement plans covers the "life cycle of an employee" from new hire to termination or retirement. The purpose of this report is to assist interested stakeholders in understanding the role and responsibilities of employers in implementing state-sponsored retirement savings plans with emphasis on necessary points of communication.

If a state decides to implement a mandatory retirement plan, the legislation should recognize common law not unemployment insurance employers. Common-law employers have control over employment services, typically act as the employee benefits decisionmaker, and are responsible for communicating with employees.

The report was developed to achieve the following goals:

- Provide a description of employer communications necessary to implement a state retirement plan;

- Outline alternatives that may make employer communications easier or harder;
- Explain the pros and cons of any alternatives for employers, employees, recordkeepers, and states; and
- Develop recommendations for state policymakers.

Recommendations and assessments in this report are preliminary to encourage broad consideration of concerns for employers. Interested stakeholders may wish to conduct employer surveys or focus groups to test for validity.

EMPLOYER DISCLOSURES AND COMMUNICATION POINTS

The following are the most likely points of communication for which employers may be held responsible, although states may contract with plan service providers or third parties for some of these responsibilities. Each element is discussed further in this report.

- Communication Preferences
- Initial Disclosure Notices
- Enrollment of Employers
- Enrollment of Employees
- Contribution Amounts
- Notice of Changes in Employment Status
- Employer Remittances and Adjustments
- Annual or Other Periodic Open Enrollment Notices

I. Communication Preferences

Electronic systems for communication are preferred, including information about the retirement savings plan, enrollment forms, opt-out forms, acknowledgement statements, notices of employee participation, and notices on the percentages or amounts of distribution from employees' wages. However, some employers and employees may not have full access to electronic systems and still require a paper option.

Generally, given the imperative to keep administrative costs low, it seems essential that absolutely every transaction and interaction be electronic. Where paper is necessary, i.e., for very small employers, the state should enable simple electronic fill-in forms or, at a minimum, two-dimensional bar codes for any paper submission process.

While employers are aware that their employees speak many different languages, employers should not be required to translate state retirement plan information or forms into different

languages. If desired, this should be the responsibility of states or their financial agents (i.e., recordkeepers). Employers should be willing to make available to eligible employees state-translated information. If a language accommodation rule is necessary, employers may be expected to communicate to employees in a language normally used by that employer to communicate employment policy-related information.

II. Initial Disclosure Notices

At state retirement plan startup and for new hires afterwards, an information packet will be furnished to eligible employees by their employer or by a plan service provider under arrangement with the state. The content of these initial information notices will be developed by the state or a plan service provider to introduce the program to employees. Employers may play a role in explaining the “opt-out” nature of the program, i.e., the action needed if an employee does not wish to participate, or a plan service provider may explain the opt-out option to employees.

The state legislation or plan should define open enrollment periods and specify when an employer must provide related information to eligible employees. For example, employers may be asked to provide information within 5, 14, or 30 days of hire. The time selected in a state retirement plan for open enrollment periods should be based on when information must be provided to the state or plan service provider, the length of time employees are given to make decisions, and when employers must notify the state or plan service provider of employees’ decisions. If a state uses a plan service provider to communicate directly with employees, established time periods must include when employers must provide startup files and notify the provider of new hires.

Introductory information should be limited to written disclosures. Employers should not be required to conduct in-person training or release employees from scheduled work time to attend state-sponsored retirement plan information classes.

III. Enrollment of Employers

Once state legislation defines which employers are subject to the state retirement plan, the state will need to formally notify such employers of the new requirements and establish key enrollment information (e.g., name, social security number, home address, etc.) for the employer. If a state phases implementation of its retirement plan, employers must be formally notified of each phase and when they must claim exemption, or enroll participating employees or provide information to plan service providers. For example, if plan enrollment for large employers occurs in year 1, medium employers in year 2, and small employers in year 3, the state must define employer size and the date of enrollment with specific compliance deadlines, and then notify each affected employer in advance of their respective effective date.

In most instances, states will be able to rely on a state workforce agency, department of revenue, or other agency that already has a current registry of employers in the state. Employers may need to provide the name and contact information of a designated employee for managing communication between plan administrators and the employer.

IV. Enrollment of Employees

Once state legislation defines which employers and employees are eligible, affected employers will need to report basic enrollment information (e.g., contact information) to the state or recordkeeper. States should consider the least burdensome request for information based on plan parameters.

Employers should be provided a reasonable time frame of at least 60 days to provide the information. States can minimize this time period by publicly announcing the enrollment requirement as early as possible and publishing specifications on a state Internet site. After final specifications are published, employers will need 6 to 12 months to reconfigure or add software programs and adjust payroll processes.

State plan administrators or recordkeepers likely will need to subsequently contact each enrolled employee to obtain additional contact information such as personal email addresses, emergency or secondary contacts, and beneficiaries. They also will need to provide further guidance on how to access their account and make investment elections.

Following initial startup of a state retirement plan, a process for adding newly hired employees is needed.

The state should provide options for electronically uploading employee enrollment information to the state-designated recordkeeper. This should include a simple Internet user interface, which would enable a registered employer to type in employee information one employee at a time, as well as file uploads using defined file formats to permit high-volume enrollments for large employers.

Paper-based enrollments are possible but may be too costly given the need to control administrative costs.

A. Recordkeeping (e.g., evidence of disclosure); Signing Event

Some states envision that employees will return to their employer a signed acknowledgement indicating that the employee has received the information describing the plan and their options. This is a significant element of a state retirement plan that deserves careful consideration. The importance of the notice cannot be overemphasized because this is a tool with real influence on an employee's preparedness for retirement. A misunderstanding regarding the notice can cause confusion when deductions are made that an employee did not expect or when no deductions are made and an employee intended to participate. States may consider attaching a "signing event" to the notice to signal a degree of importance to employees and employers.

That said, adding a "signing event" can present a substantial new administrative burden and raise liability concerns for employers. For example, the state plan should include a provision to protect employers from penalties in the case when an employee refuses to sign a required

acknowledgement form. Employers will need a means to show that the information was provided to an employee under these circumstances. One option for state plan administrators to consider is appending the attestation/signature requirement to other forms with which employees and employers are already familiar, such as U.S. Internal Revenue Service (IRS) Form W-4, *Employee's Withholding Certificate*.

Because such programs are intended to apply an “opt-out” approach, an authorization form for eligible employees to participate in the program may not be necessary. Nevertheless, some employers may still want employees to affirmatively authorize retirement plan savings deductions.¹

B. Enrollment Responses and Error Resolution

Once an employer has identified itself and its employees, the state plan administrator should notify the employer that the information was received, followed by any notices of problems (if applicable) with the information, such as formatting problems or inaccurate information about the employer or employees. For example, if an employee’s social security number does not match the name on file with the relevant government database.

The system will need to include a process for an employer or employee to make corrections or to dispute any notices of inaccurate information. In some instances, the employer may need to be advised not to initiate withholding until an issue is resolved.

C. Notice of Subsequent Changes

If an employee makes changes to a state plan retirement savings account that impacts payroll, such as authorizing a withholding percentage other than the default amount or subsequently changing the amount to withhold, and initiates such changes through the recordkeeper, the employer will require official notice to apply the changes to the payroll system. This communication may involve very high volumes of notices and should be designed to ensure that the process is efficient and effective.

To limit the administrative burden on employers, the frequency of participant plan changes should be limited. Employers, especially, small businesses, will not be able to accommodate employees who make frequent changes for budgetary reasons. Alternatively, employers should be required to implement requested changes within two pay periods.

If a state plan includes an auto-escalation provision, this information should be clearly described in the employee information along with a schedule of when the escalation will occur. An opt-out process for auto-escalation should be offered, and electronic reminder notices should be provided to the employee (for example, 90 and then 30 days prior to the effective date).

¹ State legislation should provide that employers are not liable under existing Wage and Hour and similar employment laws that generally prohibit employers from deducting from wages other than as expressly authorized in writing by the employee.

V. Contribution Amounts

An employee's contributions may vary. No explanation should be required.

In some cases, an employee may not have enough wages to contribute to their retirement account at the level selected by the employee. This often occurs with respect to commissioned employees and tipped employees, whose tax and other liabilities can exceed the wages available to withhold. The state plan should accept smaller amounts or missed contributions without any employer notice requirements.

In addition, state retirement plans should recognize other withholding obligations may result in insufficient wages to contribute to an employee's retirement account (e.g., tax levies, child support or other garnishments). It may be helpful for the state to offer guidance to employers as to the priority order of withholding, such as whether a contribution to an employee's state retirement account has priority over deductions for health insurance, creditor garnishments, student loan repayments, etc.

VI. Notices of Changes in Employment Status

In certain circumstances, it may be necessary for employers to notify the state or recordkeeper when an employee's employment status changes, e.g., termination or retirement.

However, such requirements should be recognized as a significant new administrative responsibility and should be kept to an absolute minimum. With narrow exceptions, employers are not currently required to notify any government entity of employment status changes. Therefore, state plans and recordkeeping systems should not expect to be advised of temporary disruptions or minor changes, such as an employee's extended illness or leave of absence, or reduction in hours worked or earnings affecting amounts withheld. Optimally, the system should offer an easy means to add an electronic checkbox to any employee whose employment has been terminated.

VII. Employer Remittances and Adjustments

Employers will need to communicate certain information to the recordkeeper with each remittance, e.g., the identification number and secondary identifier of each employee and the deduction amount to be credited to the employee's account. As with enrollment information, states will likely need to support more than one way to pay amounts withheld and report related details. Small employers may appreciate a simple Internet user interface that enables them to periodically log in to report amounts withheld. Through the interface, an employer authorizes an electronic debit to its account to collect the funds. Large employers and service providers require a file submission process and may prefer to rely on longstanding Automatic Clearing House (ACH Credit) systems through which direct deposits of payroll are made.

Recovery of amounts initially withheld may be a frequent occurrence and a significant source of workload for employers and state plan administrators and recordkeepers. Because of the opt-out

nature of the program, a significant number of employees may object to withholding days or weeks after deductions first commence and funds have been remitted and invested, arguing that they did not understand and did not wish to participate.

Frequent adjustments also occur when payroll adjustments are made, e.g., employees whose pay during a pay period was incorrect and adjustments are made through a manual check. In some instances, employer funds may need to be recovered from the state plan; e.g., an automatic payroll payment for a salaried employee whose employment was terminated, yet the payroll department was not notified. (In these instances, wages are unearned and checks/payments must be voided and any “withholding” recovered.) The state plan will need to include processes for managing these situations in a timely manner.

In addition, the state plan should include periodic reconciliation of remittances to confirm that aggregate amounts withheld for each employee were in fact credited to each employee’s account held with the state plan administrator or recordkeeper.

These are all significant transaction types that will materially affect the viability of the state retirement plan program. As mentioned at the beginning of this report, it is essential that absolutely every transaction and interaction be electronic, including adjustments. We recommend that protocols be established to allow employers to apply any adjustments to subsequent amounts remitted). Existing IRS income tax withholding rules allow for this approach, which makes any necessary corrections for such withholding very efficient.

VIII. Annual or Other Periodic Open Enrollment Notices

Most states have included provisions allowing employees who have opted out to opt back in at some regular interval (e.g., annually or every other year). At this time, an announcement or information packet will need to be furnished to eligible employees by their employer. Employers will therefore need to track employees that have opted out, to ensure that they receive an open enrollment notice.

The state legislation or plan should define open enrollment periods and specify when an employer must provide related information to eligible employees.

SUMMARY AND RECOMMENDATIONS

This brief report was intended to catalogue each communication point that would involve employers as they implement state-run, automatic enrollment, retirement savings programs, to discuss alternatives that may facilitate such communications, and to make recommendations for state policymakers. Each element discussed deserves further study, preferably with the participation of state administrators and recordkeepers (financial institutions). The APA stands ready to assist in such efforts.