
JULY 27, 2020

AGENDA ITEM 7
INFORMATION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

Update on Development of Enforcement Program for Employer Compliance

Summary

In establishing the CalSavers Retirement Savings Program in statute, lawmakers included penalties for employer noncompliance and provided the basic framework for an enforcement mechanism. In this item, the Executive Director will provide an update on the status of designing and developing the enforcement program. In subsequent Board meetings, the Board will have opportunities to review and revise the enforcement program through two separate foundational documents: (1) approval of an interagency agreement detailing the enforcement program with the Franchise Tax Board (FTB) and, (2) approval of regulations codifying the provisions of the enforcement program.

Purpose of and Approach to Enforcement

CalSavers aims to operate a program that is so valuable to employees and so easy to facilitate for employers that enforcement is a minor element of operations. However, with a scope as ambitious as CalSavers' and a scale as large as California's, and based on observations in peer programs in Oregon and Illinois, some level of noncompliance is expected.

Broadly, noncompliance can be due to any reason an employer fails to make the program available to their employees, including failure to register by their respective deadline or failure to meet any of the duties established in regulations that are necessary for employees to participate. Those compliance failures can include missed deadlines to upload the employee roster, add new employees, or submit contributions for enrolled employees.

The existence of a penalty structure alone should have a deterrent effect on a substantial portion of would-be noncompliant employers. For others, receipt of a first penalty notice should help to capture attention and stimulate compliance, especially if such employers have the opportunity to have fines waived following full compliance (a topic for further consideration by the Board).

Throughout every stage of outreach, onboarding, and participation, CalSavers will continue to provide outstanding customized service to employers and support them through a variety of modalities (in-person visits, video conference, telephone, email, etc.).

Statutory and Regulatory Authority

Statute previously tasked the Employment Development Department (EDD) with enforcing employer compliance with statutory requirements and working with CalSavers to develop the

implementation plan and agree on timing. With the passage of Assembly Bill (AB) 102 on June 29, 2020, the responsibility for collection of employer penalties for noncompliance and hearing of employer appeals was shifted from EDD to the Franchise Tax Board (FTB), as codified in Revenue and Taxation Code Sections 19285-19290.1. Government Code Section 100033(b) establishes that noncompliant employers shall be fined \$250 per eligible employee upon the first official penalty notice from FTB and an additional \$500 per eligible employee for continued noncompliance 90 days after the first penalty notice.

As CalSavers and FTB staff further refine the operational design of the enforcement program, they will collaborate on writing regulations, presenting proposed language and obtaining approvals from the CalSavers Retirement Savings Board and the Franchise Tax Board, and conducting public comment periods as required by the Office of Administrative Law (OAL). Regulations must be in place prior to the distribution of FTB's first official penalty notices, expected in approximately October 2021 (see *Timing* section below).

FTB Role and Scope of Work

At a high level, FTB's primary role will be to distribute penalty notices for employers deemed by CalSavers to be noncompliant, route most questions to the CalSavers customer service center, implement an appeals process for matters unresolved directly by CalSavers, and transfer any penalty revenue received to CalSavers. In service of these duties, FTB will:

- Collaborate with CalSavers to finalize the language and design of penalty notices to be sent by FTB for each category of noncompliance;
- Develop and maintain the technology infrastructure required to implement the enforcement program, including handling inbound and outbound data;
- Receive data files from CalSavers indicating noncompliant employers and penalty amounts;
- Produce and distribute penalty notices to noncompliant employers;
- Receive inquiries from recipients of penalty notices and in most cases route to CalSavers customer service center;
- Collect payments and remit to CalSavers; and
- Operate an appeals process for employer matters not resolved directly by CalSavers.

The interagency agreement currently under development outlines each of these areas of work in detail and will be presented to the Board in a subsequent meeting in 2020.

Penalty Revenue

Any penalty revenue collected by FTB will be transferred in its entirety to the CalSavers Retirement Savings Trust Administrative Fund daily via the State's FISCAL financial accounting system. Any such revenue will be used to operate the CalSavers Program and reduce the need for loan funding.

Timing

CalSavers and FTB staff seek to complete all foundational and preparatory work in time for FTB to begin distribution of the first penalty notices to noncompliant Wave 1 employers (those with more than 100 employees whose deadline is September 30, 2020) in or around October 2021. A

tentative calendar of the high-level phases of implementation is included below. Further detail, including plans for implementing enforcement for sub-categories of compliance failures, will be provided during subsequent reviews of the interagency agreement and regulations package.

Tentative CalSavers / FTB Enforcement Calendar
Subject to change, pending approval and operational development

	Registration Deadline	CalSavers Follow-up & Support	CalSavers Due Process Notices (3)	FTB 1st Penalty Notice	CalSavers Follow-up & Support	FTB 2nd Penalty Notice
Wave 1 >100 EEs	9/30/20	Oct. 2020 – May 2021	June, July, Aug. 2021	Oct. 2021	Ongoing	Jan. 2022
Wave 2 >50 EEs	6/30/21	July 2021 – Feb. 2022	April, May, June 2022	July-Oct. (TBD) 2022	Ongoing	Oct.-Dec. (TBD) 2022
Wave 3 ≥5 EEs	6/30/22	July 2022 – Feb. 2023	April, May, June 2023	July-Oct. (TBD) 2023	Ongoing	Oct.-Dec. 2023

Technology

CalSavers and FTB will design and implement an application programming interface (API) between the two agencies to share employer compliance data. The API will allow data to be shared between the two agencies as frequently as necessary to allow for the most efficient application of the enforcement program.

Data Privacy

CalSavers is permitted to share confidential employer information received from EDD with FTB through authorization in Interagency Agreement No. CSCRSIB05-19 with EDD. FTB is prohibited from re-disclosing any employer or employee data received as part of its partnership with CalSavers.

Cost

CalSavers will reimburse FTB for the cost of its services as agreed upon in an interagency agreement. CalSavers will only pay for actual costs incurred and services rendered. While cost analysis is still underway, on a preliminary basis FTB estimates its costs will be approximately \$280,000 to \$380,000 for each of fiscal years 2020-21 and 2021-22; \$1.7 million for fiscal year 2023-24; and approximately \$500,000 per year thereafter. Staff are working with FTB to refine the cost estimates based on the best available information about technology needs and estimated volume of employers. The proposed interagency agreement that staff will present for the Board’s review and approval at an upcoming meeting will include a detailed schedule of estimated costs and a maximum reimbursable dollar amount.

Interagency Agreement

CalSavers and FTB staff are collaborating closely to develop an interagency agreement codifying roles and responsibilities, terms, and maximum reimbursable costs for implementing the enforcement program. As the expected dollar value of this interagency agreement exceeds the Executive Director’s delegated authority, this will be brought to the Board for review and approval in a subsequent Board meeting in 2020.