
JUNE 22, 2021

AGENDA ITEM 5
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

Resolution No. 2021-04, Delegation of Authority for Enforcement of Employer Compliance

Summary

The CalSavers Retirement Savings Board (“Board”) will consider delegating authority for enforcement of employer compliance with Title 21 of the California Government Code and enacting regulations. The delegation of authority is necessary to begin formal enforcement of employer compliance. The purpose of the employer compliance enforcement efforts is to encourage employer compliance and therefore allow for employee participation in the program, not the collection of revenue.

Statutory and Regulatory Authority

Section 100033(b)(2) of the California Government Code establishes that each eligible employer that fails to allow its eligible employees to participate in the CalSavers Retirement Savings Program (“the Program”) shall be subject to a penalty of two hundred fifty dollars (\$250) per eligible employee and an additional penalty of five hundred dollars (\$500) per eligible employee if noncompliance continues. The law conditions the fines shall apply after the CalSavers Retirement Savings Board issues a final notice of penalty application, after which the Franchise Tax Board (“FTB”) shall issue a first notice of the imposition of a penalty.

Section 10008(a), Title 10, of the California Code of Regulations establishes the Board may delegate enforcement of employer compliance with Title 21 of the California Government Code, including all failures by an eligible employer to make the Program available to their employees.

Delegation of authority to enforce employer compliance to the executive director is a formal step necessary to begin employer compliance enforcement efforts, including referral of noncompliant employers to FTB for penalty imposition and collection.

Ongoing Efforts to Reach Noncompliant Employers

State law establishes eligible employers may be subject to penalties for failing to “allow their eligible employees to participate in the CalSavers Retirement Savings Program...” Failure to allow eligible employees to participate in the Program can include 1) failure to register by their respective deadline; 2) failure to upload their employee information; and 3) failure to remit employee contributions according to the deadlines established in Program regulations.

The Program issues regular communications via postal mail and email to employers about their requirements to register and, for the employers that have registered, their legal requirements to

upload employee data and remit participating employee contributions. Client services and field staff conduct additional phone and email outreach to employers to explain the duties and timelines and offer technical assistance.

Upon initiation of formal employer enforcement efforts, the Board will begin to issue formal notices of noncompliance that identify penalty amounts that will be imposed if employers do not come into compliance, identify the resources available to employers to come into compliance, and identify the actions that will be taken if they do not address the cause of noncompliance. After the Board issues three separate notices of penalty application, the Board will refer the noncompliant employers to FTB for formal notices of imposition of penalties.

The tentative calendar of pre-enforcement and enforcement activity is shown in the table below and is included in the interagency agreement with FTB approved by the Board at the May 19, 2021 Board meeting.

Tentative CalSavers / FTB Enforcement Calendar
Subject to change, pending 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 – July 2021	Aug - Nov. 2021	Dec. 2021	Ongoing	Mar. 2022
Wave 2 >50 EEs	6/30/21	July 2021 – April 2022	May - Aug. 2022	Sept. 2022	Ongoing	Dec. 2022
Wave 3 ≥5 EEs	6/30/22	July 2022 – April 2023	May - Aug. 2023	Sept. 2023	Ongoing	Dec. 2023

Further background information was presented in materials for Board meetings held on July 27, 2020, December 7, 2020, and May 19, 2021.

Staff Recommendation

Staff recommend the Board approve Resolution No. 2021-04 of the CalSavers Retirement Savings Board delegating authority to the executive director to conduct employer compliance enforcement efforts.

Attachments

- Attachment 5A: Resolution No. 2021-04: Resolution of the CalSavers Retirement Savings Board Authorizing the Executive Director to Conduct Employer Compliance Enforcement