
NOVEMBER 13, 2023

AGENDA ITEM 7
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

Resolution No. 2023-08, Approval of Emergency Regulations Amendments to Sections 10000 and 10008 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking

Summary

The CalSavers Retirement Savings Board (“Board”) will consider approving regulation amendments to Sections 10000 and 10008 of Chapter 15 of Title 10 of the California Code of Regulations. The Board will consider authorizing the Executive Director to conduct the emergency rulemaking process and, after approval of the emergency regulations amendments, to conduct the regular rulemaking process to make said regulatory changes permanent.

Authority

Title 21 (commencing with Section 100000) of the Government Code establishes the Board and the CalSavers Retirement Saving Program (“Program” or “CalSavers”). Section 100048 of the Government Code authorizes the Board to adopt regulations to implement the Program and deems the adoption, amendment, repeal, and readoption of those regulation as addressing an emergency for the purposes of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Detail

Staff are seeking Board approval for amendments that provide clarity on the assessment and collection of penalties from employers who are not in compliance. If approved by the Board, staff will file the regulations amendments and begin the formal emergency rulemaking process.

Section 10000- Definitions

Staff propose adding Section 10000(ss) to define “noncompliance” by adding it as a defined term. The purpose of the amendment is to clarify what CalSavers uses to delineate the difference between a compliant employer and a noncompliant one.

Currently an employer’s compliance with the CalSavers mandate is derived from Government Code §100033, excerpted, in part, below:

- (a) The CalSavers Retirement Savings Board shall have the power and duties necessary to administer the enforcement of employer compliance with this title.

(b)(1) The CalSavers Retirement Savings Board shall issue to each employer who fails to allow its eligible employees to participate in the CalSavers Retirement Program pursuant to this title a notice of penalty application.

(2) Each eligible employer that, without good cause, fails to allow its eligible employees to participate in the CalSavers Retirement Savings Program pursuant to Sections 100013 and 100032, after the CalSavers Retirement Savings Board serves a final notice of penalty application, 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 as described in Section 19287 of the Revenue and Taxation Code.

(c) The CalSavers Retirement Savings Board shall issue a final notice of penalty application to an eligible employer that fails to comply with this title. Pursuant to Section 19287 of the Revenue and Taxation Code, the Franchise Tax Board shall issue a first notice of the imposition of a penalty to an eligible employer for failure to comply after the CalSavers Retirement Savings Board informs the Franchise Tax Board of the eligible employer's noncompliance.

The proposed regulation language draws from this Government Code and would clarify how noncompliance is defined. Noncompliance would be defined as “the failure of an Eligible Employer to allow an Eligible Employee to participate in the Program.”

Section 10008 – Enforcement of Employer Compliance

Staff propose amending Section 10008 by adding new subsections (c) and (d).

Currently, certain scenarios involving the collection, refundability and recurring nature of penalties are not explicitly clear. This could cause confusion amongst employers, stakeholders and staff as more employers are subject to the mandate and enter into penalty status. This amendment change would clarify that noncompliant employers are subject to the penalties until compliance is satisfied. Once compliance is satisfied, CalSavers will take action to cease penalty collection efforts. Any penalties received after an employer comes into compliance are to be considered erroneous, and CalSavers will take action to refund the employer or reject the penalty as the Program will no longer be entitled to said penalty. If an employer is noncompliant and the penalty is collected, the employer is not eligible for a refund, even if the employer later comes into compliance. Compliance must be obtained prior to the penalty being deposited into a state account. The amendments also specify that employers who continue to be noncompliant after their first \$500 penalty will continue to be subject that penalty each subsequent year, including nonconsecutive years, until they come into compliance.

This would codify existing regulations found in Title 18, Division 3, Chapter 2.6, Subchapter 5, Article 6.1, Section 19288(g)(1)(C) of the California Code of Regulations, related to the Franchise Tax Board's collection of penalty payments for CalSavers, which reads:

(g) Resolution outside the hearing process.

- 1) At any time, an Appeal may be resolved by any of the following:
 - A) An Eligible Employer paying the Penalty.
 - B) An Eligible Employer withdrawing the Appeal.
 - C) CalSavers Retirement Savings Board informing the Franchise Tax Board that the Penalty shall not be imposed due to the Eligible Employer's compliance with the requirements of Title 21 (commencing with Section 100000) of the Government Code.

Staff proposes the following language added to Gov. Code Section 10008:

(c) Noncompliant employers are subject to the penalties set forth in Gov. Code Section 100033(b) until compliance is satisfied.

(i) A noncompliant employer, who fails to obtain compliance after the initial penalties are assessed, will be fined \$500 per employee for each subsequent calendar year;

(ii) Non-compliance does not need to be consecutive to assess the \$500 penalty. Any calendar year of non-compliance after the initial penalty will result in a \$500 penalty.

(d) If at any time through the collection efforts of the Franchise Tax Board as described in Cal Code Regs. tit. 18 § § 19285 et seq., a noncompliant employer is brought into compliance before the penalty payment is received through the submission of written documentation, or as determined by review of the employer's account status, then the Board staff shall inform the Franchise Tax Board that the penalty shall not be imposed due to the Eligible Employer's compliance with the requirements of Title 21 (commencing with Section 10000) of the Government Code. Any erroneously made payments shall be refunded.

Recommendation

Staff recommend the Board approve Resolution 2023-08 to authorize the Executive Director to approve proposed regulations amendments to Sections 10000 and 10008 of Chapter 15 of Title 10 of the California Code of Regulations, authorize the Executive Director to conduct the emergency rulemaking process to enact the amendments, and provide authority to conduct the regular rulemaking process to make the amendments permanent.

Attachments

- Attachment 7A: Text of Regulations Amendments
- Attachment 7B: Resolution 2023-08: Approval of Emergency Regulations Amendments to Sections 10000 and 10008 of Chapter 15 of Title 10 of the California Code of Regulations and Authority to Conduct Rulemaking