
FEBRUARY 13, 2023

AGENDA ITEM 7
ACTION ITEM

CALSAVERS RETIREMENT SAVINGS BOARD

Amendment with the Franchise Tax Board for Employer Compliance Enforcement Services

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 CalSavers Retirement Savings Board (“Board”) will consider approving an amendment to its current contract.

Background

On May 19, 2021, the Board approved the Interagency Agreement with Franchise Tax Board (“FTB”) to provide employer compliance enforcement services via agreement CRSB04-20. The term of the agreement is five years through June 30, 2025.

CalSavers aims to achieve full employer compliance based on the program’s value to participants and ease of use for employers. 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. 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.).

Government Code Section 100033 provides the Board with the power and duties necessary to administer the enforcement of employer compliance with the CalSavers Retirement Savings Trust Act (“Act”). The code section also outlines the penalty structure imposed on employers and provides for FTB to notice employers of penalties for failure to comply with the Act. In addition, the code section specifies that the Board shall reimburse FTB for the costs incurred by FTB in administering the employer enforcement model.

Scope

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 purpose of the IA is to establish the terms under which FTB will notify non-compliant employers of penalties, operate the collection of penalties, and consider employer appeals for employer non-compliance with the CalSavers Retirement Savings Program as authorized in Revenue and Taxation Code Section 19286 through 19288.

Penalty Revenue

Any penalty revenue collected by FTB will be transferred in its entirety to the CalSavers Retirement Savings Trust Administrative Fund and be used to operate the CalSavers Program and reduce the need for loan funding.

Timing

CalSavers and FTB first distributed penalty notices to noncompliant Wave 1 employers (those with more than 100 employees whose deadline was September 30, 2020) in December 2021. Included below is a table of prior enforcement activity and the tentative schedule for upcoming enforcement activity.

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 – Jul 2021	Aug - Nov 2021	Dec 2021	Ongoing	Jun 2023
Wave 2 >50 EEs	6/30/21	Jul 2021 –Jun 2022	Jul - Sep 2022	Dec 2022	Ongoing	Oct 2023
Wave 3 ≥5 EEs	6/30/22	Jul 2022 – Jun 2023	Jul – Sept 2023	Oct. 2023	Ongoing	Apr 2024
Wave 2022	12/31/22	Jan – Jun 2023	Jul – Sep 2023	Oct 2023	Ongoing	Apr2024

Wave 2023	12/31/23	Jan – Jun 2024	Jun-Aug 2024	Sept 2024	Ongoing	Jan 2025
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Technology

CalSavers and FTB will utilize a Secure File Transfer Protocol (SFTP) between the two agencies to share employer compliance data. The SFTP will allow for secure data transfer 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. CRSB03-22 (Amendment #1) with EDD. FTB is prohibited from re-disclosing any employer or employee data received as part of its partnership with CalSavers.

Contract Term and Cost

The term of this Agreement will be through June 30, 2025, and shall not exceed \$4,894,557. Budget detail is included as Exhibit B in the attached proposed IA. Summary charges per fiscal year are as follows:

Fiscal Year	2020-21	2021-22	2022-23	2023-24	2024-25	Total
Personal Services	\$405,782	\$337,260	\$1,003,735	\$1,545,330	\$553,991	\$3,846,098
OE&E	\$38,769	\$41,777	\$181,030	\$397,806	\$158,157	\$817,539
Department Overhead	\$ 31,015	\$ 25,902	\$56,284	\$86,654	\$31,065	\$230,920
Total	\$475,566	\$ 404,939	\$ 1,241,049	\$2,029,790	\$743,213	\$4,894,557

While the above amounts reflect the possible total cost, per the IA, FTB shall invoice the Board only for services rendered, and salary costs reflect salaries at the top of each classification range and may be lower when billed.

Staff Recommendation

Staff recommends the Board authorize the Executive Director to amend the Interagency Agreement with FTB, for employer compliance services, in substantially the same form as Attachment 7A.

Attachments

- Attachment 7A: Proposed Interagency Agreement Amendment with Franchise Tax Board
- Attachment 7B: Resolution 2021-03: Resolution of the CalSavers Retirement Savings Board Authorizing the Executive Director to Enter into an Agreement with the Franchise Tax Board for Employer Compliance Enforcement Services
- Attachment 7C: Resolution 2024-04: Resolution of the CalSavers Retirement Savings Board Authorizing the Executive Director to amend the Agreement with the Franchise Tax Board for Employer Compliance Enforcement Services, CRSB04-20