

California Chamber of Commerce and California Manufacturers & Technology Association

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Employer Perspective

- Latest announcement from the President
- ERISA
- Employee resources
- Risk exposure
- Automatic enrollment & payroll deduction

President's Announcement

- Directed Labor Department to propose rules showing states how to create an automatic payroll deduction IRA, unless workers opt out.
- Rules expected to address ERISA question
- California Treasurer Chiang: It's a major development, it's hopeful. At least we know we are going to have some rules.
- Secretary Perez: "Although the federal courts, not the Department of Labor, are the ultimate arbiter on that question, the department can try to help reduce the risk of litigation challenges to state retirement savings initiatives. The forthcoming guidance will safeguard worker retirement savings and offer pathways for states to adopt retirement savings programs that are consistent with federal law."

Questions: DOL Approach

- How helpful will it really be?
- What is the timing?
- Will it be compatible with the Secure Choice plan?
- Will it provide airtight assurance to states, employers and programs?
- Will the regulations provide a safe harbor for employers?

ERISA

Purpose (WWW.DOL.GOV)

- ERISA protects employees' retirement assets so that funds will be there when they retire
- Without ERISA, employees' assets need protection
- Fiduciary responsibility needs to be identified

The Elephant - ERISA

- Without ironclad determination from DOL, risk is far too high to proceed - Federal law cannot be amended through regulation or executive order
- What happens if ERISA pre-empts/applies?
- Will Secure Choice be truly voluntary for employees/employers?
- What protections will employees have without ERISA?
- What are the risks to employers without ERISA?
- What are the risks to employers should Secure Choice be later deemed subject to ERISA?

Risk Exposure

- Employer bears no risk or liability
- Employee bears no risk or liability
- State bears no risk or liability
- Board will carry insurance to cover risk:
How does that work? What does it cost?
Will the cost be absorbable?
- Clearly, risk must fall somewhere in case of failure

Risk Exposure to Employers

- Employee challenge to employer as responsible for employee loss
 - Potential for class action
 - Liability potential for all employers
 - Back penalties, fees

Assignment of Risk

- To board: fiduciary insurance cost added to administration
- To state: creates more potentially unfunded liabilities (think CALPERS)
- To employee: loss of wages and retirement assets
- To employer: prohibited by SB 1234, but ultimately decided by courts

Employee Resources

- Employer must be outside the loop
- Clear path for employee
- Risk to employer for providing information and advice
- Administration cost for employee resources

Enrollment & Deduction

- Not as simple as it appears
- Administration challenges
- Employer/employee sophistication
- Payroll service challenges
- No payroll service

Questions?