CALSAVERS – UNDERSTANDING YOUR OBLIGATIONS AS A BUSINESS AND ENSURING COMPLIANCE TO AVOID PENALTIES

By Stephanie L. Dunn

First, in order to make sure your company or business is in compliance with CalSavers, it is important to understand what CalSavers is and the basic requirements for employers.

The California Legislature established CalSavers in 2016 as a way to guarantee all working Californians have access to financial retirement security. CalSavers achieves this goal by creating a portable and low-cost option for workers to invest in their future. Specifically, CalSavers requires California businesses that employ five or more employees to do one of the following: (1) offer a retirement plan to their employees that is certified with CalSavers; or (2) provide their employees with access to CalSavers. If the employer fails to comply with the CalSavers requirements, they will be subject to a minimum penalty of $250.00 per employee.

Employers that have fewer than 5 employees, maintain a Tax-Qualified Retirement Plan for at least 1 employee, or are an employer that is part of the Federal Government, the State, the County, a Municipal Corporation, or any government entity, are not subject to the CalSavers requirements. Other Tax-Qualified Retirement plans that employers have the option to offer to their employees instead of using CalSavers include the following:

1. 403(a) - Qualified Annuity Plan or 403(b) Tax-Sheltered Annuity Plan
2. 408(k) - Simplified Employee Pension (SEP) Plan
3. 408(p) - Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) IRA Plan
4. 401(a) - Qualified Plan (including profit-sharing plans and defined benefit plans)
5. 401(k) Plan (including multiple employer plans or pooled employer plans)
6. Payroll deduction IRAs with automatic enrollment

If an employer decides they are going to use CalSalvers for their employee retirement plan, they need to make sure they enroll in CalSavers before the required deadline. The deadline for when a business must be in compliance with CalSavers depends on the number of employees employed by the company. Businesses that employ 100 or more workers were required to be in compliance with CalSavers as of September 30, 2020. If the business employs 50 or more workers, the deadline is June 30, 2021, and if the business employs 5 or more workers, the deadline is June 30, 2022.

The number of employees of a business is determined by the average number of employees reported to the Employment Development Department ("EDD") by the employer on EDD Form DE 9C for the quarter ending on December 31st and the previous three quarters of available data. If your business is required to comply with CalSavers, the State should have notified you of that requirement so you can register by the deadline if you do not have a tax qualified retirement plan in place already.

Using CalSavers is a great option for employers who believe creating and operating their own employee retirement plan is too costly because it only requires a minimal administration fee on the part of the employer and does not require them to make any contributions toward the retirement plan. Instead, CalSavers provides all employees with an Individual Retirement Account ("IRA") that is professionally managed. Additionally, by using CalSalvers, an employer does not have to worry about certifying their own retirement plan with CalSavers, nor do they have to worry about the fiduciary liability that would be imposed on them if they created their own retirement plan. With CalSavers, the employees are responsible for their own investment choices and are the only ones able to make contributions to the IRA account through monthly payroll deductions.

As stated above, if an employer fails to comply with the new CalSavers requirements, they will be subject to a minimum penalty of $250.00 per employee. If your business fails to comply with the CalSavers requirements, CalSavers will report the defaulting employer to the California Franchise Tax Board ("FTB"). The FTB then has the responsibility to issue penalties to the defaulting employer.

It has been reported that CalSavers will not be reporting non-compliant employers until after 90 days of continued non-compliance. This means employers who were subject to the September 30, 2020 deadline would not be reported to the FTB until the start of 2021. If the employer continues to remain non-compliant for more than 180 days, the $250.00 penalty will increase to $500.00 per eligible employee. Therefore, if your business has 100 or more employees and your retirement plan has not been set up or certified with CalSavers, you need to act immediately to resolve the situation before the start of the new year to avoid any penalties. So now you are probably thinking, "how do I sign up for CalSavers?"

Signing up for CalSavers is simple and easy. First the employer needs to go to the CalSavers website to register and set up an account. Once an account has been created, the employer creates a payroll list to enroll all of the current employees. Then the payroll list must be submitted to a third party administrator. After the initial set-up of the account with CalSavers, the employer can use their existing payroll system to send the employees' contributions to their CalSavers IRA each month. It is important for the employer to remember to update their account and add new employees when necessary.

If you have questions, need help complying with CalSavers, or want to discuss your employee retirement options, we are here to help. Let us know at info@ch-law.com.

Stephanie L. Dunn is a graduate of Oklahoma State University and received her master's degree from the University of Oregon. She received her law degree from Pepperdine University School of Law where she also earned a Certificate in Entertainment, Media, and Sports Law. At Pepperdine, Stephanie served as the Managing Editor of the Journal of the National Association of Administrative Law Judiciary and published an article titled, "Please Don't Make Me Pay Taxes: How New IRS Law Helps Art Collectors Avoid Hefty Taxes." During law school Stephanie worked at the Pepperdine Low Income Taxpayer Clinic, the General Counsel's Office at the Getty Museum, and the Pepperdine Athletic Compliance Department. Prior to joining Coleman & Horowitt, Stephanie worked in Los Angeles practicing worker's compensation defense. Stephanie works in the transactions department of the firm's Fresno and Los Angeles office where she represents clients in the areas of business transactions, real estate, intellectual property, and estate planning.