



Law & Policy Group

GRIST

New Mexico enacts retirement savings plan and marketplace

By Mercer's Margaret Berger, Brian Kearney and Ellen Stone
May 13, 2020

In this article

[Eligibility](#) | [Fiduciary responsibilities](#) | [Voluntary participation](#) | [Marketplace features](#) | [Work and save program](#) | [Implementation](#) | [Related resources](#)

New Mexico is the latest state to dive into the retirement pool for private-sector and nonprofit employers, enacting [legislation](#) (2020 Ch. 7, HB 44) to create both a state-run savings program and a retirement marketplace. New Mexico is the first state to try implementing two different arrangements at the same time. The marketplace must begin operating by July 1, 2021, with a six-month delay for the savings program.

Eligibility

The New Mexico Work and Save Act uses an expansive definition of eligibility to determine covered employers and employees, with just a few specified exceptions:

- **Covered employers.** The law applies to any private-sector or nonprofit employer with a primary place of business physically located in New Mexico. The legislation exempts any federal, state, or local government and any governmental agency, department, commission, or other related entity.
- **Covered employees.** Covered employees include all full- and part-time employees of a covered employer who are at least 18 years old, as well as self-employed individuals. Employees covered under a multiemployer pension plan or by the federal Railway Labor Act are excluded.

Fiduciary responsibilities

A state-appointed board will oversee implementation and maintenance of the savings program and marketplace. In conducting these functions, the board members and employees will act as fiduciaries under a standard of care similar to ERISA's.

The law specifically exempts employers from fiduciary responsibilities under the work and save program. However, employer plans offered through the marketplace will generally be subject to ERISA at the employer level — meaning employers will have fiduciary responsibilities for those plans.

Voluntary participation

Participation will be voluntary for employers and employees. This may preclude the marketplace from offering certain types of qualified retirement plans (such as money purchase or defined benefit plans).

The New Mexico legislature considered a similar proposal ([SB 392](#)) in 2019, but the Senate voted to freeze it. That proposal would have required covered employers to participate (or offer their own qualified retirement plan) if, by five years after the measure's effective date, more than 30% of private-sector employees still lacked access to a payroll deduction retirement plan. The new legislation contains no such provision.

Marketplace features

The board will design and manage the marketplace. Along with developing marketing materials, the board will establish standards for participating financial services businesses and plan offerings. Both employers and individuals will be able to access the plans.

Key features of the marketplace include:

- The marketplace can offer an array of plans, including simple individual plans, individual payroll-deduction plans, multiple-employer plans (if allowed under federal law), qualified retirement plans (including 401(k) plans and other defined contribution plans), and 403(b) plans.
- Employers may use auto-enrollment and auto-escalation, as long as employees can opt out.
- The marketplace will offer a financial literacy module for employers and employees.
- Plans may but aren't required to offer distribution options beyond lump sums, such as systematic withdrawal programs, guaranteed lifetime withdrawal benefits and annuities.

- Participating financial services businesses will pay administrative service fees sufficient to cover the cost of operating the marketplace.

Work and save program

The program will operate a state-run, payroll-deduction Roth IRA. Employers will be able to use auto-enrollment and auto-escalation features, as long as employees can opt out. A cap will limit fees and expenses to less than 1% of the total invested funds. Employer contributions to the fund will not be allowed.

The work and save board will be responsible for establishing all program policies and processes, including procedures for employers to enroll in the program and for employees to withdraw their money. The board will also oversee the development of educational materials for employers, employees and the public.

Implementation

The law requires the marketplace to begin operating by July 1, 2021. The work and save program has a little more time: Covered employees must be able to begin contributing by Jan. 1, 2022.

Related resources

Non-Mercer resources

- 2020 Ch. 7, [HB 44](#) (New Mexico legislature, Feb. 26, 2020)

Note: Mercer is not engaged in the practice of law, accounting or medicine. Any commentary in this article does not constitute and is not a substitute for legal, tax or medical advice. Readers of this article should consult a legal, tax or medical expert for advice on those matters.