PUBLICATION

Mandatory IRAs Proposed

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Employers under the Patient Protection and Affordable Care Act are not required to provide health care coverage, but a failure to do so may result in monetary penalties. Is this the end of federally-required employee benefits? Maybe not!

Proposed legislation known as the Automatic IRA Act of 2010 (S. 3760) would require most employers which have at least 10 employees, which have been in business for at least two years, and which do not offer a traditional tax-qualified retirement plan for all employees, to establish an "automatic IRA" for employees with at least three months of service and who are at least age 18 at the beginning of the year. If an employer excludes part of its employees from participation in its traditional retirement plan, such as by excluding an operating division or a certain category of employees, then the excluded employees would generally be eligible for an automatic IRA. Governmental and church employers would be exempt.

Under this proposal, an IRA (either a Roth IRA or traditional IRA, at the option of the employee) would have to be established for each employee. The IRA providers could be selected by the employer from among providers which satisfy certain cost and other requirements, or the employer may allow employees to select their own qualified IRA provider. The IRAs would have to meet certain minimum requirements regarding investment options and default investments.

Rather than sending contributions to an IRA established for this purpose, an employer may instead be allowed to apply the employee contributions for the purchase of a retirement bond (R-bond) to be established by the Treasury Department for this purpose. Contributions applied in this manner would be sent to the Treasury Department with the regular payroll tax deposits.

In the absence of an employee election to the contrary, employers would contribute a default percentage of an employee's paycheck into the employee's IRA or R-bond. The proposed default contribution rate would be 3% of pay. Employees can elect a different contribution percentage, or can opt out of the program. No employer contributions would be required or permitted.

If enacted, this proposal would require employers to provide information about the program and establish payroll systems, both for withholding contributions elected by the employees and depositing those contributions on a timely basis into the IRAs or R-bonds. The employer would have more limited duties and exposures than those which exist for traditional retirement plans like 401(k) plans, but there would be some rules imposing duties on the employers, as well as potential sanctions for not complying. For example, under the current proposal a failure to comply could subject the employer to an excise tax of $100 per employee. To help offset the cost under the "employer friendly" proposal, employers may be allowed a single tax credit of $250 for each of the first two years of the required IRA or R-bond based plan. The rules would phase in over four years, with larger employers with 100 or more employees being initially subject to the rules.

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