On ERISA's 50th anniversary, RetirePath Virginia is *born*

CPAs can help clients determine if they need to register for RetirePath or offer their own qualified retirement plan.

By Lisa Germano, CPA, JD

The Employee Retirement Income Security Act of 1974 (ERISA) was enacted when employers could promise their employees a future pension — and then never fulfill it. Often, employees were not notified their pension was never funded and gone forever.

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There was debate, discussion, collaboration and controversy preceding the enactment of ERISA. There was also much compromise. There are heroes who deserve to be recognized. There are legacies to be remembered. There are lessons to be learned.

This article is the first in a three-part series dedicated to sharing the history and impact of federal preemption for private employers sponsoring certain retirement plans. These federal retirement plans offer tax incentives but in return require certain actions and fiduciary oversight.

My starting place is, ironically, state-sponsored retirement plans. These are retirement programs states establish by their own legislatures. The Commonwealth of Virginia has done just that: RetirePath Virginia is now a mandate for all employers who are not exempt because they sponsor a retirement plan, are in business less than two years, or who have less than 25 employees.

In 2016, a report by the Virginia Retirement System Work Group found more than 1 million employees in Virginia did not have access to a retirement plan at work. Studies were commissioned and the search began for the ideal solution to help these workers gain access to a retirement plan.

So this year, on the 50th anniversary of the federal law providing security to workers covered by a federal retirement plan, Virginia opens its own state-mandated program.

Under state law, eligible employers are required to either register for RetirePath or offer their own qualified retirement plan. Although the program officially opened in June 2023, the due date to register or request exemption was Feb. 15, 2024.

Eligible employers are urged to take action to avoid penalties. Enforcement penalties will begin later this year. The first step is for a business to identify whether they need to register or claim exemption. Employers should respond to any notifications from the state as soon as possible.

CPAs can help employers identify whether they are exempt. If the business is not exempt, the next step is to determine whether a retirement plan under ERISA is more suitable than RetirePath.

For instance, a 401(k) plan allows participant contributions that provide a current income tax subsidy. RetirePath defaults participant contributions to Roth after-tax contributions — with an option to recharacterize back to traditional IRA contributions.

RetirePath does not allow employer contributions, while a profit sharing or 401(k) plan can offer discretionary employer contributions. Not all federal plans require offering participant contributions. For instance, employers can make contributions to a profit-sharing plan when it suits their cash flow. Profit-sharing plans can also avoid the participant automatic enrollment mandated under RetirePath. Finally, anti-alienation under ERISA prevents creditors from accessing retirement accounts no matter how much is accumulated.

RetirePath facilitates a payroll deposit system to transmit participant contributions. Employees are automatically enrolled unless they opt out. Employers may terminate participation when they are no longer eligible.

Enforcement penalties can be up to $200 per eligible employee and can be assessed annually.

RetirePath will begin enforcement later this year, so employers need to act quickly and decide the best course of action.

Note: Material for RetirePath is taken from ***RetirePathVA*** *and the program's* ***Enabling Legislation****. See also:* ***Reports to General Assembly*** *for an historical perspective about state sponsored retirement programs.*

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