

CALSAVERS

The CalSavers program is a state-administered Roth-like retirement plan available to California employees working for businesses that don't offer a retirement plan. (Gov't. Code §100000 et seq.; 10 Cal. Code Regs. §10000 et seq.)

Employers who already offer a retirement plan to their employees are "exempt" and cannot enroll in the program.

MOST NONEXEMPT BUSINESSES MUST REGISTER BY 2026

As noted in the chart below, employers with five or more California W-2 employees, at least one of whom is at least age 18, were required to register no later than June 30, 2022. Nonexempt employers with more than 50 employees and more than 100 employees were already required to register in 2021 and 2020, respectively.

SB 1126 (Ch. 22-192) expands the program to require eligible employers that have one or more eligible employee and that do not provide a retirement savings program to register with the CalSavers program by December 31, 2025. (Gov't. Code §100000(d))

Sole proprietors, self-employed individuals, or other business entities that don't employ any individuals other than the owners of the business are excluded from this new requirement.

CalSavers Requirements	
Employer size	Registration deadline
More than 100 employees	Extended from June 30, 2020, to September 30, 2020*
More than 50 employees	June 30, 2021
5 or more employees	June 30, 2022*
1 or more employees	December 31, 2025
* Deadline has passed. Register today	

Comment

The CalSavers program estimates that an additional 750,000 businesses will be impacted by SB 1126's expansion of the program. Dropping the mandatory registration of the program to businesses with only one employee is raising a lot of questions, such as:

- How will spousal employees be treated? Will the employee spouse be considered an owner so if the only "employee" is an owner's spouse, the business will not be required to register?
- Will having a household employee require a nonbusiness taxpayer to register with the CalSavers program?

We anticipate that CalSavers will be providing answers to these questions and more as the December 31, 2025, deadline approaches.

REGISTERING WITH CALSAVERS

The CalSavers program will notify employers via letter of their requirement to register in the program. When the employer registers (or shortly thereafter), they need to enter an employee roster into their CalSavers account, providing basic employee information like name, address, phone number, e-mail address (if available), and external payroll ID (and this is all done on an Excel spreadsheet).

The employer will also have to update the roster with information for employees hired after the initial roster is submitted.

CalSavers will contact the employees directly about whether the employee will opt out, and if not, what their contribution rate will be.

NEW BUSINESSES

An employer that becomes an eligible employer after July 1, 2019, must register with CalSavers by the later of:

- The applicable date listed in the chart above, based on the employer's number of employees listed above; or
- Within 24 months of the employer becoming an eligible employer.
(10 Cal. Code Regs. §10002(b))

Example of registration deadline for new businesses

Company X opens its California business on January 1, 2021, with 60 employees and does not offer a retirement plan. Even though the general rule is that businesses with more than 50 employees without a retirement plan must register with CalSavers by June 30, 2021, because Company X didn't open its business until after July 1, 2019, it does not have to register with CalSavers until January 1, 2023 (24 months after it opened).

CALSAVERS PENALTIES

Employers that fail to comply with the CalSavers program requirements will be subject to a \$250 per-employee penalty after receiving a notice of noncompliance from the FTB. (Gov't. Code §100033; R&TC §19286) The penalty will be increased to \$500 per employee if the employer doesn't comply within 180 days.

The FTB and the CalSavers Retirement Savings Board have already begun issuing penalty notices to midsize to large employers deemed by the CalSavers Retirement Savings Board to be noncompliant with the CalSavers requirements. We believe they'll be issuing notices to smaller noncompliant employers soon.

CalSavers will determine whether a penalty should be imposed for an employer's failure to comply with program requirements without good cause. If CalSavers determines the penalty should be imposed, it then refers the case to the FTB, and the FTB is responsible for collecting the penalty.

Common reasons for the penalty notice would be:

- Failing to register;
- Failing to provide eligible employee information to CalSavers on time;
- Failing to provide new eligible employee information to CalSavers on time; and/or
- Failing to remit employee contributions.

An employer will first receive a notice of its failure to comply without good cause from the CalSavers program. The employer then has 90 days to come into compliance.

After that 90-day period, the FTB will send the first penalty notice on Form FTB 4230A, which imposes a \$250 per-employee penalty. If noncompliance continues for 180 or more days, the FTB will send a final notice on Form FTB 4230B, which increases the penalty by an additional \$500 for a total of \$750 per employee. (R&TC §19286 et seq.) Clearly, these penalties can add up quickly even for small employers.