The ERISA Industry Committee
Driven By and For Large Employers
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**ERIC's Legal Complaint about OregonSaves State Retirement Plan:
What You Need to Know**

Q: What is OregonSaves?

A: OregonSaves is the State of Oregon's state-run retirement program. Signed into law in June 2015, the Oregon Retirement Savings Board was implemented and tasked with creating a defined contribution retirement plan for private-sector employees. The resulting plan was OregonSaves, a program that automatically enrolls employees of employers that do not offer a retirement plan into an Individual Retirement Arrangement (IRA). Under the program, a portion of each enrolled employee's paycheck will be added to his or her IRA account.

Q: When does OregonSaves go into effect?

A: Oregon started with a pilot program in July 2017. The pilot program guided employers through the registration and payroll deduction processes, while also allowing for employer feedback. Once this program was completed, a second pilot program was launched in August 2017. Both pilot programs included employers of various size and from across a wide range of industries.

Starting November 15, 2017, employers not involved with the pilot programs will be required to begin registering based on size. Through a preset schedule, employers will register employees between 2017 and 2020, at which time all employers will have either registered employees or certified from exemption. Below is the complete registration schedule:

- An employer employing 100 or more employees: November 15, 2017
- An employer employing 50 to 99 employees: May 15, 2018
- An employer employing 20 to 49 employees: December 15, 2018
- An employer employing 10 to 19 employees: May 15, 2019
- An employer employing 5 to 9 employees: November 15, 2019
- An employer employing 4 or fewer employees: May 15, 2020

Q: Does OregonSaves apply to an employer that provides a retirement plan to all or some employees?

A: OregonSaves requires all employers that operate a retirement plan to report to the state that a retirement plan is offered to employees. Oregon offers an online process for employers to report the existence of a retirement plan for receiving an exemption from the OregonSaves mandate. If an employer does not report to OregonSaves that a retirement plan is offered, the employer must enroll employees into the OregonSaves program by the deadline associated with the size of the employer (see above question).

Q: How has The ERISA Industry Committee (ERIC) been involved with OregonSaves?

A: Since 2015, ERIC has been working to ensure that state and local laws do not adversely impact employers providing health and retirement benefits to workers and retirees, and their families. ERIC members are leaders in every sector of the economy, each employing thousands of workers in states across the country. ERIC advocates for its member companies on the federal, state and local levels for public policies that support their ability to design and administer health and retirement plans that are tailored to their unique workforce, and to do so uniformly across the country.

In February 2017, ERIC filed comments with the Oregon Retirement Savings Board on the draft proposed rules published during the OregonSaves rulemaking process. ERIC also was present in state and national media on the program and what it means for large employers.

At the federal level, ERIC worked to educate policymakers on the actions of states like Oregon to impose requirements on employers that are already governed by the Employee Retirement Income Security Act of 1974 (ERISA), a federal law that provides a uniform set of rules and regulations for certain retirement and healthcare plans. ERIC sent letters to Congress in support of two Joint Resolutions—now signed into law—that prohibited implementation of a U.S. Department of Labor rule that permitted states and localities the ability to create mandatory retirement plans with an auto-enrollment feature. While ERIC does not oppose state efforts to provide retirement options for employees not covered by an employer retirement plan (see question below), ERIC supported the congressional measures due to the increase compliance burden placed on employers that already provide a retirement plan by OregonSaves.

Q: How many other states have similar retirement programs?

A: **S**everal states have passed legislation that would create similar programs, and some states will soon begin to draft regulations associated with their state-run plan. The following states are about to commence the rulemaking process: California, Illinois, Maryland, and Connecticut. In addition, approximately 19 states have active legislation that would create a state-run retirement plan and several large metropolitan areas are considering local-run retirement plans (e.g., Seattle, Philadelphia, and New York City).

Q: Does ERIC support state programs intended to increase access to retirement savings plans?

A: Yes, but only if such programs do not infringe on an employer that already provides a retirement plan. State-run retirement programs are intended to fill a void by providing access to a retirement plan to employees of an employer that does not provide a retirement plan. Employers that do not provide a retirement plan typically cite cost and compliance burden as reasons they do not operate a retirement plan. Thus, any additional burden imposed by state plans on employers already providing a retirement plan would be counterproductive to the underlying goal of increasing retirement savings.

Q: Why is ERIC seeking relief from the State of Oregon?

A: ERIC believes OregonSaves imposes unnecessary reporting requirements that infringe on employers' ability to offer ERISA-qualified retirement plans and that such requirements are in violation of federal law. Therefore, ERIC is seeking relief by requesting an injunction against ***only the reporting requirement*** OregonSaves imposes on employers that already provide a retirement plan.

Q: Why does ERIC believe the reporting requirement violates ERISA?

A: As stated above, ERISA is a federal law that provides a uniform set of rules and regulations for certain retirement and healthcare plans. ERISA provides for federal preemption over state and local laws within the statute. Typically, preemption clauses are included in federal statutes to ensure that a uniform set of rules are applicable across the country.

Within ERISA, specific reporting requirements are imposed on retirement and healthcare plans. Additional reporting requirements imposed by state and local law should be preempted by ERISA.

Q: Besides the reporting requirement, did OregonSaves attempt to regulate ERISA-qualified retirement plans through other mandates?

A: Yes, earlier this year OregonSaves proposed a rule (Division 15) that would exclude an employer from being able to claim an exemption from the mandate if employees were not enrolled into the employer-provided plan within 90 days of hire. ERISA provides specific eligibility criteria that is more flexible to employers choosing to provide an ERISA-qualified retirement plan; thus, the proposed rule attempted to override ERISA eligibility provisions. We requested OregonSaves to remove this proposed rule and they agreed.

Q: Why sue the State of Oregon and not other states that have passed similar legislation?

A: Oregon is the very first state to implement a state-run retirement program. While other states have passed similar legislation, none have proposed or finalized regulations nor enrolled individuals into the program. ERIC believes it is important to protect ERISA qualified retirement plans and Oregon, due to the final rules the state implemented, provides the first opportunity to present our arguments regarding why states should not infringe on an employer's ability to provide a retirement plan to employees – from both a legal and public policy perspective. We hope other jurisdictions take notice and do not further harm the U.S. retirement system by imposing unnecessary burdens on employers that are already providing quality retirement plans to tens of millions of Americans.