



Legislation Details (With Text)

File #: Int 1574-2017 **Version:** * **Name:** Establishing a retirement savings program for private-sector employees.
Type: Introduction **Status:** Filed (End of Session)
In control: Committee on Civil Service and Labor
On agenda: 4/25/2017
Enactment date: **Enactment #:**
Title: A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings program for private-sector employees
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Indexes:
Attachments: 1. Summary of Int. No. 1574, 2. April 25, 2017 - Stated Meeting Agenda with Links to Files, 3. Int. No. 1574

Date	Ver.	Action By	Action	Result
4/25/2017	*	City Council	Introduced by Council	
4/25/2017	*	City Council	Referred to Comm by Council	
12/31/2017	*	City Council	Filed (End of Session)	

Int. No. 1574

By Council Members Kallos, the Public Advocate (Ms. James), Rosenthal, Levin, Lancman, Miller and Gentile

A Local Law to amend the administrative code of the city of New York, in relation to establishing a retirement savings program for private-sector employees

Be it enacted by the Council as follows:

Section 1. Title 20 of the administrative code of the city of New York is amended by adding a new chapter 11 to read as follows:

CHAPTER 11

RETIREMENT SAVINGS PROGRAM FOR PRIVATE-SECTOR EMPLOYEES

- § 20-937 Definitions.
- § 20-939 Establishment of retirement savings program.
- § 20-940 Certification required.
- § 20-942 Elements of retirement savings program.
- § 20-944 Covered employer obligations.
- § 20-948 Covered employer record retention.
- § 20-949 Enforcement.

§ 20-937 Definitions. For purposes of this chapter, the following terms have the following definitions:

Account. The term “account” means an individual retirement savings account established pursuant to the retirement savings program.

Administrator. The term “administrator” means a person that has entered an agreement with the retirement savings board to implement and maintain a retirement savings program or components of such program. More than one person may perform the functions of the administrator, and duties applicable to the administrator also apply to persons with whom the administrator contracts to implement such program or components.

Board. The term “board” means the retirement savings board, as defined in this section.

Covered employer. The term “covered employer” means any entity, whether for profit or otherwise, with a physical location in the city where such entity (i) currently employs no fewer than 10 employees and has employed no fewer than 10 employees without interruption for the previous calendar year; (ii) has been in continuous operation for at least two years; (iii) has not offered, in the preceding two years, to its employees who satisfy the definition of “eligible employee” in this section, a retirement plan, as defined in this section; and (iv) has satisfied any other criteria established by the board necessary to prevent the termination of other retirement plans by covered employers.

Eligible employee. The term “eligible employee” means any employee: (i) who is 18 years of age or older; (ii) who is employed either part-time or full-time for compensation in the city by a covered employer; and (iii) to whom a retirement plan has not been offered by the covered employer in the preceding two years.

Participating employee. The term “participating employee” means an eligible employee that is enrolled in the retirement savings program.

Program. The term “program” means the retirement savings program, as defined in this section.

Retirement plan. The term “retirement plan” means a qualified retirement plan under subsection (a) of section 401 of the internal revenue code, subsection (a) or (b) of section 403 of such code, or subsection (k) or

(p) of section 408 of such code; or a savings incentive match plan for employees of small employers (SIMPLE IRA or SIMPLE 401(k)) plan; a simplified employee pension (SEP) plan; a salary reduction simplified employee pension (SARSEP) plan; a payroll deduction IRA (individual retirement account or individual retirement annuity) under subsection (a) or (b) of section 408 of the internal revenue code; or a Keogh plan.

Retirement savings board. The term “retirement savings board” means the retirement savings board established by section 20-938.

Retirement savings program. The term “retirement savings program” means the retirement savings program established pursuant to section 20-939, which may also be known as the “Savings Access New York Retirement Program.”

§ 20-939 Establishment of retirement savings program. Subject to applicable federal and state law, the board shall establish a retirement savings program as set forth in this chapter, either directly or indirectly through agreement with an administrator. To the extent permitted by law, the agreement between the board and an administrator shall allow the administrator to perform any functions of the board. Such program shall be a defined contribution individual retirement account program. The board shall require the administrator to exercise the care that persons of prudence, discretion and intelligence exercise in the administration of the program established by this chapter, and may require the administrator to assume legal responsibility and liability pursuant to this chapter for functions to be performed by the administrator, provided, however, that nothing in this chapter shall be construed as limiting the city’s responsibility for the security of payroll deductions and employee savings under the program to the extent that assumption of such responsibility is required to ensure that the program is not an “employee pension benefit plan” or a “pension plan” for purposes of the employee retirement income security act of 1974.

§ 20-940 Certification required. Notwithstanding any inconsistent provision of this chapter, the board shall not establish a retirement savings program under this chapter until both the director of management and budget and the corporation counsel have jointly certified to the following:

a. The program is within the scope of a regulatory exemption defining the coverage of the terms “employee pension benefit plan” and “pension plan” established by a regulation of the United States department of labor pursuant to title I of the employee retirement income security act of 1974, or would fall within such scope with variations not inconsistent with the overall purpose and policy of this chapter; and

b. Establishment and implementation of such program would not create additional material monetary liability or obligation for, or an enforceable guarantee by, the city or its agencies, officers or employees, except to the extent that assumption of such liability is required to ensure that the program is not an “employee pension benefit plan” or a “pension plan” for purposes of the employee retirement income security act of 1974.

§ 20-942 Elements of the retirement savings program. Subject to applicable federal and state law and except as otherwise provided in this chapter, the retirement savings program shall include all of the following elements. The program shall:

a. Allow eligible employees to contribute to an account established under the retirement savings program through payroll deduction or any other method of contribution established by the retirement savings board.

b. Apply to all covered employers.

c. Require a covered employer to offer its eligible employees the opportunity to contribute to accounts established by the program through payroll deduction or any other method of contribution established by the retirement savings board, unless such covered employer offers all of its eligible employees a retirement plan.

d. Provide for the automatic enrollment of eligible employees and allow such employees to opt out of the program.

e. Establish a default contribution rate of three percent of an eligible employee’s income, subject to any escalation or reduction of such rate authorized by the board pursuant to subdivision i of section 20-941.

f. Permit an eligible or participating employee to change his or her contribution rate or discontinue making contributions.

g. Provide that individual retirement accounts established pursuant to this chapter are by default Roth IRAs as defined in section 408A of the internal revenue code but shall allow participating employees to, upon request, opt in to individual retirement accounts, as defined in subsection (a) of section 408 of the internal revenue code.

h. Include (i) a default option for the placement by the program of eligible employees' initial contributions to the retirement savings program in escrow for a fixed short-term time frame to allow such employees to opt out of the program without incurring withdrawal penalties on those initial contributions, and (ii) an option to opt out of such escrow arrangement.

i. Include a process for withdrawals by, and disbursements to, participating employees and provide such employees options including lump-sum or annuitized payments.

j. Establish a default investment plan based on target dates while allowing eligible and participating employees to select investment plans from other options provided by the board.

k. Take measures to protect the confidentiality of account and participating employee information.

l. Provide that employers shall not contribute to accounts of employees.

m. Maintain, or require the maintenance of, separate records and accounting for each account established pursuant to this chapter.

n. Provide for reports on the status of accounts to be given to participating employees no less than once per year and upon request of any participating employee.

o. Allow previously eligible employees to maintain account savings or to roll over funds into other retirement accounts.

p. Allow participating employees to terminate participation in the program and withdraw all or part of the balances in their accounts, subject to possible penalties and limitations established by federal law.

q. Provide that the city and covered employers have no proprietary interest in the contributions or earnings of money contributed to accounts established pursuant to this chapter.

r. Provide that amounts deposited in the retirement savings program shall not be commingled with funds belonging to or managed by the city.

s. Refrain from requiring any employer to perform any duty or offer any guarantee not otherwise authorized by this chapter. The board shall not establish any guarantee by, or duty on behalf of, the city except as otherwise required by law or authorized by this chapter.

t. Allocate administrative fees to individual retirement accounts in the program on a pro rata basis. To the extent practicable, all fees required for the administration of the retirement savings program shall be borne by participating employees or paid through funds received pursuant to subdivision h of section 20-941.

u. Require an annual audit as described in section 20-947, which shall be performed by an independent auditor.

§ 20-944 Covered employer obligations. a. Except as provided in subdivision d of this section, a covered employer shall enroll each eligible employee who works for such covered employer in the retirement savings program by a date to be determined by the board.

b. A covered employer shall be required to remit funds deducted from the earnings of each participating employee for deposit in the retirement savings program on the earliest date on which such contributions can reasonably be segregated from a covered employer's general assets but in no event later than the last business day of the calendar month following the month in which such amounts would have otherwise been payable to the participating employee in cash. Notwithstanding the preceding sentence, if the board promulgates rules in accordance with subdivision h of section 20-942, a covered employer shall remit funds in accordance with such rules.

c. A covered employer shall not be permitted to endorse or contribute to the program.

d. A covered employer shall be required to distribute to its employees program information provided by the board or the administrator and otherwise to allow the board to publicize the program to employees.

e. The retirement savings board may delay implementation of the employer obligation required by

subdivision a of this section for covered employers, provided that such delay shall not exceed three years from the initial enrollment of eligible employees, and provided further, that such delay shall be based on the practicability of implementation using the following criteria:

1. the number of eligible employees;
2. the size of the covered employer; or
3. the sector or industry of the covered employer.

§ 20-948 Covered employer record retention. Each covered employer shall retain annual records documenting such employer's compliance with the requirements of this chapter for a period of three years, unless otherwise required pursuant to any other law, rule or regulation, and shall allow the agency or agencies designated by the mayor pursuant to section 20-938 to access such records upon request. In addition, such agency or agencies may require a covered employer to provide electronic or paper copies of records upon request.

§ 20-949 Enforcement. a. The agency or agencies designated by the mayor pursuant to subdivision j of section 20-938 shall enforce sections 20-944 and 20-948.

b. In undertaking such enforcement, such agency or agencies shall establish a procedure to allow individuals to submit complaints concerning non-compliance by covered employers with the provisions of this chapter.

c. After notice and an opportunity to be heard, a covered employer who violates subdivision a or b of section 20-944 is liable for a civil penalty of \$250 per violation.

d. Each failure to comply with subdivision a or b of section 20-944 with respect to each eligible employee of a covered employer constitutes a separate violation. Where failure to comply with subdivision a or b of section 20-944 is ongoing, each two-week period of noncompliance constitutes a separate violation with respect to each affected eligible employee, except that a covered employer shall not be held liable for more than 26 weeks' worth of violations unless the prosecuting agency demonstrates that the covered employer had actual

notice of the requirements of this chapter.

e. In addition to the penalties provided by subdivision c of this section, after notice and an opportunity to be heard a covered employer that violates section 20-948 by failing to retain annual records is liable for a civil penalty of \$100 for each employee for which such covered employer has failed to retain annual records. A covered employer that violates section 20-948 by preventing the agency or agencies designated by the mayor pursuant to section 20-938 to access records for which access is required under section 20-948 is liable for a civil penalty of \$1,000 for each such violation.

f. The agency or agencies designated by the mayor pursuant to subdivision j of section 20-938 may commence a proceeding to recover any civil penalty authorized by subdivision c or e of this section by filing a petition returnable to the office of administrative trials and hearings, which may impose the civil penalties prescribed by subdivisions c and e of this section. Such civil penalties may, in the alternative, be recovered in a civil action brought by the corporation counsel in a court of competent jurisdiction.

g. The corporation counsel may bring an action on behalf of the city to restrain or prevent any violation of this chapter or a continuation of any such violation.

h. Pursuant to a written request by an eligible employee, the corporation counsel may also bring an action on behalf of any eligible employee where such employee's covered employer has failed to enroll such employee or has failed to remit such employee's contributions in accordance with subdivision a or b of section 20-944 to obtain any appropriate legal or equitable relief on behalf of such eligible employee in furtherance of the purposes of this chapter.

i. An eligible employee who has not made a request of the corporation counsel pursuant to subdivision h or who has made such a request upon which the corporation counsel has not acted after 90 days from receipt of such request or upon which the corporation counsel has declined to act, may bring an action in a court of competent jurisdiction for violation of subdivision a or b of section 20-944 to obtain any appropriate legal or equitable relief in furtherance of the purposes of this chapter.

§ 2. This local law takes effect 180 days after it becomes law.

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LS #3281
1/23/2017 2:09 PM