California Secure Choice Retirement Savings Program (SB 1234)

FAQ for Unions and Union Members

Background

Half of California workers are projected to have serious economic hardship when they retire because they don't have sufficient savings, and 7 million private sector workers—55%—do not have access to a pension or 401k at work. Low-wage workers, small business employees, and Latinos are also much less likely to have access to a retirement plan. And Social Security, while critical, is not enough for most retirees to make ends meet in California.

In order to address this retirement crisis, California enacted SB 1234 in 2016 authorizing implementation of the California Secure Choice Retirement Savings Program (Secure Choice) to help millions of workers save for retirement.

What is SB 1234/California Secure Choice?

SB 1234 authorizes implementation of the California Secure Choice Retirement Savings Program, which is an **automatic payroll deduction retirement savings program** for private sector employees in California who lack access to a workplace retirement plan.

- Participation is mandatory for eligible employers, those with 5 or more employees that do *not* sponsor their own retirement plan.
- Eligible employees will be enrolled unless they opt out.[*]
- Employees will contribute via automatic payroll deduction.

Secure Choice is a state-managed Individual Retirement Account (IRA) system, not an employer-sponsored retirement plan like a 401(k) or pension.

Who contributes, and how much?

Only employees will be able to contribute to Secure Choice. Currently, employers are not allowed to contribute to Secure Choice because IRAs cannot accept employer contributions under federal tax law.

The default employee contribution rate will be 3% of pay, though the Board can decrease it to 2% or increase it up to 5%. Individual employees can change their contributions at any time or opt out of the program entirely. The Board also can increase contributions for existing participants by 1% a year up to a maximum of 8%, in order to help workers accumulate larger nest eggs. This is called auto-escalation. Employees can opt out of these increases.

[*] California Government code Section 100032(f)(1).

When will workers be enrolled?

State officials expect the program to start enrolling workers in 2019. Once the program opens for enrollment, eligible employers with 100 or more workers will have one year to sign up their workers. Those with 50 to 99 workers will have two years. All other eligible employers will have three years.

Is there a penalty for covered employers that fail to enroll their employees in Secure Choice? What is the enforcement mechanism?

Employers that receive a notice from the state that they are out of compliance will have 90 days to auto-enroll their employees, or else be fined $250 per eligible employee. After 180 days, an additional penalty of $500 per eligible employee applies. However, the state has not yet budgeted for systematic compliance auditing and will rely on complaint-driven enforcement for the foreseeable future.

If our union contract has a retirement plan, does our employer have to participate in Secure Choice?

No. Only employers with 5 or more employees that do not offer a retirement plan are mandated into Secure Choice.

If an employer's retirement plan excludes some workers (such as part-time workers), is that employer required to enroll these workers in Secure Choice? Can they do so voluntarily?

In general, employers that offer their own retirement plan are not required to participate in Secure Choice, even if that plan excludes some (or even most) workers as allowed by federal law. The Secure Choice board does have the authority to allow such employers to offer Secure Choice to employees on a purely voluntary (opt-in) basis.

Are public employees covered? What about IHSS workers?

Public employees are generally not covered. The single exception is IHSS (In-Home Supportive Services) workers, who will have a representative on the Board and be allowed bargain into the program if their inclusion in Secure Choice is determined by the Secure Choice board, the Director of the State Department of Social Services, and the Director of the Department of Finance to be consistent with state and federal law, and can be implemented without creating liabilities for employers and the state.

Are self-employed workers (such as family daycare providers and taxi drivers) covered?

Self-employed workers are currently not covered. SB 1234/California Secure Choice currently applies only to employees. However, there is strong interest among stakeholders in making the program available to self-employed workers on a voluntary basis. The Secure Choice board may consider doing so once the core program is running smoothly, but that may take a few years.

<u>Are employers likely to dump their existing retirement plan and instead enroll their employees in Secure Choice?</u>

It is important to understand that Secure Choice is a <u>floor</u>, not a ceiling—just like the minimum wage. On the whole, the new mandate is more likely to increase coverage by employer sponsored plans, than it is to decrease it.

However, some employers might wonder whether to switch from an existing plan to Secure Choice. In discussing this issue, employers, workers, and unions should understand the how Secure Choice differs from an employer sponsored retirement plan, whether a pension or 401(k)-type account (see table below). *In the vast majority of cases where employers already sponsor a plan, Secure Choice is unlikely to be an adequate substitute because of low contribution limits and the prohibition on employer contributions.*

Secure Choice may be a better alternative if three conditions are met: the employer plan is small and burdened with high fees; the plan has low participation rates; and employees are unlikely to want to contribute more than $5,500 a year. But this determination should wait until the Secure Choice Board finalizes its investment lineup.

Pension vs 401(k) vs Secure Choice IRA

	Pension	**401(k)**	**Secure Choice IRA**
Employer contribution	Yes (required)	Yes (allowed)	No
Employee contribution	Generally not allowed for corporate & multiemployer plans. Allowed for governmental plans	Yes (allowed)	Yes
Funding limit (2017)	Annual benefit limited to the lesser of 100% of final 3 years pay, or $215,000	$18,000 employee $54,000 combined employee/employer Extra $6,000 age 50+	$5,500 employee Extra $1,000 age 50+
Fees (investment & admin costs)	Usually low for large plans	Usually low for large plans, but many small plans have high fees	Expected to be lower than most small plans
Investments	Managed in a single pool by plan trustees.	Usually extensive menu of funds, but large plan best practice is to streamline menu	Limited menu, per best practice
Employer role	Sponsor, fiduciary, ERISA compliance, liable for promised benefits	Sponsor, fiduciary, ERISA compliance	Minimal, limited to enrollment and payroll deduction
Portability between employers	No, except within plans covering multiple employers and govt plans with reciprocity agreements.	Yes, but employees not allowed to stay in plan must roll over funds to another account.	Yes. Account stays with worker from job to job with no need to roll over funds.