STATE OF NEW YORK

6972

2019-2020 Regular Sessions

IN ASSEMBLY

March 29, 2019

Introduced by M. of A. BARCLAY -- read once and referred to the Committee on Small Business

AN ACT to amend the state finance law and the tax law, in relation to the establishment of the small business child and dependent care savings program

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. The state finance law is amended by adding a new article 17 to read as follows:

ARTICLE 17

NEW YORK STATE SMALL BUSINESS CHILD AND DEPENDENT CARE SAVINGS PROGRAM

Section 255. Short title.
256. Definitions.
257. Program established.
258. Program administration.
259. Program implementation and enrollment.
260. Payments.
261. Duty and liability of the state.
262. Duty and liability of participating employers.
263. Delayed implementation.

§ 255. Short title. This act shall be known and may be cited as the "New York small business child and dependent care savings program act".

§ 256. Definitions. The following terms shall have the following meanings:

1. "Commissioner" shall mean the commissioner of labor.

2. "Comptroller" shall mean the comptroller of the state.

3. "Employee" shall mean any individual who is eighteen years of age or older, who is employed by an employer, and who earned wages working for an employer in New York state during a calendar year.

4. "Employer" shall mean a person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that (a) has at all times during the previous calendar year employed at least one but not more than one

EXPLANATION--Matter in *italics* (underscored) is new; matter in brackets [-] is old law to be omitted.

LBD10983-01-9

hundred employees in the state, (b) has been in business at least two years, and (c) has not offered a child and dependent care savings plan.

5. "Enrollee" shall mean any employee who is enrolled in the program.

6. "Fund" shall mean the New York small business child and dependent care savings program fund.

7. "Participating employer" shall mean a small business that provides a payroll child and dependent care savings arrangement as provided for by this article for its employees who are enrollees in the program.

8. "Payroll deposit child and dependent care savings arrangement" shall mean an arrangement by which a participating employer allows enrollees to remit payroll deduction contributions to the program.

9. "Program" shall mean the New York state small business child and dependent care savings program.

10. "Small business" shall mean a person or entity engaged in a business, industry, profession, trade, or other enterprise in New York state, whether for profit or not for profit, that employed at least one but no more than one hundred employees at any one time in the state throughout the previous calendar year, and that notifies the comptroller that it is interested in being a participating employer.

11. "Wages" means any compensation received by an enrollee from a participating employer during the calendar year.

12. "Internal revenue code" shall mean the internal revenue code of nineteen hundred eighty-six, or any successor law, in effect for the calendar year.

13. "Administrators" shall mean the commissioner of labor together with the comptroller.

§ 257. Program established. A state child and dependent care savings program in the form of payroll deduction, known as the New York state small business child and dependent care program, is hereby established for the purpose of promoting greater child and dependent care savings for private-sector employees of small businesses in a convenient, low-cost, and portable manner.

§ 258. Program administration. The administration of the program shall be overseen by both the comptroller and the commissioner. The administrators are authorized and directed to establish a flexible benefits program consistent with sections one hundred twenty-five and one hundred twenty-nine of the internal revenue code and regulations adopted pursuant thereto. The administrative duties and responsibilities are as follows:

1. Cause the program to be designed, established and operated in a manner that:

(a) maximizes participation and savings;

(b) maximizes simplicity, including ease of administration for participating employers and enrollees;

2. Determine the number and duties of staff members needed to administer the program and assemble such staff, including, as needed, employing staff and appointing a program administrator.

3. Evaluate and establish the process by which an enrollee is eligible to contribute a portion of his or her wages to the program for automatic deposit and the process by which the participating employer provides a payroll deposit child and dependent care savings arrangement to forward those contributions and related information to the program, including, but not limited to, contracting with financial service companies and third-party administrators with the capability to receive and process employee information and contributions for payroll deposit child and dependent care savings arrangements or similar arrangements.

4. Design and establish the process for enrollment including the process by which an employee can opt not to participate in the program, select a contribution amount or terminate participation in the program.

5. Evaluate and establish the processes by which an employee may voluntarily enroll in and make contributions to the program.

6. Set minimum and maximum contribution levels in accordance with limits.

7. Facilitate education and outreach to employers and employees.

8. Carry out the duties and obligations of the program in an effective, efficient, and low-cost manner.

9. Exercise any and all other powers reasonably necessary for the effectuation of the purposes, objectives, and provisions of this article.

10. Determine withdrawal provisions, such as economic hardships, portability and leakage.

§ 259. Program implementation and enrollment. Except as otherwise provided in this article, the program shall be implemented, and enrollment of employees shall begin, within twelve months after the effective date of this article. The provisions of this section shall be in force at such time as the program administrators open the program for enrollment.

1. Each participating employer shall establish a payroll deposit child and dependent care savings arrangement to allow each employee to participate in the program after the program administrators open the program for enrollment.

2. Enrollees shall have the ability to select a contribution level to the fund. This level may be expressed as a percentage of wages or as a dollar amount. Enrollees may change their contribution level at any time, subject to rules promulgated by the program administrators.

3. Following initial implementation of the program pursuant to this section, at least once every year, participating employers shall designate an open enrollment period during which employees who previously opted out of the program may enroll in the program.

4. An employee who opts out of the program and who subsequently wants to participate through the participating employer's payroll deposit child and dependent care savings arrangement may only enroll during the participating employer's designated open enrollment period or if permitted by the participating employer at an earlier time.

5. Employers shall retain the option, at all times, to set up any type of employer-sponsored child and dependent care savings plan instead of having a payroll deposit child and dependent care savings arrangement such that employees are allowed to participate in the program.

6. An enrollee may terminate his or her participation in the program at any time in a manner prescribed by the program administrators.

7. To the extent permitted by section one hundred twenty-five of the internal revenue code and regulations adopted pursuant thereto, and salary deferred by an employee as defined in subdivision three of section two hundred fifty-six of this article under a flexible benefits program established pursuant to this article shall be considered part of annual compensation for the purpose of computing retirement benefits.

§ 260. Payments. Employee contributions deducted by the participating employer through payroll deduction shall be paid by the participating employer to the fund using one or more payroll deposit child and dependent care savings arrangements established by the administrator under this article, either:

1. on or before the last day of the month following the month in which the compensation otherwise would have been payable to the employee in cash; or

2. before such later deadline prescribed by the administrator for making such payments, but not later than the due date for the deposit of tax required to be deducted and withheld relating to collection of income tax at source on wages or for the deposit of tax required to be paid under the unemployment insurance system for the payment of tax for the payroll period to which such payments relate.

§ 261. Duty and liability of the state. 1. The state shall have no duty or liability to any party for the payment of any child and dependent care savings benefits accrued by any enrollee under the program. Any financial liability for the payment of child and dependent savings benefits in excess of funds available under the program shall be borne solely by the entities with whom the program administrators contract to provide insurance to protect the value of the program.

§ 262. Duty and liability of participating employers. 1. Participating employers shall not have any liability for the decision of an employee to participate in or opt out of the program.

2. A participating employer shall not be a fiduciary, nor considered to be, a fiduciary over the program. A participating employer shall not bear responsibility for the administration of the program. A participating employer shall not be liable for program design and benefits paid to program participants.

§ 263. Delayed implementation. If the program administrators do not obtain adequate funds to implement the program within the time frame set forth under this article or such funds are subject to appropriation, the program administrators may delay the implementation of the program.

§ 2. The state finance law is amended by adding a new section 99-ff to read as follows:

§ 99-ff. New York state small business child and dependent care program fund. 1. There is hereby established within the joint custody of the commissioner of taxation and finance and the state comptroller, a new fund to be known as the New York state small business child and dependent care program fund.

2. The fund shall include the child and dependent care savings accounts of enrollees, which shall be accounted for as individual accounts.

3. Moneys in the fund shall consist of moneys received from enrollees and participating employers pursuant to automatic payroll deductions and contributions to savings made under the New York state small business child and dependent care program.

4. The fund shall be operated in a manner determined by the administrators of the New York state small business child and dependent care savings program.

5. The amounts deposited in the fund shall not constitute property of the state and the fund shall not be construed to be a department, institution, or agency of the state. Amounts on deposit in the fund shall not be commingled with state funds and the state shall have no claim to or against, or interest in, such funds.

§ 3. Subsection (c) of section 612 of the tax law is amended by adding a new paragraph 44 to read as follows:

(44) Any payroll deduction for child and dependent care services, pursuant to article seventeen of the state finance law.

§ 4. This act shall take effect immediately.