

Compliance with the New York Secure Choice Savings Program



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November 24, 2025 | **PRESS RELEASES**

Starting in 2026, New York State funeral homes may be required to comply with the New York Secure Choice Savings Program (the “Secure Choice Program”) to assist their employees in saving for retirement. The Secure Choice Program requires employers that meet certain criteria to register with the Secure Choice Program and automatically deduct contributions from employee paychecks and remit them to the Secure Choice Program for investment into Roth individual retirement accounts. In short, this is a mechanism to force private sector employers in New York (including not-for-profit organizations) to provide a retirement plan to their employees, and make retirement saving automatic.

Although the Secure Choice Program was enacted in 2018, it was not made mandatory for certain employers until Kathy Hochul signed a bill in 2021, which was codified as Article 43 of the New York State General Business Law. Even though the law became effective January 26, 2024, the start date for the mandatory employer obligations was delayed to allow further time to create the Secure Choice Program’s governing structure and develop guidance for both employers and employees. Until now, participation by New York employers in the Secure

Choice Program has been optional.

However, starting in 2026, New York employers who meet certain conditions, including mid-sized funeral homes, will be required to participate in the Secure Choice Program. With the implementation of the Secure Choice Program, New York will become the 14th state to implement a state-facilitated retirement savings program.

Employer Participation. Funeral homes are required to register and facilitate the Secure Choice Program if they meet the following requirements:

- Have employed at least ten employees in New York State at all times during the previous calendar year;
- Been in business for at least two years; and
- Have not offered a qualified retirement plan in the preceding two years, which includes plans qualified under Internal Revenue Code sections 401(a), 401(k), 403(a), 403(b), 408(k), 408(p), or 457(b).

As defined in New York State General Business Law § 1300, an “employee” is an individual who is at least eighteen years old, employed by the employer (as opposed to an independent contractor) and has earned taxable wages from the employer in New York State during the calendar year. This includes both full and part-time workers. The employee count is based on employer-reported data submitted to New York State, including on the New York State Department of Taxation and Finance Form NYS-45 Quarterly Combined Withholding, Wage Reporting, and Unemployment Insurance Return.

Exemption Certificate. If any one of the above requirements is not met, then participation by the funeral home is not required. However, the funeral home is required to complete and submit an exemption certificate to the Secure Choice Program administrator. Once approved, the exemption certificate will continue for the funeral home for as long as the conditions for exemption remain.

Deadlines. Employers are required to register with the Secure Choice Program and facilitate enrollment of their employees into the Secure Choice Program, or obtain an exemption certificate, by the deadlines established by the Secure Choice Program’s board. The deadline for registration by employers depends on the number of employees at the funeral home, as follows:

- Funeral homes with 30 or more employees: March 18, 2026
- Funeral homes with 15 to 29 employees: May 15, 2026
- Funeral homes with 10 to 14 employees: July 15, 2026

Although there are currently no penalties for failure to comply, the Secure Choice Program board has the authority to determine enforcement penalties for an employer’s lack of compliance, which are expected to be developed by the board and issued shortly.

Employer Obligations. To register with the Secure Choice Program, employers are required to provide the funeral home’s full corporate name and assumed business name (if applicable), federal employer identification number, mailing address, name, and telephone number and e-mail address of an individual designated by the employer to serve as the point of contact with the Secure Choice Program. Although registration is required by the applicable deadlines, nothing prohibits an employer from registering now at

<https://newyorksecurechoice.com/employers/program-details>

Employers are responsible for providing Secure Choice Program information to its employees, enrolling any individual who is considered an employee, unless the employee opts out of participation, and deducting the contributions from the employee's compensation and remitting it to the Secure Choice Program. The Secure Choice Program's default withhold amount is 3% of an employee's gross salary unless the employee requests a higher contribution amount, subject to Roth IRA contribution limits, which are the employee's responsibility.

In order to onboard employees, the funeral home will need to provide the full name, social security number or individual taxpayer identification number, date of birth, physical and mailing addresses, e-mail address or mobile phone number, for all employees who do not opt out of the Secure Choice Program. After onboarding has occurred, the employer will need to keep the employee payroll contributions and list of employees current with the Secure Choice Program.

Employers are not permitted to:

- Require, endorse, encourage, prohibit, restrict, or discourage employee participation in the Secure Choice Program;
- Provide enrollees or beneficiaries of deceased enrollees advice or direction regarding investment choices, contribution rates, participation in automatic escalation, or any other decision about the Secure Choice Program;
- Remit any contributions for any employee who opted out of the Secure Choice Program;
- Exercise any authority, control, or responsibility regarding the Secure Choice Program, other than those duties specifically described in Article 43 of the New York State General Business Law and the Secure Choice Program's policies and procedures; or
- Contribute to an enrollee's account.

Preparation. Prior to the registration deadlines, funeral homes should use this time to determine if they are required to register with the Secure Choice Program, and if so, whether they want to consider adopting their own qualified retirement plan. It is important to note that the Secure Choice Program was established as a base model for all employers, but there may be better retirement plan options available for your specific funeral business, which provide greater flexibility, allow for matching contributions, and offer a wider array of investment choices. In addition, funeral home owners should review the Secure Choice Program employer requirements so that they can provide for a smooth transition and answer employee questions.

If you have any questions on the New York State Secure Choice Savings Program, please reach out to Lippes Mathias partner Matthew L. Hosford at (518) 462-0110 ext. 1446 or at mhosford@lippes.com.

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