

Why 1 Law Firm Picked a PEP

Illinois-based Prero & Morgenstern found value in a pooled employer plan that it never saw in the state-facilitated option.

Reported by [EMILY BOYLE](#)

A changing legal environment in Illinois prompted Skokie-based real estate law firm Prero & Morgenstern P.C. to consider its options to address the future of its employees' retirement preparedness.

As part of the Illinois Secure Choice Savings Program, employers with between five and 15 employees were required to either offer their own retirement plan or enroll their employees in the state-run plan by November 1, 2023. The Prairie State launched its pilot program for private sector employers in May 2018, after which it gradually phased in the requirement for employers with at least 500 employees, gradually working all the way down to those with at least five. Businesses in operation for at least two years that do not offer or contribute to a qualified retirement plan are required to enroll their employees or offer another qualified plan.

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In 2023, as the firm was considering using the state program, IRS limits permitted \$6,500 savings per year in a Roth individual retirement plan, compared with an annual savings limit of \$22,500 of tax-advantaged savings in a 401(k) plan.

"We were searching for options," says Elisheva Plotnik, a senior paralegal at Prero & Morgenstern. The state-facilitated option "wasn't really a good plan."

Once an employer enrolls in Illinois Secure Choice, the program sets up a Roth IRA in the employee's name, which the employee can then choose to convert to a traditional pre-tax account. The default savings rate is 5% of the employee's gross pay, which can be changed at any time, with an automatic escalation of one percentage point per year, up to 10%. Employers do not make contributions, matching or otherwise, to the accounts.

At the end of 2025, Illinois Secure Choice had 25,820 employers registered for the program, covering 167,328 employees with a total of \$311.4 million in assets. The state program had the third-highest asset level among the 12 state auto-IRA programs that were open as of December 31, 2025, behind only California's CalSavers at \$1.59 billion and Oregon's OregonSaves at \$445 million.

Despite Illinois Secure Choice's success on paper, the Fidelity Advantage 401(k), a pooled employer plan for employers with at least two employees and providing a 401(k) for the first time, was the better choice for Prero & Morgenstern in 2023 and remains its pick today.

Why a PEP?

The Setting Every Community Up for Retirement Enhancement Act of 2019 Act established PEPs, a defined contribution savings vehicle that enables unrelated employers to join a single DC plan. The plan is overseen by a pooled plan provider, which serves as a fiduciary and third-party responsible for the PEP's management and administration.

"Lawyers are likely very aware of liability and risk," says Grace Peloquin, director of the Fidelity Advantage 401(k). "This probably feels like a big win for them."

A PEP significantly reduces an employer's fiduciary duty, but it does not entirely eliminate it. According to [interpretive guidance](#) the Department of Labor released on July 28, 2025, employers will always be responsible for the prudent selection of the PPP. The document, part of a request for information on PEPs and the fiduciary duties that arise from participating in one, provides a series of questions for employers to consider when selecting a PEP, including: the experience and qualifications of the PPP; whether the PEP will be able to offer economies of scale; what the PEP's fees include; and what the PEP's investment options are.

Plotnik says that as a small firm, Prero & Morgenstern—with five employees at the time—did not have an employee dedicated to handling benefits and human resources. She says that by adopting the Fidelity Advantage PEP, however, the firm did not need to invest in one.

"We just weren't confident in ourselves in knowing what we were doing [with starting a plan]," Plotnik says. With Fidelity's PEP, the firm did not "have to be," she says. Plotnik also touts the PEP's affordability and quality, as well as Fidelity's online portal and support, as positive aspects of her firm's experience with the plan.

Aside from helping Prero & Morgenstern comply with the Illinois mandate and support its employees' retirement preparedness, the PEP has helped the firm attract new employees, according to Plotnik. She says the firm is "very happy" with the new hires that have joined since it adopted the PEP, and she is not sure the employees would have accepted their positions had a 401(k) not been part of their benefits packages.

Lawyers can be "high earners, financially savvy and want to maximize their retirement savings," says Peloquin. "So a 401(k) can be a good way to do that."

In addition to offering a 401(k), firms with high earners can also offer nonqualified deferred compensation plans, which allow employees to defer a portion of their compensation—and, therefore, their tax payment on that income—until a later date.

Other Firms' Futures

Peloquin says Fidelity's PEP has served mainly smaller businesses since it began taking clients in 2021, likely since employers offering a 401(k) plan for the first time tend to be smaller.

In [2021](#), 95% of private sector firms with at least 500 employees offered a retirement plan, compared with only 52% of firms with fewer than 52 workers, according to the Center for Retirement Research at Boston College. A study the CRR conducted in 2023 found revenue stability and business size, considered together, were the top reason (60%) employers without plans did not plan to offer them in the future. Cost came in second, named by 52% of employers, followed by administrative burden and compliance at 38%.

Regardless of their size, however, law firms can weigh the pros and cons of adopting a plan.

"Some firms may be reviewing their structure from an efficiency perspective," wrote Marcia Wagner, founder of and managing partner in the Wagner Law Group, in a response to emailed questions. "The skill set that made a rainmaker an optimal candidate for partnership may not in all instances carry over to the skill set required for managing a business."

As a "matter of efficiency," Wagner wrote, using a PEP to provide retirement benefits may make sense for some firms.

Holly Tardif, director of retirement at WTW, told PLANSPONSOR in September 2025 that by pooling resources from multiple employers, PEPs can spread administrative costs across a "large participant base," thereby reducing costs for individual employers. She added that PEPs help businesses reduce administrative complexities and focus on their core operations.

On the flip side, Wagner wrote that some law firms in particular—including those with non-equity partners—may not be appropriate candidates for joining PEPs. With respect to firms operating under a traditional partnership or limited liability company structure, a partners-only retirement plan is not subject to the Employee Retirement Income Security Act because partners are not treated as employees under Department of Labor regulations interpreting

ERISA, Wagner explained. With the advent of non-equity partners and special rules for partners under the Internal Revenue Code Section 401(k) plan regulations, a firm may not be well-suited to adopt a PEP—which falls under ERISA—because of the ambiguity of their partners’ statuses as employees, she wrote.

Another possible downside to joining a PEP, according to Wagner, is a potential loss of control of fiduciary duty. Even if managing a retirement plan is not within a partner’s “area of competence,” it may be difficult for them to “relinquish the exercise of control,” Wagner suggested.

As a related matter, a firm might desire to operate its own retirement plan because it can control the offering and be “more nuanced” than can a pooled plan.

“It is not that the plan of a pooled plan provider would be deficient in any manner from an IRC or ERISA perspective, but rather that a firm’s plan could contain, for example, more detailed procedural rules,” wrote Wagner.

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