April 5, 2022

Washington Long Term Care Act Version 2.0

State Lawmakers Delay and Revise Long Term Care Act

Shortly after its planned January 1, 2022 effective date, Washington State's controversial Long-Term Services and Supports Trust Act (the Act) underwent significant revision. A new and improved version passed in late January delaying implementation of the Act for 18 months, providing some welcome relief for both employers and employees. This Alert addresses the original Act as it applies to employers, its revisions, and effective dates.

Brief background

Washington enacted the Act in 2019 in an effort to plan for the projected long-term care needs of Washington residents. The Act requires any employee who works in Washington State to contribute $0.58 per $100 (0.58%)[1] of their wages to the Washington Cares Fund (the Fund), a trust fund set aside to pay long-term care benefits. The Act does not require employers to sponsor Long-Term Care insurance plans for their employees or make any direct payments towards coverage under the state plan.

Under the original version of the Act, employers were supposed to begin deducting payroll contributions as of January 1, 2022, and remit them to the Fund on a quarterly basis. The Fund would start paying benefits to eligible individuals beginning January 1, 2025. Employees could opt out of the program and avoid the required contribution, but the Act limits opt-outs to employees with private LTC coverage in place as of November 1, 2021 and who opt out by December 31, 2022. This opt out is permanent.

Sticking points under original law

The original version of the Act (now codified) was controversial for several reasons, but primarily because the Act required individuals to pay into the Fund who would never be entitled to any payout. Examples included:

- All employees working in the state of Washington were subject to the payroll deductions, but only Washington residents were eligible for benefits. This appeared to include remote employees.
- Older workers nearing retirement were at a disadvantage. In order to receive benefits, the Act required employees to work and contribute to the Fund for:

  (1) A total of ten years with no more than a five-year interruption; or

  (2) Three of the six years immediately preceding the date they applied for benefits.

  The Act also required a minimum 500-hour work requirement per year during the applicable ten or three-out-of-six year period.

[1] The payroll tax percentage will be adjusted based on Washington's CPI

2022 revisions

In an attempt to address some of the flaws in the original version of the Act, Washington Governor Jay Inslee signed two bills (HB 1732 and HB 1733) into law on January 27, 2022.

HB 1732 delayed implementation of the Act for 18 months, which pushes back the start date for payroll deductions and reporting to **July 1, 2023** and defers benefits availability to **July 1, 2026** (from January 1, 2025). This bill also requires employers to refund any 2022 employee payroll deductions withheld for the Fund within 120 days of collection. Another provision of this bill allows employees who were born before 1968 to receive partial benefits on a pro-rated basis as long as they contribute to the Fund for at least one year.

HB 1733 expanded program opt-outs by allowing military spouses, disabled veterans and employees who are not Washington State residents (including remote employees) to apply for an exemption to the payroll tax. Exemptions are permanent as long as the individual continues to meet the exemption criteria. For example, an exemption for a non-resident employee will no longer be valid if that employee later moves to Washington.

Opt-Out for Private LTC Coverage: The Act's existing right for employees to opt out of the program and avoid the required Fund contribution by employees if they have private LTC coverage in place as of November 1, 2021 remains unchanged (including the requirement to opt out by December 31, 2022).

Employer action items

There was confusion in late December and early January about the Act's future and employer responsibility to take premium deductions from employee paychecks. HB 1732 is clear that employers should not be taking any payroll deductions under the Act during 2022. If they have not already done so, employers should halt the deduction of Fund contributions from employee paychecks. Employers must refund any existing deductions to employees within **120 days** of their collection date.

For now, employers do not need to take any additional action. There are reportedly additional reform efforts underway, and Washington may modify (or even repeal) the Act prior to the revised July 1, 2023 effective date.

The Fund will update the Washington Cares Fund website when more information becomes available. Employers can sign up on that site to receive notifications.

About the author

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