

Legal Update Article

Washington Delays Payroll Tax and Adds Exemptions for Long-Term Services and Support Trust Program

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Related Services

Employee Benefits

After months of confusion about whether to begin withholding premiums from employees' paychecks on January 1, 2022, employers and employees in Washington state have gotten a reprieve from the controversial payroll tax for the long-term services and support program, called the WA Cares Fund.

On January 27, 2022, Governor Jay Inslee [signed into law Substitute House Bill 1732](#), which quickly passed in the House and Senate, to delay the payroll tax until July 2023. The law requires employers to refund any premiums they have collected within 120 days of (a) the employer's collection of the premiums from the employee, or (b) the state's reimbursement of the employer for premiums already remitted. Governor Inslee also signed [Engrossed Substitute House Bill 1733](#), which added promised exemptions for certain Washington workers.

Last month, Governor Inslee, Senate Majority Leader Andy Billing, and House Speaker Laurie Jinkins released a [joint statement](#) proposing the delay of the premium assessment so legislature could change the law to "better serve disabled veterans, military spouses, non-residents, and near retirees will improve the program." At that time, they also suggested "[a] pause will also give the Long Term Care Commission the ability to study and make recommendations about residents who move out of Washington to retire and assure that those who have opted out of the program maintain their private insurance policies." The statement noted that the changes to the law might require work through the 2023 legislative session.

SHB 1732 addresses the concern about those nearing retirement by allowing anyone born before January 1, 1968, and who pays premiums for at least one year, to receive one-tenth (1/10) the maximum number of benefit units starting July 1, 2026. ESHB 1733 adds four new categories of exemptions from the law: (1) U.S. military veterans with a service disability of seventy-percent (70%) or more; (2) spouses and domestic partners of active duty service members; (3) employees with non-immigrant visas for temporary workers; and (4) Washington workers with a permanent primary residence outside of the state. Washington's Employment Security Department will begin accepting applications for new exemptions for individuals who qualify beginning on January 1, 2023.

Employees who have already purchased substitute long-term care coverage should carefully consider maintaining it for two reasons. First, the legislature may yet fulfill its promise to require exempt employees with qualifying coverage to maintain that coverage to remain exempt. Second, the legislature may not extend the date by which that coverage was required to be in place (before November 1, 2021). Employers should prepare to reimburse employees by the applicable deadline and may want to communicate with employees about the delay and the new exemptions.

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