

Legal Update Article

Washington Employment Security Department Issues New Rules for Long-Term Care Fund WA Cares

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The Washington Employment Security Department's (ESD) Leave and Care Division has adopted rules to implement revisions to the Washington Long-Term Services and Supports Trust Program (also known as "WA Cares"). The new rules will become effective October 29, 2022.

WA Cares imposes a payroll tax on employees to pay for state-provided long-term care benefits. Employers are not required to pay any portion of the tax. Certain employees are either permanently or conditionally exempt from the long-term care tax. In response to an [outcry](#) from Washington companies and workers, the governor postponed implementation of the program until July 1, 2023, to give the legislature time to address some of its obvious shortcomings. The legislature [passed](#) Substitute House Bill 1732 and Engrossed Substitute House Bill 1733 to address some of these issues and the bills were signed into law by the governor on January 27, 2022.

The new rules include the following key aspects:

- **Exemption for Disabled Veterans.** The rules address the exemption for U.S. military veterans who have a service-connected disability rating of at least 70 percent. The ESD will begin accepting applications from qualifying disabled veterans on January 1, 2023.
- **New Deadline for "Covered" Employees to Apply for Exemption.** WA Cares exempts employees who purchased other long-term care insurance before November 1, 2021. The new rules reflect the extended deadline (December 31, 2022) to apply for a permanent exemption.
- **Conditional Exemptions.** Certain exemptions under WA Cares are conditional (non-permanent). The conditional exemptions include those for military spouses, workers with non-immigrant visas, and Washington workers who maintain a permanent residence outside of the state. The new rules require those who qualify for these conditional exemptions to notify the ESD and their employer within 90 days of the date when they no longer qualify for the exemption. Once the employer has been notified, the employer must begin withholding the required WA Cares premiums on the first day of the next quarter. Employees who fail to provide the required notice will owe the required premiums to ESD and those premiums will be subject to a monthly interest charge of one percent until they are fully paid.
- **ESD Audits.** The new rules also set forth ESD's broad right to audit employers for compliance, including a provision that gives ESD the right to use other data to determine the premiums if the employer refuses to provide payroll or wage data.

Employers should prepare to begin deducting premiums from the paychecks of their Washington workers who have *not* notified the employer that they are exempt beginning on July 1, 2023. In addition, employers may want to make sure employees understand their responsibilities (and possible penalties) under WA Cares to notify the employer if they no longer qualify for a conditional exemption within the 90-day deadline.

Please contact a Jackson Lewis attorney with any questions.

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