Updates
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Washington Employers Must Act Now to Stay Ahead of New Long-Term Care Act

In 2019, Washington passed the first law in the nation requiring employees to fund a state-operated long-term care insurance program. The program, codified at RCW 50B.04 and set to begin on January 1, 2025, will be funded by an uncapped payroll tax starting at 0.58% on all employee compensation beginning January 1, 2022. Although changes to the law are subject to final approval, Governor Inslee is expected to sign the final bill (HB 1323) shortly. If signed into law, the amendments will require employees who wish to opt out of the tax to purchase long-term care insurance by November 1, 2021. Accordingly, employers should act now if they want to offer employees long-term care options prior to the anticipated deadline.

What Is Washington's New Long-Term Care Program?

Passed in May 2019, Washington's long-term care program is the country's first public state-operated long-term care insurance program and is designed to provide basic long-term care insurance for Washingtonians. Starting January 1, 2025, qualified employees who need long-term care will be able to access benefits up to $100 per day (maximum lifetime limit of $36,500) to pay for a range of services and support for one year.

How Is the Program Funded?

Beginning January 1, 2022, the program will be funded by an uncapped 0.58% payroll tax on all employee compensation, including wages, bonuses, stock-based compensation, paid time off, and severance pay. This means that an employee who earns $100,000 annually will pay $580 in taxes to fund the program each year. Employers can elect to pay this tax on behalf of employees, but there is no obligation on behalf of the employer to pay a portion. Additionally, employers must collect the tax from employees through payroll deductions and must remit the funds to the Employment Security Department to place in a trust.

Who Must Pay the Payroll Tax?

All employees employed in Washington are required to pay the 0.58% payroll tax except (1) self-employed individuals, (2) employees of federally recognized tribes, (3) certain collectively bargained employees, and (4) employees who opt out of the program and qualify for an exemption (discussed below). Employers with collective bargaining agreements in existence on October 19, 2017, are exempt from collecting the payroll tax until the existing collective bargaining agreement is reopened, renegotiated, or expires. RCW 50B.04.080(3). This means that many union-represented employees will only begin paying the payroll tax once their current collective bargaining agreements are reopened, renegotiated, or expire.

Although the Employment Security Department will likely provide clarifying guidance, a qualifying employee is one who

- Performs services localized in Washington, or
- Performs services that are not localized in any state, but performs some services in Washington, and (1) the base of operations of the employee is in Washington, or if there is no base of operations, then the place from which the service is directed or controlled is in Washington; or (2) the base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is

performed, but the individual resides in Washington. This means that out-of-state employers must likely collect and remit premiums for any employees who primarily work in Washington.

How Can Employees Opt Out of the Program?

Pursuant to HB 1323, an employee may opt out of paying the tax and receiving long-term care benefits under the program if (1) the employee is 18 years or older, (2) the employee purchases long-term care insurance by November 1, 2021 (unless this date is extended), and (3) the employee applies for an exemption with the Employment Security Department between October 1, 2021, and December 31, 2022. If an employee receives an exemption from the Employment Security Department, the employee must provide the approval letter to its employer, which the employer must maintain. Once an employee opts out of the program, the employee cannot opt back into the program, and once the exemption period closes, no further exemptions from the program will be granted.

For higher wage earners, opting out of the program and purchasing an individual policy may make sense for several reasons. For example, the money spent in the payroll tax may be used to purchase more competitive options in the open market, the employee may choose to retire outside of Washington (and therefore would not receive the benefit), or the employee may choose to retire before the benefits vest.

Takeaways

All employers with employees located in Washington should stay apprised of developments regarding Washington's new program and make applicable payroll tax deductions starting January 1, 2022. In advance, employers should consider informing employees of the new law, its effect on their paycheck, the very brief period to purchase long-term care insurance before November 1, 2021, and the exemption window between October 1, 2021, and December 31, 2022. Employers may also want to provide long-term care insurance to employees, however, employers who choose this option must provide a plan equal to or better than the state plan. Finally, employers should consult with trusted legal counsel if they have any questions or concerns regarding the new program.

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