



The Undiscovered Country, Sort Of: Washington Employers Must Begin Collecting Employee Premiums Starting July 1

Insights

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The first-in-the-nation statute that will require Washington employers to deduct taxes from employees and remit them to the Employment Security Department is finally set to go into effect in just a few weeks, and it's time for employers to prepare for compliance. The original January 1, 2022 deadline set by the WA Cares Act was paused by Governor Jay Inslee in December to give legislators the opportunity to make refinements to the law, leaving employers in the dark as to whether they were required to begin withholding benefit premiums from employee paychecks. Now that the law's delay has ended and the slings and arrows are about to return, this insight recaps the impact of the amended WA Cares Act on employers.

The Law's Delay: What does the WA Cares Act Do and Why was it Delayed?

It's been over a year since we informed you of the sea of troubles posed by Washington's WA Cares Act. The new statute establishes a mandatory state-run insurance fund to help Washington residents pay for certain long-term care services, such as assisted living facilities, after retirement. The Act requires that employees to pay for the insurance through mandatory wage withholding premiums.

Soon after the law was passed, employers, employees, and legal commentators raised concerns. Many employees noted that the maximum benefit seems inadequate. Meanwhile, some workers noted they would be forced to pay into the fund with no ability to receive benefits (such as older residents will pay the tax yet not be eligible for the benefit, and retirees no longer living in Washington and thus ineligible to access benefits). Also, many noted that the opt-out mechanism is extremely narrow and limited. Finally, some commentators argued the federal Employee Retirement Income Security Act (ERISA) preempts (and therefore voids) the law altogether, leading to litigation over the issue.

Reacting to these critiques, Governor Inslee paused the State from collecting withheld employee premiums, leaving employers unsure whether to deduct those premiums from employee paychecks. On January 27, 2022, Governor Inslee signed House Bills 1732 and 1733, delaying and amending the WA Cares Act to address these concerns.

A Fardel of Amendments

These amendments broadened the categories of employees who can opt out of the WA Cares program. As with the prior version, if an employee provides an employer with an approved exemption letter they received from the Employment Security Department (ESD), employers must stop withholding WA Cares premiums and retain the employee's exemption letter. The following employees had the ability to opt out:

- Veterans with a service-connected disability of 70% or more. Such employees may qualify for a permanent exemption;
- Spouses or registered domestic partners of an active-duty service member. Such exemption expires if the service member is discharged from the military or upon dissolution of marriage or domestic partnership from the service member;
- Employees with a nonimmigrant visa for temporary workers. Such exemption expires if the employee becomes a permanent resident or citizen; and
- Employees with a permanent address/primary place of residence outside of Washington. Such exemption expires if the employee establishes a permanent address/primary location of residence in Washington.

The deadline for an employee to apply for an exemption was June 1, 2023.

Further, employees near retirement age now can earn partial benefits for each year they work. Anyone born before January 1968 can earn 10% of the full benefit amount for each year they work at least 500 hours.

And of course, as noted, the amendments also set a new effective date for implementation. Employers must begin withholding employee premiums starting July 1. Covered workers will be eligible to use benefits starting July 1, 2026.

The Thousand Natural Shocks that Employers are Heir to

While amending the WA Cares Act in other ways, the legislature offered only a poisoned sword for employers who had begun deducting premiums in accordance with the original effective date. Employers that began withholding WA Cares premiums before July 2023 must return those premiums to employees within 120 days of collection. For many employers that withheld premiums in accordance with the original effective date, this will require reimbursement to employees as soon as possible.

Since Brevity is the Soul of Wit, We'll be Brief

Despite the lingering concerns posed by the WA Cares Act, any further delays are thus highly unlikely. Accordingly, employers should move swiftly to reimburse employees for previously withheld premiums and prepare to begin collecting such premiums again starting July 1.

We will continue to monitor this developing situation and provide updates as necessary. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information directly to your inbox. For further information, contact your Fisher Phillips attorney, the authors of this Insight, or any attorney in [our Seattle office](#).

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