

## Future of Washington's Long-Term Care Tax, Fund Uncertain

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With the start date of the Washington payroll tax to fund long-term care benefits for workers looming, state lawmakers are considering changes to the law even while lawsuits have been filed to modify or undo it.

Most companies with Washington workers have been preparing to comply with the 2019 Washington State Long-Term Services and Supports Trust Act. The Act, a first-of-its-kind law, provides Washington workers with long-term care benefits (called the Washington Cares Fund) and is funded by a payroll tax (beginning January 1, 2022) on Washington workers.

### Background

The Act imposes a payroll tax on Washington workers of \$0.58 for every \$100 (0.58 percent) of their gross wages. Employers are required to withhold the tax and contribute the funds to a trust to fund long-term care benefits.

Eligible Washington residents who require long-term care will be eligible for up to \$100 per day (\$36,500 maximum lifetime benefit) to pay for certain items. To be eligible for the benefit, Washington workers must pay into the trust for 10 years (with no more than a five-year interruption) or for three of the last six years before they apply for benefits.

Workers who secured qualifying long-term care coverage, through an individual policy or a group policy before *November 1, 2021*, can apply for an exemption. The deadline to apply for an exemption is December 31, 2022. If approved, the exemption would be effective beginning the quarter *after* it is approved and submitted to the employer. Exempt employees are not subject to the payroll tax and are permanently excluded from receiving benefits from the trust. It is critical for employees to apply for the exemption, obtain an approval letter from the state, and submit the letter to their employer as soon as possible because, until the employer receives the letter, it is required to withhold the payroll tax. Once those taxes have been withheld from employee paychecks, they will not be refunded by the trust. Therefore, employees who have secured other coverage but delay submitting the exemption letter to their employers could pay taxes and never be eligible for benefits.

Alas, the state has been inundated with exemption applications and the dedicated website has crashed or been taken out of operation many times. According to the state website, all applications submitted by December 1 will be processed before January 1, 2022.

### Legislative Changes Under Considered

Some state legislators have been discussing reforming the law, primarily to correct some of its least popular features. Those features include:

1. Limiting benefits to Washington residents (retirees who move out of state will lose the benefits despite potentially having paid in during their entire career);
2. Providing no mechanism for new workers in Washington to opt out, as the one-time window has already closed; and
3. Requiring workers to pay into the system even though they might never be eligible for benefits (older workers may never accrue enough service to earn a benefit).

As of this writing, legislation to reform the law has not been introduced.

However, Senate Democratic leaders have urged Governor Jay Inslee to delay implementation of the Washington Cares program for a year because of the ongoing COVID-19 pandemic. On December 2, 2021, Governor Inslee expressed his support of such a delay, but he said the Legislature would have to act.

### New Challenges

Meanwhile, there are several challenges to the law in progress. First, a citizens' initiative ([I-1436](#)) would make participation in the program optional. Second, a class-action lawsuit has been [filed in the Western District of Washington](#), alleging that the law is preempted by ERISA, is unconstitutional, unlawfully

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### Practices

Employee Benefits

discriminates against employees based on age, and violates other state laws. The lawsuit asks the court to enjoin enforcement of the law and to require the state to refund any payroll taxes that have been contributed to the trust.

## Next

It is unclear whether any legislative reforms, the citizens' initiative, or the lawsuit will result in termination or reform of the program. For now, employers should continue preparing for withholding the payroll tax beginning on January 1, 2022. Employers might also consider making employees aware that the payroll tax will be deducted from their paychecks and that, as long as they secured their own qualifying coverage before November 1, 2021, they still have time to apply for an exemption. Employees should also be reminded that if they do not provide their approval letter to their employer, payroll tax deductions will begin on January 1 through at least the end of the first quarter, and they will not receive a refund of those taxes.

Please contact a Jackson Lewis attorney with any questions.

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