



Employment Law Note

January 2022

Washington Cares Act on Hold



By **Nick Morton**, nmorton@sbj.law

In late December 2021, the State Legislature and Governor Inslee delayed premium assessment under the Washington Cares Act (the “Act”) prior to its scheduled January 1, 2022, start date. Under this pause, the state will not collect premiums from employers under the Act prior to April 2022. The Legislature is slated to address potential changes to the Act during the legislative session beginning January 10, 2022.

Background

In 2019, the Washington State Legislature passed the Washington Cares Act, which provides up to \$36,500 in long-term care benefits for eligible beneficiaries to apply to the cost of their long-term care. The program is funded through a 0.58 percent premium assessment on an employee’s wages for employees who have worked at least 500 hours during a calendar year. The premium assessment was to begin on January 1, 2022, and eligible beneficiaries are to begin receiving benefits on January 1, 2025.

Challenges to the Washington Cares Act

In September 2021, a large group of businesses and business groups urged Governor Inslee to delay the implementation of the Washington Cares Act until certain issues were resolved. Among the issues raised by this group was a concern that many near-term retirees and Washington employees who live in border states would be required to pay into the program without ever realizing its benefits.

In November 2021, a class action lawsuit was filed against the State of Washington, seeking a declaratory judgment that the Act is unenforceable. The plaintiffs raised some of the same concerns as the Washington business groups and alleged that the Act is preempted by federal law. Long-term care benefits are addressed by the Employee Retirement Income Security Act of 1974 (“ERISA”), and ERISA could preempt a state law purporting to govern employee benefits plans. The plaintiffs also allege an array of constitutional and statutory violations.

The Delay

After months of pushback from political opposition and Washington residents, Governor Inslee announced on December 17, 2021, that he was ordering the Employment Security Department (“ESD”) not to collect premiums from employers before they come due in April after the end of the quarter. This delay was intended to give the Legislature an opportunity to make improvements to the Act during the 2022 legislative session. Governor Inslee clarified that employers will not be subject to penalties for not withholding premiums from employee payroll.

On December 22, 2021, Governor Inslee issued a letter to ESD ordering it to not collect premiums until the legislature addresses the issues with the Washington Cares Act. In this letter, Governor Inslee acknowledged that “legislative leadership has strongly encouraged the employer community to pause collection of premiums.” However, the letter also clarified that, in the event that the Legislature fails to change the law, employers will be obligated to pay the full amount, effective January 1, 2022. In Governor Inslee’s words,

“employers must now choose whether to begin collecting premiums.”

A day after issuing the letter to ESD, Governor Inslee made a statement to clear up “misinformation” about the Washington Cares Act pause. Governor Inslee stated that the State of Washington, in its capacity as an employer, *will* withhold premiums from state employee paychecks under the Act. While such premiums are not owed to ESD for the time being, some employers—including the state—have chosen to withhold from employees’ wages in case the legislature fails to change the Act.

The legislative session began on January 10, 2022. There are currently two bills that would make changes to the Act, most significantly to the scope of covered employees and eligible beneficiaries.

Takeaway for Employers

Employers are faced with the decision of whether or not to withhold from employees’ paychecks during the premium collection pause. While the Legislature has urged employers not to withhold, Governor Inslee has indicated that withholding may be beneficial to some employers.

If the Legislature fails to make any changes to the Act before April 2022, all premiums beginning on January 1, 2022, will come due to ESD at that time. Accordingly, some employers may choose to err on the side of caution by withholding premiums from employees’ paychecks until that date. However, employers are currently under no legal requirement to do so.

In his letter to ESD, Inslee stated: “[I]f the Legislature fails to act to change the [Act] in early 2022, [ESD] will work with employers who did not assess Long Term Services and Support premiums during the first quarter of 2022, to develop plans to address potential payment options.” In other words, employers who have not been withholding premiums will not be penalized but will be required to utilize some form of a payment plan with ESD should the Legislature fail to amend the Act.

The Legislature is expected to address the potential changes to the Act in January 2022. ESD is also expected to provide additional clarification of the Act through regulations. Please contact us with questions about the ongoing developments to the Washington Cares Act, or if you need assistance determining whether to withhold premiums.

For more information about this month’s Employment Law Note
contact us at **425-454-4233**



We publish the Employment Law Note to inform clients and friends of developments in labor and employment relations law. This Note is not intended, nor should it be used, as a substitute for specific legal advice or opinions. Legal counsel can be given only in response to inquiries regarding particular factual situations. © 2022 Sebris Busto James. All rights reserved.