



Employment Law Note

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Payroll Specialists, Prepare to Update: Pending Changes to the WA Cares Fund



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On May 20, 2025, Senate Bill 5291 was signed into law and introduced significant amendments to Washington State's WA Cares Fund. The amendments make it easier for employees to qualify for coverage, create additional insurance frameworks, and expand participation classes. Additionally, the amendments create new reporting and recordkeeping requirements for employers. Most of the provisions take effect on January 1, 2026.

WA Cares Fund Background

The WA Cares Fund, established under the Long-Term Services and Supports ("LTSS") Trust Act, created the nation's first mandatory, publicly funded long-term care insurance program for workers. It was signed into law in May 2019. Senate Bill 5291 amended the LTSS Trust Act and expanded access to the WA Cares Fund. Benefits begin for eligible individuals starting July 2026. Unlike other care coverage programs, the WA Cares Fund provides coverage to eligible individuals regardless of pre-existing conditions. Most long-term care is not covered by Medicare or health insurance, and Medicaid has strict financial and medical eligibility requirements. Working Washingtonians contribute through the 0.58% payroll deduction to this shared fund that will be accessible only to those who have contributed, meet the requirements, and need the care.

Beginning January 1, 2023, Washington workers became eligible for exemptions to opt out of the WA Cares Fund long-term care program if they: lived

outside of Washington, were the spouse or registered domestic partner of an active-duty service member of the U.S. armed forces, had a non-immigrant work visa, or were a veteran with a 70% service-connected disability rating or higher. Once an exemption was approved, the worker received a letter from the Employment Security Department ("ESD") to present to all current and future employers who then became obligated to stop withholding the payroll deduction. If an employee obtained an exemption but failed to present the exemption letter to the employer, any premiums that may have been collected would not count toward benefit eligibility and the employer(s) would have no responsibility to return those premiums to the employee.

Notably, those who had private long-term care insurance before November 1, 2021, and applied for an exemption from the WA Cares Fund by December 31, 2022, were considered exempt.

Changes Taking Effect January 2026

As a result of Senate Bill 5291, Washington workers who relocate out-of-state may elect to continue participation if they've paid into the program for at least three years. Additionally, those with private long-term care insurance who previously opted out may rejoin the program before July 1, 2028.

In addition, the Bill creates recordkeeping and reporting obligations requiring employers to submit reports and information to the ESD, as well as collect and remit premiums. If the employer is a staffing company that provides employees on a temporary

basis, they are considered the employer for purposes of the recordkeeping requirements. These records must be kept for six years. Monetary penalties are established for an employer's willful failure to make the required reports (\$75 for a second occurrence, \$150 for a third occurrence, and \$250 for the fourth occurrence and each occurrence thereafter). Monetary payments for failure to remit premiums are also established, which include payment of the premium amount due, amounts assessed as interest, and a penalty fee equal to the premiums and interest. If payments owed to the ESD become delinquent, the ESD has authority to issue an order and assessment for the amount due. If the amount due is unpaid within 10 days after mailing or service of the order, the ESD is authorized to collect through seizure and sale of the delinquent employer's property.

Beginning January 1, 2026, an optional exemption exists for active-duty service members working civilian jobs in Washington. This is in addition to the already-existing exemption for the spouses or registered domestic partners of active-duty service members. This new exemption for active-duty service members working civilian jobs must be discontinued within 90 days of discharge or separation from military service.

Additionally, the Bill also created a new framework that allows private insurers to offer supplemental

policies to the WA Cares Fund if they meet certain standards. The supplemental policies must provide at least 12 months of coverage after WA Cares Fund benefits are exhausted and allow continuity of care when transitioning between programs.

Senate Bill 5291 also simplified employee-contribution requirements. Workers are eligible for lifetime access to the WA Cares Fund benefit if they contribute for at least 10 years, without the previous requirement that the contributions be without interruption for five or more consecutive years. Therefore, workers who leave the workforce for an extended time will not have to restart their timeline to meet the 10-year eligibility target. There is also a pathway to coverage for those who worked three years within the last six years before application for benefits and those born before January 1, 1968 (near-retirement).

Final Thoughts

Employers should review their payroll systems for compliance with the new reporting and premium-collection rules. Employers should also ensure they retain their records related to the WA Cares Fund for at least six years. Employers with questions regarding the upcoming changes to WA Cares Fund are encouraged to contact Sebris Busto James.

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