COMPLIANCE ALERT

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Washington Long Term Care Program Clarifies Opt-Out Rules

Overview

In May 2019, Washington Governor Jay Inslee signed the nation's first publicly-funded long term care program. Under the program, long term care benefits will be available to individuals who need assistance with at least three activities of daily living, and who have paid into the program for a specified period of time. The program will be funded by a payroll tax that will be implemented January 1, 2022, and benefits will become available January 1, 2025. The law allows individuals, for a limited time, to opt-out of the program. Governor Inslee recently signed Substitute House Bill 1323 (SHB 1323), which provides additional guidance on the opt-out process, and addresses other outstanding issues on program administration, including the availability of coverage for self-employed individuals.

Opt-Out Provisions

Under SHB 1323, employees may apply for an exemption from premium assessments if they attest that they have long term care insurance purchased before November 1, 2021. The Washington Employment Security Department (ESD) will accept applications for exemptions for a limited window: October 1, 2021 through December 31, 2022. Only employees who are 18 years or older may apply for an exemption. Approved exemptions will take effect on the first day of the quarter immediately following approval.

Exempt employees must provide written notification to all current and future employers of an approved exemption, and are not entitled to a refund of any premium deductions made before the effective date of the exemption. Similarly, if exempt employees fail to notify an employer of an exemption, they are not entitled to a refund of any premium deductions made before the notification is provided. Employers may not deduct premiums after being notified by an employee of an approved exemption, and must retain written notification of exemptions received from employees (though the law does not specify for how long). Employers that deduct premiums after receiving notice of an exemption are responsible for refunding employees for any premiums that were deducted after they received notice. Employers are not entitled to refunds from the ESD for premiums that were remitted on behalf of exempt employees. The bill indicates that the ESD will develop procedures on the submission and processing of opt-out applications.

Notably, exempt employees are permanently ineligible for coverage under the state program. Employers that are considering employer-sponsored long term care plans should address conversion/portability options to ensure access to coverage for employees that terminate.

Self-Employed Individuals

Starting January 1, 2022, any self-employed person may elect coverage under the program. Coverage must be elected before January 1, 2025, or within three years of becoming self-employed for the first time. Self-employed individuals who elect coverage must continue to pay premiums until they retire or are no longer self-employed. To stop premium assessments, self-employed individuals must file a notice with the ESD if they retire or are no longer self-employed.

Federally Recognized Tribes

A federally recognized tribe may elect coverage, but must also have the option to opt-out at any time for any reason. The ESD will implement procedures in this regard.

Next Steps

Employers interested in implementing employer-sponsored long term care programs should act promptly given the deadline for employee opt-out applications. Additional information on the state program is available here. To access our prior alert on the topic, click here. Please contact your Alliant team member with additional questions.

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