

Publications

California to Potentially Implement a Long-Term Care Payroll Tax

ATTORNEYS & PROFESSIONALS

Kathryn Bjornstad Aminkamin@groom.com

202-861-2604

Elizabeth LaPaughelapaugh@groom.com

202-861-6606

Malcolm Sleemslee@groom.com

202-861-6337

PUBLISHED

08/31/2023

SOURCE

Groom Publication

SERVICES

Employers & SponsorsHealth & Welfare Programs

In 2019, California passed a law that created the Long Term Care Insurance Task Force (“Task Force”) to examine how to design and implement a long-term care insurance program. The Task Force recommended a payroll tax to fund the program and an opt-out provision if the employee purchases private long-term care coverage before the program’s effective date. The program could go into effect as early as January 1, 2025, so employers should start to consider whether to offer a long-term care benefit effective January 1, 2024 which, depending on the final design of the program, might allow employees to opt out of the tax.

Background

On December 14, 2022, the Task Force issued its [feasibility report](#) that included several options to establish the program, and on August 15, 2023, updated its [FAQs](#). The Task Force is expected to release a final recommendation, along with an actuarial report, by January 1, 2024. The legislature is not bound to enact the Task Force’s recommendations, but if it does, the program could go into effect as early as January 1, 2025.

California is not the first state to explore implementation of a long-term care insurance program. Other states, such as New York, have considered such legislation, and Washington was the first state to enact a program. Effective July 1, 2023, Washington passed the Long-Term Care Trust Act, which requires employees to pay an additional payroll tax of \$0.58 per \$100 of wages to fund future long-term care benefits. The Washington law is mandatory and covers any employee covered by the state’s family and medical leave law and who works in the state. Washington provides an exception for employees who purchased a private long-term care policy before November 1, 2021.

The Task Force’s Recommendations

The Task Force’s notable recommendations in the feasibility report are:.

- The Task Force recommended a progressive payroll tax up to 2% of wages. The Task Force is still weighing options of whether or not to include a cap on taxable income subject to the tax, which will be addressed in the forthcoming actuarial report.
- The Task Force suggested that alternatively, the tax could be split between employers and employees.
- The Task Force proposed to provide an exemption from the payroll tax for individuals insured by eligible private insurance as of a certain date before or on the program's effective date. If an individual is covered under a new private policy after the effective date, they would be ineligible to opt out of the program, but new private policies could qualify for reduced program contributions if they met certain standards (yet to be determined) and were periodically recertified.
- The Task Force proposed that the long-term care program could pay for care received from informal or family caregivers as long as these individuals completed certified caregiver training.
- The Task Force is considering design options that would permit at least partial domestic or international portability, meaning some, if not all, of an individual's benefits would be accessible if the individual moved to another state and was fully vested in the program.

The Task Force is expected to release a final recommendation, along with an actuarial report by January 1, 2024. Importantly, with no established enactment date and the final recommendation forthcoming, these proposals are preliminary considerations. The California legislature is not bound to accept the final recommendation and could also choose to modify it. However, employers should start to consider now whether to offer a long-term care benefit, either employer-sponsored or as a voluntary plan, which might allow employees to timely opt out of the state payroll tax.