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Washington adds tight exemption timeline to long-term care law

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In this article

Beginning Jan. 1, 2022, Washington's long-term care (LTC) insurance law requires employers to collect 0.58% of wages through payroll deduction from employees working — or, in certain cases, merely residing — in the state and remit those premium contributions to the state-run Long-Term Services and Supports (LTSS) Trust Program. The LTSS legislation (WA Rev. Code Ch. 50B.04) enacted in 2019 does not require any employer contributions. A recent change to the law (2021 Ch. 113, HB 1323) allows employees to opt out of the program only if they have purchased private LTC coverage by Nov. 1, 2021. Employers — particularly those offering a qualifying LTC policy — should notify employees about the impending exemption deadline and prepare to collect and report employee premiums. Benefits will become available to eligible individuals beginning Jan. 1, 2025. State regulators are developing draft and proposed regulations, which may provide some early guidance.

Covered employees

Washington's LTC mandate covers any worker covered by the state's paid family and medical leave (PFML) law. The program will apply to all W-2 employees who work in the state if one of the following apply:

- Their service is localized in Washington.
- Their service isn't localized in any state, but some of the service is performed in Washington and the employee's base of operations is there.
- They do not have one location that serves as base of operations, service area, or place from which their service is directed or controlled, but their residence is in Washington.

For employees covered by a collective-bargaining agreement in existence on Oct. 19, 2017, the law does not apply until the agreement expires or is reopened or renegotiated. The program doesn't cover employees younger than 18, independent contractors or casual laborers. Self-employed individuals are exempt but may opt in by following certain guidelines.

Reports and contributions

Beginning Jan. 1, 2022, employers must deduct employee premiums set at 0.58% of wages — without any wage cap — for each pay period. Employers unable to collect the contribution due to insufficient employee wages for any pay period won't face a penalty for failure to comply. Payments and quarterly reports are due to the Employment Security Department (ESD) by the last day of the month after the end of the calendar quarter.

The premium contribution rate will be adjusted every other year beginning in 2024. Draft reporting regulations don't specify what employers must include in the quarterly report. However, the law directs regulators, to the extent feasible, to use the premium collection and reporting procedures required by PFML law. The uncapped tax requires higher earners to pay significantly higher premiums for the same benefit.

Covered wages

Wages for premium assessment purposes include salary or hourly wages; the cash value of gifts, goods, or services, including meals and lodging; commissions or piecework; bonuses; holiday pay and other employer-paid time off; separation pay; and stipends or per diems. Supplemental paid disability benefits are exempt from the contribution calculation, as are reimbursements of an employee's costs incurred while performing expected job functions. Wages also exclude employer-paid life, health, disability and accident insurance, and retirement benefits.

Exemptions

An employee may qualify for an exemption by purchasing a private LTC policy before Nov. 1, 2021. Under currently proposed regulations, the ESD will accept applications for LTSS exemptions only from Oct. 1, 2021, through Dec. 31, 2022, from employees age 18 or older on the application date. Approved exemptions will take effect on the first day of the quarter immediately after the approval.

Employees receiving an exemption will not receive any refund of previous payroll taxes paid. An exempt employee must provide written notification about the exemption to all current and future employers. Employers are responsible for refunding any contributions collected after receiving an employee's exemption notice.

State regulators need to clarify the LTC products and coverage amounts needed to receive an exemption. Current state law (WA Rev. Code § 48.83.020) defines and excludes certain types of LTC insurance. However, traditional LTC policies and certain life products that provide dual life and LTC benefits (filed and approved under WA LTC laws) probably will qualify for exemption, but the state will have to provide official guidance.

Eligibility and benefits

Starting Jan. 1, 2025, benefits will become available so eligible Washington residents can have payments made to registered LTSS providers. Benefit eligibility will extend to individuals who have paid LTSS premiums for the equivalent of either (i) 10 years without an interruption of five or more consecutive years or (ii) three years within the last six years. Employees must have worked at least 500 hours per year.

Services qualifying for benefits include adult day care, professional services, family support, assisted living, nursing homes and more. The lifetime maximum benefit will be set at $36,500. The Department of Social and Health Services (DSHS) will reimburse eligible services on a given date using a "benefit unit" of up to $100, which will be annually adjusted to reflect changes in the Washington consumer price index. The Health Care Authority will establish rules and procedures to coordinate LTSS benefits with Medicaid, Medicare, or private LTC coverage.

Eligible individuals must be Washington residents at time of claim to receive benefits. This creates a planning risk for employees who may retire to another state. The residency requirement for benefits also raises questions for Washington workers who reside in a bordering state since they will have to pay the payroll tax but cannot receive benefits unless they move to Washington. Clarifying regulations may address these issues.

Employer next steps

Employers with Washington employees will want to monitor developments and discuss implications with LTC vendors. Given the Nov. 1 deadline, employers will need to decide quickly whether to offer a voluntary LTC plan so employees electing that benefit can opt out of contributing to the state program. In addition, employers should notify Washington employees about the opt-out requirements well in advance of the Nov. 1 deadline. Employers should also begin to prepare for the required payroll deductions in 2022.

Related resources

Non-Mercer resources

- WA Rev. Code Ch. 50B (Washington State Legislature)
- 2021 Ch. 113, HB 1323 (Washington State Legislature , April 21, 2021)
- Long-Term Services and Supports Trust Program (Washington DSHS)
- Draft and proposed regulations (Washington ESD)
- Employment Security Department
- Health Care Authority

Mercer Law & Policy resources

- Washington state to establish employee-funded long-term care (Oct. 29, 2020)

Other Mercer resources

- Mercer voluntary benefits

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