



Washington changes long-term care law

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Two recent laws make changes to Washington's long-term care (LTC) insurance mandate. The first law ([2022 Ch. 1](#), HB 1732) delays the original start date for employee contributions from Jan. 1, 2022, until July 1, 2023. The measure also delays the benefit start date by 18 months to July 1, 2026, shortens the vesting time frame and provides a reduced benefit for residents born before 1968. A second law ([2022 Ch. 2](#), HB 1733) offers additional premium contribution exemptions.

Overview of LTC insurance mandate

Washington's 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. Employer contributions are not required.

A 2021 amendment ([Ch. 113](#), HB 1323) to the 2019 LTSS law (WA Rev. Code [Ch. 50B.04](#)) allows employees to opt out of the program only if they purchased private LTC coverage by Nov. 1, 2021. However, 2022 changes to the law permit four categories of employees to seek an exemption from making premium contributions (see the [Recent changes](#) section for details on this and other 2022 amendments to the law).

Benefits will become available to eligible individuals beginning July 1, 2026. State regulators are developing [draft and proposed regulations](#), which should provide additional guidance.

Covered employees

Washington's LTC mandate applies to any worker covered by the state's paid family and medical leave (PFML) [law](#). The program will apply to any W-2 employee who works in the state if one of the following applies:

- The employee's service is localized in Washington.
- The employee's service isn't localized in any state, but some service is performed in Washington and the employee's base of operations is there.
- The employee does not have one location that serves as base of operations, service area, or place from which service is directed or controlled, but the employee's 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 between July 1, 2023, and Jan. 1, 2026 (or within three years of becoming self-employed for the first time).

Exemptions

An employee qualifies for an exemption if the employee purchased a private LTC policy before Nov. 1, 2021. Under [currently proposed regulations](#), the ESD is accepting applications for LTSS exemptions from Oct. 1, 2021, through Dec. 31, 2022, from employees who are age 18 or older on the application date and have met the Nov. 1, 2021, deadline to purchase a private policy. Approved exemptions will take effect on the first day of the quarter immediately after the approval and will remain in effect indefinitely.

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

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 the state's LTC laws) probably will qualify for exemption, but the state will have to provide official guidance.

As discussed in the [Recent changes](#) section, 2022 amendments to the law provide additional exemptions.

Reports and contributions

Beginning July 1, 2023, 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. The premium contribution rate will be adjusted every other year beginning in 2024 but will not exceed the 0.58% rate currently in place.

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. [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 the 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.

Eligibility and benefits

Starting July 1, 2026, 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. A shorter vesting time frame is available to individuals born before Jan. 1, 1968; see the [Recent changes](#) section for details.

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.

Benefit-eligible individuals must be Washington residents at the time of the claim. This creates a planning risk for employees who may retire to another state. The residency requirement 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. As explained in the [Recent changes](#)

section, out-of-state residents who work in Washington may apply for an exemption starting in 2023. Clarifying regulations or additional legislation may further address these issues.

Recent changes

Delays and shorter vesting time frame/reduced benefits

As stated earlier, a 2022 law ([Ch. 1](#), HB 1732) delays implementation of the state's LTC premium collections by 18 months, from Jan. 1, 2022, to July 1, 2023. Because the law was enacted Jan. 27, some employers may have already started the premium collection process on the original Jan. 1 effective date. If so, those employers must issue refunds within 120 days after collecting the premiums.

Example. XYZ Co. withheld post-tax premium contributions from the biweekly payroll on Jan. 7 and Jan. 21, 2022. XYZ must refund these amounts to employees on a pretax basis (the amounts have already been taxed) by May 7 and May 21, 2022, respectively

The same law also delays the start date for making LTC benefits available by 18 months, from Jan. 1, 2025, to July 1, 2026.

Individuals born before Jan. 1, 1968, may qualify for reduced benefits if they have paid the required premiums for at least one year. The benefit amount equals 1/10 of the maximum benefit units available for each year of LTC contributions that the individual makes.

Voluntary premium exceptions

Another 2022 law ([Ch. 2](#), HB 1733) establishes several voluntary exemptions. Starting in 2023, ESD will process exemption applications for four categories of individuals:

- Employees whose primary residence is outside Washington, even though they work for a Washington-based employer
- US active military spouses and domestic partners
- Temporary worker nonimmigrant visa holders
- Certain disability-rated US military veterans

ESD will adopt criteria, procedures and rules for verifying information. For the first three categories above, an employee can lose the exemption under certain circumstances. In each situation, an affected individual must notify his or her employer within 90 days of the disqualifying event or face liability for unpaid premiums (and interest at 12% per year).

Employer next steps

Employers with Washington employees will want to monitor developments and discuss implications with LTC vendors. More complicated work/residence scenarios (for example, teleworkers or employees who reside and work in different states) should be discussed with legal counsel. Employers should communicate the recent program changes to Washington employees. Finally, employers should refund any LTC contributions deducted from paychecks at the start of 2022.

Related resources

Non-Mercer resources

- [2022 Ch. 1](#), HB 1732 (Washington State Legislature, Jan. 27, 2022)
- [2022 Ch. 2](#), HB 1733 (Washington State Legislature, Jan. 27, 2022)
- [WA Rev. Code Ch. 50B](#), LTSS Program (Washington State Legislature)
- [2021 Ch. 113](#), HB 1323 (Washington State Legislature, April 21, 2021)
- [LTSS Trust Program](#) (Washington DSHS)
- [Draft and proposed LTSS regulations](#) (Washington ESD)
- [Employment Security Department](#)
- [Health Care Authority](#)

Mercer Law & Policy resources

- [Washington adds tight exemption timeline to long-term care law](#) (May 3, 2021)
- [Washington state to establish employee-funded long-term care](#) (Oct. 29, 2020)

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