



## The Long-Term Care Trust Act FAQs

*Proposed New York State Long-Term Care (LTC) Payroll Tax Legislation*

**Please note:** *This legislation is still pending in New York State as well as in other states across the U.S. The answers are based on information available to-date (January 2023) and references how this legislation is managed in Washington State, where it is has already been implemented.*

**Q: What is the proposed New York State Long-Term Care (LTC) Payroll Tax?**

A: The proposed LTC Trust Act would require employees to pay a percentage of their income to fund a State-Run Long-Term Care plan. This will not only impact your employees – it will also require administration by employers to withhold these taxes.

**Q: What is the purpose of a state funded long-term care plan?**

A: To help address the challenges of long-term care, including an aging population, current options for long-term care insurance, and new legislation.

**Q: When will this happen?**

A: The effective date of the pending payroll tax is yet-to-be determined. This proposed legislation has not passed yet. We will continue to provide you updates as we receive them.

**Q: Has actual legislation been introduced in New York State or is it just speculation that legislation will be introduced?**

A: The *Long-Term Care Trust Act* was introduced in May 2022 but has not yet been approved.

**Q: Is the tax on the state-funded LTC plan based on gross wages or taxable wages?**

A: Based on the information available, it will be based on gross wages.

**Q: What happens to the LTC plan when an employee leaves the organization?**

A: Private long-term care plans are portable at the same rate and no additional Evidence of Insurability (EOI) is required.

**Q: If an employee does not want the voluntary LTC coverage (private plan) offered by the employer, does the employer have to offer the state-funded plan?**

A: It is anticipated that an employee without an individual policy (private plan) will be taxed and therefore placed in the state-funded plan. This would mirror what happened in Washington State.



**Q: If an employer has satellite offices in multiple states, what would you recommend doing to track updates on this as changes are made by the individual states?**

A: Lawley will provide its clients with updates as information is shared by New York State. You can also reach out to your Lawley team with questions. Most states also have information online regarding the status of the proposed legislation.

**Q: Can the premiums for the private LTC plan be employer-paid?**

A: The premium can be fully or partially funded by the employer.

**Q: Can an employee have both a private LTC plan through their employer and the state-funded plan and utilize both when LTC is needed?**

A: New York State has not yet provided guidance on this. In Washington State, employees were able to have the private plan, the state-funded plan, or both. New York State does have guidelines on maximum amounts of coverage one can have for LTC. We expect the legislation to acknowledge what the maximum benefit will be moving forward when this legislation passes.

**Q: Will new hires need to provide proof of coverage in an LTC plan in order to opt-out of the state-funded plan?**

A: New York State has not yet provided guidance on this. In Washington State, new hires that had a private LTC plan (allowing them to opt out of the state plan) received documentation from the state exempting them from the tax which they can provide to their employer.

**Q: What happens if not all of the employees enroll in the private LTC plan?**

A: There is no requirement for all of the employees to take the private plan. Employees who do not enroll in the private plan will be subject to the state funded plan tax when the legislation passes.

**Q: Do the state-funded plans apply to part-time employees?**

A: Clarification on this has not yet been provided by New York State. In Washington State, it was required for all employees to enroll in the state-funded LTC plan except those with a private LTC plan. The private LTC plan allowed employees to opt out of the state-funded plan and therefore avoid the payroll tax.

**Q: Is there an age or salary amount that would be a tipping point between choosing the state-funded LTC plan and the private LTC plan?**

A: This will be unique to each employee based on age, income, and premium of private LTC plan options. The tax rate for the New York State is unknown at this time. We will have representatives available for one-on-one conversations with employees to evaluate their options.

**Q: Is the opt-out provision only available if you are enrolled in a private LTC plan on January 1 in the year the legislation is passed?**

A: This is something that was submitted in the original legislation but has not yet passed. It is one of the main hurdles the carriers are working on with the New York State Insurance Committee. Carriers are hopeful that a period will be created to give employees an opportunity to secure private LTC coverage that qualifies for the opt-out as they did in Washington State.

**Q: If LTC is funded by the payroll tax deduction, are they pre-tax deductions?**

A: New York State has not yet released guidelines on this. Post-tax is likely based on the proposed legislation and what passed in Washington State.

**Q: If I enroll my 23-year old child on my private LTC plan, will they be able to opt out of the payroll tax?**

A: This is yet to-be-determined by New York State. In Washington State, children added to a plan were allowed to opt-out if they had qualifying coverage. They would have to be at least 18 years old, as this is the when the tax age threshold is anticipated to begin.

**Q: Are employees over the age of 65 eligible for the private LTC plan?**

A: There are carriers that will issue coverage up to the age of 75. There is no age limit to how late in life someone can keep the private plan.

**Q: Is the private LTC plan portable after employment?**

The benefit is portable at the same rate and no additional Evidence of Insurance (EOI) is required.

**Q: What happens if you pay the LTC tax and then retire – do you lose coverage?**

A: This is still to-be-determined on how this will be addressed by New York State. There may be a vesting schedule as was implemented in Washington State.

**Q: What are the rates for private LTC plans?**

A: The rates are group-specific based on different factors, including company size, demographics, and the benefit level.

**Q: How can I prepare for this proposed LTC payroll tax legislation?**

A: Contact your Lawley team to discuss your specific situation and they will provide guidance, information, and next steps to help ensure you and your employees are best prepared when this legislation passes.