

Changes to Minimum Wage Act Exemptions for Executive, Administrative, Professional, Computer Professional & Outside Sales Employees





Purpose

The information in this presentation is to help you understand the recent changes to Minimum Wage Act exemptions for executive, administrative, and professional (EAP) workers, as well as outside salespeople and computer professionals across all industries in Washington. The information in this presentation will also highlight useful tools that L&I has created.



Presentation overview

- Minimum Wage Act protections
- Overtime rules updates overview
- What is happening and why?
- Public speaks out – We listened
- Criteria for EAP exemptions
- Changes to the state rules
- Changes to the job duties tests
- Key terms



Presentation overview

- Changes to the salary thresholds
- Phase-in schedule
 - Employer-size calculations
 - Who is considered an employee
- Potential compliance options
- Differences between state and federal rules
- How it will work now
- How it will change in 2021
- Overtime rules resources
- Q&A



Minimum Wage Act overview

- Minimum Wage Act protections (Chapter 49.46 RCW)
 - Minimum wage
 - Overtime (time and a half) for hours worked over 40 per week
 - Tips and service charges
 - Paid sick leave
 - Protection from retaliation/discrimination
- Applies to most employees, except those who are specifically exempt from the law.



Overtime rules updates overview

L&I updated rules that determine which workers in Washington can be exempt from overtime and other Minimum Wage Act protections.

These changes affect executive, administrative, and professional (EAP) workers, as well as computer professionals and outside sales employees across all industries.

The updated rules mean tens of thousands of Washington workers will be properly paid for the hours they work, and others will regain the right to overtime and other protections.



What is happening and why?

The rules governing these exemptions have not had a major update since 1976. At that time, the state minimum salary threshold to qualify as an exempt worker was set at \$250 a week, about \$13,000 a year. That threshold is no longer high enough to help identify bona fide exempt workers, given changes in the workforce over the last four decades.

The minimum salary threshold is now a multiplier of the state minimum wage. This means the threshold will adjust automatically as the state minimum wage changes. This will prevent the salary threshold from becoming outdated again.



Public speaks out – We listened

During the rulemaking process we listened to employers and employees across the state:

- L&I received almost 2,500 public comments including at 7 public hearings and during the public comment period.
- Staffers heard 9 hours of testimony and traveled 1,035 miles to attend the hearings.

L&I used this valuable feedback while developing the final rules.



Criteria for executive, administrative, and professional (EAP) exemptions

State and federal regulations generally use this three-part test to determine if an employee is exempt:

- **Salary basis test:** The employee must be paid a predetermined, fixed salary.
- **Salary level test:** The employee's salary must be more than a minimum specified amount, to qualify for the exemption.
- **Duties test:** The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations.



Changes to the state rules

- Updated duties tests
 - Combines previous two job duties tests into one for each exemption.
 - Closely aligns state tests language with federal standards to make it easier to correctly classify workers.

- Updated salary threshold requirements
 - The state salary threshold is increasing to 2.5 times the state minimum wage after an 8-year phase-in.



Job duties test changes

- The updated rules combine the previous two job duty tests into one for each exemption. There are separate tests for executive, administrative, professional, computer professional, and outside sales employees.
- An employee's actual job duties, not job title or job description, determine if the employee meets the exemption requirements.
- The language of the state tests are now more closely aligned with federal standards. These changes are intended to make it easier to properly classify workers.



Where to find the job duties tests

- WAC 296-128-510(1) – Executive
 - Also includes WAC 296-128-510(2): Business owners
- WAC 296-128-520(1) – Administrative
 - Also includes WAC 296-128-520(2): Academic administrators
- WAC 296-128-530(1) – Professional
 - Also includes WAC 296-128-530(2): Teachers
 - Also includes WAC 296-128-530(3): Law or medicine
- WAC 296-128-535(1) – Computer professionals
- WAC 296-128-540(1) – Outside salespersons

www.Leg.wa.gov -search “WAC 296-128-xxx”



Key terms

Primary duty: The main, major, or most important duty an employee performs. An employee's primary duty might be the biggest or most consequential responsibility, or it could be the duty the employee spends the most time on.



Key terms

Customarily and regularly: Work that is performed repeatedly, for instance work regularly done each workweek, as opposed to occasional or one-time tasks.



Key terms

Discretion and independent judgment: Comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered. It implies that the employee has the authority to make an independent choice, free from immediate direction or supervision.



Executive exemption

There are two paths to meet the executive exemption:

- Executive
 - WAC 296-128-510(1)
 - Administrative Policy ES.A.9.3
- Business owner
 - WAC 296-128-510(2)
 - Administrative Policy ES.A.9.3 (#3)



WAC 296-128-510(1) – Executive

Generally speaking, in order for an employee to meet the executive exemption, the employee:

- Has the primary duty of managing the business, or a distinct department or subdivision of the business.
- Customarily and regularly directs the work of two or more other employees.
 - This could mean supervising two full-time employees or some combination that equals two.
- Has the authority to hire or fire other employees, or can recommend hiring, firing, or promoting other employees.
- Is paid on a salary basis, and the amount of that salary is equal to or greater than the required salary threshold.



WAC 296-128-510(2) – Business owner

An employee can also meet the executive exemption if the employee:

- Owns at least 20% equity interest in the business.
- Is actively involved in managing the business.

Owners can meet the executive exemption without meeting any salary basis or salary threshold requirements.



Administrative exemption

There are two paths to meet the administrative exemption:

- Administrative
 - WAC 296-128-520(1)
 - Administrative Policy ES.A.9.4
- Academic administrator
 - WAC 296-128-520(2)
 - Administrative Policy ES.A.9.4 (#3)



WAC 296-128-520(1) – Administrative

Generally speaking, in order for an employee to meet the administrative exemption, the employee:

- Has the primary duty of non-manual work that is related to managing or operating the business or their employer’s customers.
 - This might include helping run the business by setting policies, assisting a high-level executive, acting as an expert advisor to management, or performing special assignments.
- Has discretion and independent judgement (such as decision-making authority) about important matters while performing that primary duty.
- Is paid on a salary or fee basis, and the amount of that salary is equal to or greater than the required salary threshold.



WAC 296-128-520(2) – Academic administrators

An employee can also meet the administrative exemption if, the employee:

- Has the primary duty of performing administrative work related to academic instruction or training in an educational establishment.
 - Typical examples may include superintendents, principals, or other heads of school systems.
- Is paid on a salary or fee basis, and the amount of that salary is equal to or greater than the required salary threshold; or, on a salary basis that is at least equal to the entrance salary for teachers in that educational establishment.



Professional exemption

There are five paths to meet the professional exemption:

- Learned professional
 - WAC 296-128-530(1)(a)(i)
 - Administrative Policy ES.A.9.5 (#1 and #5)
- Creative professional
 - WAC 296-128-530(1)(a)(ii)
 - Administrative Policy ES.A.9.5 (#1 and #6)
- Teaching professional
 - WAC 296-128-530(2)
 - Administrative Policy ES.A.9.5 (#7)



Professional exemption

There are five paths to meet the professional exemption:

- Legal professional
 - WAC 296-128-530(3)
 - Administrative Policy ES.A.9.5 (#8)
- Medicine professional
 - WAC 296-128-530(3)
 - Administrative Policy ES.A.9.5 (#8)



WAC 296-128-530(1) – Learned Professional

Generally speaking, in order for an employee to meet the learned professional exemption, the employee:

- Has a primary duty requiring advanced knowledge that they would get from lengthy specialized instruction in a field of science or learning.
 - Such as a graduate degree, or a specialized certification like a Certified Public Accountant.
- Is paid on a salary or fee basis, and the amount of that salary or fee is equal to or greater than the required salary threshold.



WAC 296-128-530(1) – Creative Professional

Generally speaking, in order for an employee to meet the creative professional exemption, the employee:

- Has a primary duty of doing work in a creative or artistic field that requires invention, imagination, originality or talent.
- Is paid on a salary or fee basis, and the amount of that salary or fee is equal to or greater than the required salary threshold.



WAC 296-128-530(2) – Teachers

Generally speaking, in order for an employee to meet the teaching professional exemption, the employee:

- Must work as a teacher in an educational establishment;
- Must be paid on a salary or fee basis
 - There is no minimum salary threshold for teachers



WAC 296-128-530(3) – Doctors/Lawyers

Generally speaking, in order for an employee to meet the legal or medical professional exemption, the employee:

- Must be a practicing lawyer, doctor, or medical resident.

These law and medicine employees can meet the professional exemption without meeting the salary basis or salary threshold requirements.



WAC 296-128-535 – Computer professionals

Generally speaking, in order for an employee to meet the computer professional exemption, the employee must work as a:

- Computer system analyst
- Computer programmer
- Software engineer
- A similarly skilled worker in the computer field



Computer professionals

Have a primary duty of one of the following:

- Applying systems analysis procedures (including consulting with users) to determine hardware, software, or system functional specifications
- The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications
- The design, documentation, testing, creation or modification of computer programs related to machine operation systems
- A combination of these duties



Computer workers who are not exempt

An employee whose primary duty consists of any of the following activities is not exempt:

- Manufacture, repair, or maintenance of computer hardware and related equipment; or
- Work relying on the use of computers and computer software programs (such as engineers, drafters, and other employees skilled in computer-aided design software), but who are not usually doing computer systems analysis and programming.



Compensation requirements for computer professionals

- Hourly employees must be compensated at a rate of at least 3.5 times the state minimum wage (phased-in over three years)

Employer size	July 1, 2020	January 1, 2021	January 1, 2022
1 - 50 Employees	No Change (Stays at \$27.63/hour)	2.75x (\$37.65/hour*)	3.5x (TBD)
51+ Employees	2.75x (\$37.13/hour)	3.5x (\$47.92/hour*)	3.5x (TBD)

*The state minimum wage for 2021 is \$13.69 per hour.

- Salaried employees must be compensated at rate of at least 2.5 times the state minimum wage (phased-in over eight years*).
*See salary threshold implementation schedule



WAC 296-128-540 – Outside salesperson

Generally speaking, in order for an employee to meet the outside salesperson exemption, the employee:

- Has a primary duty of either:
 - Making sales (including sales, exchanges, contract sales, consignment sales, shipment sales, or other similar sales)
 - Taking orders or making contracts for services or facilities that the client or customer will pay for
- Customarily and regularly (typically) does work away from the employer's place of business.



Outside salesperson

- Is paid on a guaranteed salary, commission or fee basis. Note: The minimum salary threshold does not need to be met for outside salespeople.
- Is told that the employee is an “outside salesperson.”



WAC 296-128-545 – Salary threshold

- The salary threshold is now a multiplier of the state minimum wage as of July 1, 2020.
- The salary threshold will be phased in over 8 years, with the schedule dependent on employer size. Small employers (1-50 workers) have a slower phase-in.
- The final multiplier will be 2.5 times the state minimum wage. After that, the multiplier will remain constant but the threshold will adjust based on changes to the state minimum wage.



Exclusive of board, lodging, or other facilities

- Salary threshold must be exclusive of board, lodging, and other facilities.
 - This means that if an employer pays for an employee's food, lodging, or other accommodations, the value of those benefits does not count towards the minimum salary threshold requirements.
- Bonuses, commissions, and benefits are also not salaries and therefore do not count towards the state salary threshold.



Salary threshold phase-in schedule

Salary threshold implementation schedule

Salary thresholds for overtime exempt workers are a multiplier of state minimum wage for a 40-hour workweek



2021 Salary thresholds

- Small businesses: \$821.40/week (\$42,712.80/year)
- Large businesses: \$958.30/week (\$49,831.60/year)

When the rule takes effect		July 1, 2020	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026	Jan. 1, 2027	Jan. 1, 2028
For employers with 1-50 employees	Multiply minimum wage by ...	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$821.40 (\$42,712)	\$975* (\$50,700)	\$987* (\$51,324)	\$1,137* (\$59,124)	\$1,152* (\$59,904)	\$1,308* (\$68,016)	\$1,334* (\$69,368)	\$1,512* (\$78,624)
For employers with 51 or more employees	Multiply minimum wage by ...	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$958.30 (\$49,831)	\$975* (\$50,700)	\$1,128* (\$58,656)	\$1,137* (\$59,124)	\$1,296* (\$67,392)	\$1,308* (\$68,016)	\$1,482* (\$77,064)	\$1,512* (\$78,624)

Note 1: Salary thresholds after 2021 are projections be based on the Consumer Price Index for all Urban Consumers (CPI-U).

Note 2: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers.



Employer size calculations

Two options:

- The number of Washington-based workers at the time of the effective date of each step of the implementation schedule.
 - Each employee counts, whether full time or part time

- The employer size determination provided by Washington Employment Security Department (ESD) for Paid Family and Medical Leave purposes.
 - ESD provides this determination each fall
 - The ESD determination can be used for the next calendar year.



Who is considered an employee?

Any Washington-based employee is considered and counted as an employee, including part-time workers, minors, new hires, and seasonal or intermittent workers. Bona fide exempt executive, administrative, professional, computer professional, and outside sales employees, and other employees exempt from the Minimum Wage Act, do not count towards an employer's size calculation.

- See ES.A.13 for guidance on Washington-based employees.
- See ES.A.9.9 for guidance on franchisees, joint-employment and multi-employer scenarios.



Potential employer compliance options

Convert current exempt salaried employees to non-exempt salaried employees and pay overtime

- Track hours of work for non-exempt salaried employees
- Pay overtime for hours worked over 40 per week
- Provide other protections associated with the Minimum Wage Act



Potential employer compliance options

Limit hours worked by employees to 40 per workweek

- Convert current salaried exempt employees to salaried non-exempt or hourly non-exempt
- Track hours of work and limit hours of work to 40 per week, or less
- Provide other protections associated with the Minimum Wage Act



Potential employer compliance options

Convert current salaried exempt employees to hourly non-exempt employees

- Pay formerly salaried employees on an hourly basis
- Pay overtime (time and a half the employee's regular rate of pay) for hours worked over 40 per week
- Provide other protections associated with the Minimum Wage Act



Potential employer compliance options

Maintain exempt status

- Meet salary threshold requirements in WAC 296-128-545 for salaried exempt workers
- Ensure employees meet the duties test requirements, so employees would appropriately remain exempt from overtime and other MWA provisions



Differences between state and federal overtime regulations

- Different salary threshold requirements.
 - The federal salary threshold is \$684/week (\$35,568 annualized).
 - The state salary threshold is 1.25 times the state minimum wage in 2020, and increases to 2.5 times the state minimum wage after an 8-year phase in.
- Federal regulations include a separate exemption for highly compensated employees (who make at least \$107,432/year). State rules do not include this exemption.
- A few differences in the teaching and outside salesperson tests.



Differences between state and federal overtime regulations

Differences in what payments can count toward the salary thresholds.

- Federal regulations now allow employers to use nondiscretionary bonuses and incentive payments (including commissions) paid at least annually to satisfy up to 10% of the federal salary threshold.
- Nondiscretionary bonuses and incentive payments cannot be used to satisfy the state salary threshold.



How it will work now

For 2020, Washington employers will need to meet the federal salary threshold:

- On July 1, 2020, the new state threshold for all employers is \$675 a week (\$35,100 a year). L&I is required to enforce this state threshold.
- On Jan. 1, 2020, the U.S. Department of Labor raised its minimum salary threshold to \$684 a week (\$35,568 a year).

Employers need to follow the standard more favorable to employees when state and federal regulations differ.



How it will change in 2021

Starting in 2021, employers need to follow the state salary threshold:

- Beginning Jan. 1, 2021, exempt employees of small employers will have to earn at least 1.5 times the state minimum wage (an estimated \$827 a week/\$43,004 a year) to be exempt.
- Exempt employees of large employers will have to earn at least 1.75 times the state minimum wage (an estimated \$965 a week/\$50,180 a year) to be exempt.

Employers need to follow the standard more favorable to employees when state and federal regulations differ.



Overtime rules resources and tools

- L&I website: www.lni.wa.gov/OvertimeRulemaking
 - Overview fact sheets
 - Exemption-specific fact sheets
 - New salary threshold implementation schedule
 - Changes to overtime rules Q&A
 - Administrative policies
 - eLearning Module





Questions?

EAPrules@lni.wa.gov

Bob Joy

360-902-5462

joyr235@lni.wa.gov

Sylvia Cardenas

509-405-1449

duru235@lni.wa.gov

Tiffany Richard

360-902-4759

riti235@lni.wa.gov