



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

**TITLE: MINIMUM WAGE ACT –
 WASHINGTON-BASED EMPLOYEE**

NUMBER: ES.A.13

**CHAPTER: [RCW 49.46](#)
 [WAC 296-128](#)**

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This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

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1. When does this policy apply?

This policy is intended to assist in determining whether an employee is “Washington-based” for purposes of the protections of the [Washington Minimum Wage Act \(MWA\), RCW 49.46](#). The MWA regulates employers who are doing business in Washington and who have hired Washington-based employees. An “employee” under the MWA is defined as any individual employed by an employer *except* those employees specifically excluded by the Legislature in [RCW 49.46.010\(3\)\(a\) through \(p\)](#). Please see Administrative Policy [ES.A.1](#) for more information on the definition of “employee” for purposes of the protections of the MWA.

If a worker meets the definition of “employee” under the MWA, and is “Washington-based,” then the employer must pay the employee at a rate at least equal to the minimum hourly wage established at [RCW 49.46.020](#), provide the employee with paid sick leave as required by [RCW 49.46.210](#) and [WAC 296-128](#), and pay to the employee all tips, gratuities, and service charges due to them under [RCW 49.46.020](#) and [RCW 49.46.160](#). Additionally, most Washington-based employees must be paid overtime at a rate of at least one and one-half times their regular rate of pay for all hours worked in excess of 40 in a seven-day workweek. Please note that there are additional exceptions to overtime, and some employees may be entitled to the state minimum wage and paid sick leave even if overtime pay is not required. Please see [RCW 49.46.130](#) and administrative policy [ES.A.8.1](#), for more information on exceptions from overtime.

2. Who is a “Washington-based” employee?

State statutes and regulations do not define “Washington-based.” The Washington-based employee standard was recognized in the 2007 Washington Supreme Court decision *Bostain v. Food Express, Inc.*, in which the Court held that the “MWA regulates only employers who are doing business in Washington and who have hired *Washington-based employees*” (emphasis added). 159 Wn.2d 700, 719, 153 P.3d 846 (2007). In *Bostain*, the employee was an interstate truck driver who was based out of a Washington terminal, and also lived in Washington. Neither party disputed that the employee was a Washington-based employee, and so the Court did not conduct further analysis on this point. However, the Court recognized that whether an individual is a “Washington-based employee will depend on factors that the courts routinely use for deciding *choice of law* questions.” *Bostain*, 159 Wn.2d at 713, n.5 (emphasis added).

3. What factors determine whether an employee is Washington-based?

To determine whether an employee is Washington-based, and therefore subject to the MWA, Washington follows the choice of law analysis mentioned in *Bostain* and described in *Burnside v. Simpson Paper Company*, 123 Wn.2d 93, 864 P.2d 937 (1994). This requires a two-step process to determine what state has the most significant relationship to an employee. A conflict of law analysis is fact-specific and must be analyzed on an employee-by-employee basis.

The first step is to determine whether there is a conflict between Washington’s MWA and another state’s law. For example, if an employee is potentially subject to the overtime laws of more than one state, but both states have the same overtime requirements, there is no conflict. If an employee has significant ties to Washington, the department can enforce the MWA’s overtime requirements with respect to hours worked by that employee.

If the laws of the two states differ, for example, when an employee works both in a state that has no mandatory paid sick leave and in a state (such as Washington) that has such a requirement, then the department must determine which state has the most significant relationship to the employee by evaluating the connections that each state has to the employee. It is important to evaluate the number and the significance of each connection to Washington State when performing a choice of law analysis. The department will consider, among other factors, the following questions:

- Where was the employment agreement made?
- Does the employee live in Washington?
- Does the employer have its base of operations in Washington?
- Does the employee have his or her base of operations in Washington?
- Does the employer maintain a work site in Washington?
- If the employee leaves Washington as part of the employee’s work, where does the trip begin and end?
- Does the employee receive work assignments from a location in Washington?
- Is the employee’s work supervised by individuals operating from the employer’s location in Washington?
- How much of the work is performed in Washington?
- How long is the contract to do work in Washington?

These factors parallel the test for when “employment” includes “an individual’s entire service performed within or without or both within and without this state” under the Family and Medical

Leave Program. See RCW 50A.04.010(7)(a). While the department will consider all the above factors in evaluating whether an individual is a Washington-based employee, and may consider additional factors that show a connection between the worker and Washington State, some of the factors may be more relevant than others. For example, the department will give careful consideration to where the work is performed.

4. What are some examples of employees that the department considers Washington-based?

Using a conflict of law analysis and considering the factors described above, the department would conclude that the following individuals are Washington-based employees for the purposes of applying the MWA provisions. The examples are intended for guidance purposes only.

Example 1

Vera, a resident of Moscow, Idaho, was hired by a cleaning service headquartered in Pullman, Washington. Every week-day, Vera is required to report to the Pullman headquarters of her employer to pick up supplies. Vera typically spends all of her day in Washington, but she occasionally has a work assignment in Idaho. Vera is allowed to end her work-day in Idaho without reporting back to Pullman if her last appointment is in Idaho.

Washington-based Factors	Idaho-based Factors
Employer's base of operations	Employee's residence
Employee required to report to WA to pick up supplies	Occasional work performed in Idaho
Majority of work only performed in WA	

Vera is a Washington-based employee covered by the Washington MWA.

Example 2

Jackson has worked as a technical writer for a small Vancouver, Washington, engineering firm since 1999. Jackson is paid by the hour, and primarily creates documents to communicate complex technical information more easily to his firm's clients. In 2018, Jackson's spouse received a job offer from a software developer in Salt Lake City. Jackson moved to Salt Lake City with his spouse, and continues to work for his employer's firm remotely through teleconferencing and Internet-based technologies. Jackson's supervisor works in Vancouver and sends Jackson his assignments and also reviews his work. Jackson is required to travel to the Vancouver office twice a year for training on new technologies and office policies.

Washington-based Factors	Utah-based Factors
Employer's base of operations	Employee's new residence
Employment agreement made in WA	All work conducted in UT
Work assignments given from WA	
No employer worksites in UT	

Jackson is a Washington-based employee covered by the Washington MWA.

Example 3

Gabriela, a Reno, Nevada, resident, applied for a job with a Washington consulting firm headquartered in Spokane, and was offered the job in-person in Spokane. Gabriela is paid by the hour to do graphics design work remotely for her employer, which is subsequently used by the employer in their marketing. Gabriela is not required to physically report to the consulting firm's Spokane headquarters, and her work can be done anywhere with Internet access. Gabriela receives instruction and work assignments from the Spokane office only.

Washington-based Factors	Nevada-based Factors
Employer's base of operations	Employee's residence
Employment agreement made in WA	All her daily work performed in NV
Work assignments given from WA	
No employer worksites in NV	

Gabriela is a Washington-based employee covered by the Washington MWA.

Example 4

Kelly, a resident of St. Helens, Oregon, works as a drywall installer for a company headquartered and based in Portland, Oregon. Kelly's employer bids for construction contracts in the Portland metropolitan area (which includes Clark and Cowlitz Counties in Washington). Kelly only works on one contract at a time, and these contracts can last anywhere from 3 to 12 months, depending on the complexity and size of the construction project. When Kelly is assigned to a project, he reports directly to the construction site each morning. There is no expectation that Kelly report to the Portland office of his employer, aside from staff meetings every three months. When assigned to a contract in Clark or Cowlitz County, the work must be solely performed in Washington as the buildings are to be built at specific locations in such counties.

Washington-based Factors	Oregon-based Factors
Work can only be done in WA under the contract	Employee's residence
Employee reports and ends day in WA	Employer's headquarters
All work on contract done in Washington	Employment relationship began in OR

When Kelly is working on projects in Clark or Cowlitz Counties under such circumstances, Kelly is a Washington-based employee.

5. What are some examples of employees the department does not consider to be Washington-based?

Using a conflict of law analysis and considering the factors described above, the department would conclude that the following individuals are not Washington-based employees. The examples are intended for guidance purposes only.

Example 1

Vanessa has a home office in Coeur d'Alene, Idaho, and works as a sales representative for a diesel manufacturer based in Everett, Washington. Vanessa's employer has no facilities in Idaho and only operates the manufacturing plant in Everett. Vanessa's employer has sales representatives located in every western state, and Vanessa is her employer's Idaho sales

representative. Vanessa is required to travel to businesses within the boundaries of Idaho to promote her employer's products, and the only time she is required to travel to Washington is to attend a once-a-year training class held in Everett. The vast majority of Vanessa's job can only be performed in Idaho.

Washington-based Factors	Idaho-based Factors
Employer's base of operations	Employee's residence
	Vast majority of work performed in ID
	No sales promotion work performed in WA

Vanessa is not a Washington-based employee.

Example 2

Jamie, a resident of Sheboygan, Wisconsin, works in Sheboygan for a company that is headquartered in Seattle. Jamie applied for and received a job with the Seattle company while a representative for the employer was touring the Sheboygan facility of the employer. Although 500 employees work in Seattle for the company, only 15 workers are employed at the Sheboygan facility. Jamie travels from home to work in Sheboygan every week-day, and except for a few conferences out of state each year, nearly all his work is performed at the Sheboygan facility.

Washington-based Factors	Wisconsin-based Factors
Employer's base of operations	Employee's residence
	Employment agreement entered into in WI
	Work is not performed in WA

Jamie is not a Washington-based employee.

Example 3

Brent is a service technician who installs and services telephone equipment for a telephone service company. He is a resident of Oregon who interviewed at the company's headquarters in Vancouver, Washington. More than 70% of his work is in Oregon with the remainder in Clark County, Washington. The company has a service location in suburbs of Portland, which Brent visits to pick up supplies and to turn in timekeeping and other employment paperwork, but he is usually dispatched from his house in Portland. He receives his assignments from customer service representatives who work at the company's main office in Vancouver. Other than securing the job in Washington, and receiving dispatch calls from Washington, the vast majority of Brent's work is performed in Oregon.

Washington-based Factors	Oregon-based Factors
Employer's base of operations in WA	Employee's residence
Less than 30% of work conducted in WA	More than 70% of work performed in OR
Work assignments given from WA	Employee starts and ends work at his home
Employment agreement made in WA	Employer has a service location in OR

Brent is not a Washington-based employee.

Example 4

Vergel, a resident of Walla Walla, Washington, was hired by a wine-bottling company headquartered in Milton-Freewater, Oregon. Every week-day morning, Vergel reports to the Milton-Freewater headquarters of his employer to receive work assignments to various vineyards in Oregon and Washington. Vergel typically spends all of his day in Oregon, but occasionally performs on-site visits to vineyards in Washington. Vergel is allowed to end his work-day in Washington without reporting back to Milton-Freewater if his last appointment is in Washington.

Washington-based Factors	Oregon-based Factors
Employee's residence	Employer's headquarters
Occasional work performed in Washington	Employment agreement entered into in OR
	Employee required to report to OR
	Majority of work performed in OR

Vergel is not a Washington-based employee.