



## ADMINISTRATIVE POLICY

### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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<b>TITLE:</b>	<b>EXEMPTION FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS FOR ADMINISTRATIVE POSITIONS</b>	<b>NUMBER:</b> ES.A.9.4
		<b>ISSUED:</b> 6/24/2005
		<b>REVISED:</b> 7/15/2014
<b>CHAPTER:</b>	<a href="#">RCW.49.46.010(3)(c)</a> , <a href="#">RCW 49.46.130(2)(a)</a> , <a href="#">WAC 296-128-520</a>	<b>SEE ALSO:</b> ES.A.9.2 – 3, And ES.A.9.4 - 8 <a href="#">ES.A.8.1</a> and <a href="#">ES.A.8.2</a> , <a href="#">ES.A.9.1</a> , <a href="#">ES.A.10.1</a> , <a href="#">ES.A.10.2</a> and <a href="#">ES.A.10.3</a>

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#### **ADMINISTRATIVE (WAC 296-128-520)**

1. On August 23, 2004, the U.S. Department of Labor published revised regulations for the “white collar” overtime exemptions, including executive, administrative, professional, and outside sales positions. The State regulation on the administrative job classification has not changed. The federal changes, and existing state regulations, affect *white-collar employees only (executive, administrative, professional, outside sales)*.

Employers must comply with both state and federal overtime regulations. Where differences exist between Washington State and new federal overtime regulations, an employer must follow the regulation that is most favorable to the worker. The following chart is designed to provide an analysis of both state and federal regulations for the administrative exemption. Greater details of the state administrative exemption follow this chart. For more specific information on federal regulations, check with the U.S. Department of Labor at their toll free # 1-866-487-9243, or at their website at <http://www.dol.gov/whd/reg/compliance/fairpay/> or with a qualified consultant, to determine how changes in federal overtime requirements affect the specific circumstances.

## Administrative

Requirements under state regulations	Requirements under new federal regulations	Differences between state and federal regulations
<p>Must meet all three parts of the test in the state regulation to be exempt from overtime pay:</p> <ol style="list-style-type: none"> <li>1. Meets minimum salary or fee payment requirement of not less than \$250/wk</li> <li>2. Primary duty consists of the performance of office or non-manual work directly related to management policies or general business operations of his employer or his employer's customers;</li> <li>3. Work must require the exercise of discretion and independent judgment.</li> </ol>	<p>Must meet all parts of this three-part test in the federal regulations:</p> <ol style="list-style-type: none"> <li>1. Meets minimum salary or fee requirement of \$455/wk;</li> <li>2. Non-manual office work directly related to management or general operations of employer or employer's customers;</li> <li>3. Primary duty includes discretion and independent judgment on matters of significance.</li> </ol>	<p>Washington's minimum salary for overtime-exempt workers is \$250/wk vs. the new federal minimum of \$455/wk.</p> <p>Washington's regulation requires performance of office or non-manual work directly related to management <u>policies</u>, while the new federal rule deleted that word</p>

The new federal regulations provide that executive, administrative, or professional workers are also exempt from overtime pay if they are earning more than \$100,000 per year as long as they perform at least one duty in an executive, administrative, or professional function job. State regulations contain no similar provision. Administrative workers must meet all of the state requirements for the exemption to apply.

The new federal regulations allow an employer to impose *unpaid* disciplinary suspensions of *one or more full days* for workplace-conduct rule infractions for exempt workers. Washington State allows an *unpaid* disciplinary suspension in increments of less than one week *only* for violations of safety rules of major significance. Unpaid disciplinary suspensions for non-major safety violations cannot be in less than full-week increments.

**2. Reliance On Pre-August 23, 2004 Federal Interpretation.** Prior to August 23, 2004, state and federal "white collar" exempt regulations had many identical parts. On August 23, 2004, substantial changes were made to the federal regulations. The Department relies on the interpretations of the pre-August 23, 2004 regulations where identical.

**3. Short Test Proviso for Administrative Employees.** The administrative exemption contains a special proviso in the latter part of [WAC 296-128-520](#)(4)(b) after the word "Provided" for employees who are compensated on a salary or fee basis at a rate of at least \$250 per week exclusive of board, lodging, or other facilities. Under this proviso, the requirements for exemption will be deemed to be met by an employee who 1) receives the \$250 per week on a salary or fee basis; 2) the employee's primary duty consists of the performance of office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers; and 3) duties include work requiring the exercise of discretion and independent judgment. If an employee qualifies for exemption under this proviso, it is not necessary to test the employee's qualifications in detail under the long test.

**4. Administrative Workers Must be Compensated On a Salary Basis.** In addition to “duties” requirements, an administrative employee must be compensated on a salary basis in order to qualify for the exemption from minimum wage and overtime. The salary requirement will be met if the salary is paid weekly or if it is paid bi-weekly, semi-monthly, or monthly and translates into the appropriate weekly equivalent. See [Administrative Policy ES.A.9.1](#) for Questions and Answers About Salary Basis.

**5. How to Determine Primary Duty.** Primary duty must be based on all facts in the particular case. Generally, 50% is a good rule of thumb but is not the sole test. There may be situations where the employee does not spend over 50% of his or her time in administrative duties, but still be exempt if other pertinent factors support such a conclusion. Pertinent factors might include the relative importance of the administrative function compared with other duties performed in which the employee exercises discretionary powers, freedom from supervision, etc.

The employee must have as the primary duty office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, or, in the case of academic administrative personnel, the employee must have as the primary duty work that is directly related to academic administration or general academic operations of the school in whose operations he is employed.

**6. Job Titles Are Not Determinative.** The employees for whom exemption is sought under the term “administrative” have extremely diverse functions and a wide variety of titles. However, the title alone is of little or no assistance in determining the employee's exempt or nonexempt status. Questions of whether the employee meets the criteria of the administrative exemption must be considered on a case-by-case basis.

**7. Types of Administrative Employees.** The administrative exemption is intended to cover white-collar workers, who perform office or non-manual work. Clerical staff performing routine clerical duties as their major function, regardless of the extent of their discretion in the method by which those duties are performed, are not performing work of substantial importance to the management or operation of the business. Three types of employees qualify for exemption as administrative employees, which include executive and administrative assistants, staff employees, and those who perform special assignments.

**7.1 Executive and Administrative Assistants.** The first type is the assistant to a proprietor, to an executive, or to an administrative employee. These are persons who assist an executive in the performance of his duties without themselves having executive authority. Typical titles of persons in this group are executive assistant to the president, confidential assistant, executive secretary, assistant to the general manager, administrative assistant and, in retail or service establishments, assistant manager and assistant buyer. Generally speaking, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence, and interviews must be delegated. This exemption would not apply to a receptionist whose duties are to answer the phone, open and distribute mail to others, and to greet customers or clients and other routine duties. This exemption does not generally apply to a bookkeeper whose duties are to prepare the payroll, or to track and pay accounts receivable or record accounts payable and other routine and repetitive duties.

**7.2 Staff Employees.** Staff employees are those who can be described as staff rather than production or line employees. They include among others employees who act as advisory specialists to the management. Typical examples of such

advisory specialists are tax experts, insurance experts, sales research experts, wage-rate analysts, investment consultants, foreign exchange consultants, and statisticians. Also included are persons who are in charge of a so-called functional department, which may frequently be a one-employee department. Typical examples of such employees are credit managers, purchasing agents, buyers, safety directors, personnel directors, and labor relations' directors.

**7.3 Those That Perform Special Assignments.** Among them are to be found a number of persons whose work is performed away from the employer's place of business. Typical titles of such persons are lease buyers, field representatives of utility companies, and location managers of motion picture companies. This classification also includes employees whose special assignments are performed entirely or partly inside their employer's place of business. Examples are special organization planners, customers' brokers in stock exchange firms, account executives in advertising firms and contact or promotion men of various types.

**8. Office or Nonmanual Work and Directly Related to Management Policies or General Business Operations:** The administrative employee's primary duty must consist of the performance of office or nonmanual work directly related to the management policies or general business operations of the employer of the employer's customers. An administrative employee may perform office work that is manual. The performance by an otherwise exempt administrative employee of some manual work that is directly and closely related to the work requiring the exercise of discretion and independent judgment is not inconsistent with the principle that the exemption is limited to white-collar employees. However, if the employee performs so much manual work, other than office work, that he or she cannot be said to be basically a white-collar employee, he or she does not qualify for exemption as a bona fide administrative employee. This is true even if the manual work performed is directly and closely related to the work requiring the exercise of discretion and independent judgment. Employees who spend most of their time in using tools, instruments, machinery, or other equipment, or in performing repetitive operations with their hands, no matter how much skill is required, would not be bona fide administrative employees.

**9. Directly Related to Management Policies or General Business Operations of the Employer or Employer's Customers.** This phrase describes those types of activities relating to the administrative operations of a business as distinguished from production or, sales work in a retail or service establishment. In addition to describing the types of activities, the phrase limits the exemption to persons who perform work of substantial importance to the management or operation of the business of his employer or his employer's customers. This must be considered on a case-by-case basis to determine this applies.

Generally, examples of administrative operations include advising the management, planning, negotiating, representing the company, purchasing, promoting sales, business research. Individuals performing this work can be administrative even if he or she is an assistant to an executive rather than the executive.

"Directly related to management policies or general business operations" includes those who participate in the formulation of management policies, or in the operation of the business as a whole, and includes those whose work affects policy or whose work it is to execute and carry the policy out. It may also include advisory specialists, consultants, experts, analysts, marketers, promoters, etc.

Employees whose work is directly related to management policies or to general business operations include those whose work affects policy or whose responsibility it is to execute or carry it out. The phrase is not limited to persons who participate in the formulation of management policies or in the operation of the business as a whole. The phrase also includes a wide variety of persons who either carry out major assignments in conducting the operations of the business, or whose work affects business operations to a substantial degree, even though their assignments are tasks related to the operation of a particular segment of the business.

The fact that there are a number of other employees of the same employer carrying out assignments of the same relative importance or performing identical work does not affect the determination of whether they meet this test so long as the work of each such employee is of substantial importance to the management or operation of the business.

It is not possible to lay down specific rules that will indicate the precise point at which work becomes of substantial importance to the management or operation of a business. Generally, those employees who hold the run-of-the-mill positions are not performing work directly related to management policies or general business operations and are not exempt even though he or she may exercise some measure of discretion and judgment as to the manner in which he performs the clerical tasks. An employee operating very expensive office equipment may cause serious loss to his employer by the improper performance of his duties. An investigator for an insurance company may cause loss to the employer by the failure to perform the job properly. But such employees, obviously, are not performing work of such substantial importance to the management or operation of the business that it can be said to be directly related to management policies or general business operations.

The test of directly related to management policies or general business operations is also met by many persons employed as advisory specialists and consultants of various kinds, credit managers, safety directors, claim agents and adjusters, wage-rate analysts, tax experts, account executives of advertising agencies, customers' brokers in stock exchange firms, and many others.

Management policies or general business operations may be those of the employer or the employer's customers. For example, many bona fide administrative employees perform important functions as advisers and consultants but are employed by a concern engaged in furnishing such services for a fee. Typical instances are tax experts, labor relations consultants, financial consultants, systems analysts, or resident buyers. Such employees, if they meet the other requirements of this section qualify for exemption regardless of whether the management policies or general business operations to which their work is directly related are those of their employer's clients or customers or those of their employer.

**10. Administrative Employees Must Exercise Discretion and Independent Judgment.** In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The term implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

In the data processing field a systems analyst is exercising discretion and independent judgment when he or she develops methods to process, for example, accounting, inventory, sales, and other business information by using computers. He or she also exercises discretion and independent judgment in determining the exact nature of the data processing problem, and structures the problem in a logical manner so that a system to solve the problem and obtain the desired results can be developed. Whether a computer programmer is exercising discretion and independent judgment depends on the facts in each particular case. Every problem processed in a computer first must be carefully analyzed so that exact and logical steps for its solution can be worked out. When a computer programmer does this preliminary work he or she is exercising discretion and independent judgment. A computer programmer would also be using discretion and independent judgment when determining exactly what information must be used to prepare the necessary documents and by ascertaining the exact form in which the information is to be presented.

Examples of work not requiring the level of discretion and judgment are highly technical and mechanical operations such as the preparation of a flow chart or diagram showing the order in which the computer must perform each operation, the preparation of instructions to the console operator who runs the computer or the actual running of the computer by the programmer, and the debugging of a program. The duties of data processing employees such as tape librarians, computer operators, junior programmers and programmer trainees are so closely supervised as to preclude the use of the required discretion and independent judgment.

**10.1 Exercise of skill does not require discretion and independent judgment.** The use of skill in applying techniques, procedures or specific standards as opposed to having the freedom to make decision independently on matters of little consequences is not work that requires the exercise of discretion and independent judgment.

An employee who merely applies his knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, classes, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment. This is true even if there is some leeway in reaching a conclusion. The employee is engaged in exercising skill rather than discretion and independent judgment.

A personnel clerk may screen applicants and has skill in the application of techniques and procedures for that task. Typically such an employee will interview applicants and obtain from them data regarding their qualifications and fitness for employment. The data may be entered on a form specially prepared for the purpose. The screening operation consists of rejecting all applicants who do not meet standards for the particular job or for employment by the company. The standards are usually set by the employee's superior or other company officials, and the decision to hire from the group of applicants who do meet the standards is similarly made by other company officials. This personnel clerk does not exercise discretion and independent judgment.

**10.2 Some routine tasks may be performed by exempt employee.** Tasks that are comparatively routine in nature can involve the exercise of discretion and judgment if the person who actually makes the ultimate decisions is doing them.

An exempt personnel manager will often perform functions similar to the personnel clerk. That is, he or she will interview applicants to obtain the necessary data and eliminate applicants who are not qualified. The personnel manager will then hire one of the qualified applicants. Thus, when the personnel manager who does the hiring performs the interviewing and screening, that constitutes exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

**10.3 The decisions do not have to be final.** The phrase “discretion and independent judgment” does not necessarily imply that the decisions made by the employee must have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the assistant to the president of a large corporation may regularly reply to correspondence addressed to the president. Typically, such an assistant will submit the more important replies to the president for review before they are sent out. Upon occasion, after review, the president may alter or discard the prepared reply and direct that another be sent instead. This action by the president would not, however, destroy the exempt character of the assistant's function, and does not mean that the assistant does not exercise discretion and independent judgment in answering correspondence and in deciding which replies may be sent out without review by the president.

The policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by his superiors before it is submitted to the client. The purchasing agent may be required to consult with top management officials before making a purchase commitment for raw materials in excess of the contemplated plant needs for a stated period, for example, six months. These employees exercise discretion and independent judgment within the meaning of the regulations despite the fact that their decisions or recommendations are reviewed at a higher level.

### **11. Discretion and Independent Judgment On Decisions in Significant Matters.**

Some difficulty with this phrase concerns the level or importance of the matters with respect to which the employee may make decisions. In one sense almost every employee is required to use some discretion and independent judgment. It is frequently left to a truck driver to decide which route to follow in going from one place to another; the shipping clerk is normally permitted to decide the method of packing and the mode of shipment of small orders; and the bookkeeper may usually decide whether to post first to one ledger rather than another. Yet it is obvious that these decisions do not constitute the exercise of discretion and independent judgment of the level required in this regulation. The discretion and independent judgment exercised must be real and substantial, that is, they must be exercised with respect to matters of consequence.

Work that requires discretion and independent judgment is work that is not ordinary or routine in nature. It is not possible to state a general rule that will distinguish each of the many thousands of possible factual situations between the making of real decisions in significant matters and the making of choices involving matters of little or no consequence. The phrase "significant matters" does not apply to the kinds of decisions normally made by clerical and similar types of employees. The term does apply to the kinds of decisions normally made by persons who formulate or participate in the formulation of policy within their spheres of responsibility or who exercise authority within a wide range to commit their employer in substantial respects financially or otherwise.

**12. Short Test Does Not Apply to Academic Administrators.** The short test does not apply to academic administrators and the full criteria under the long test must be applied.

The academic administrative exemption applies to workers whose primary duty consists of the work in the administration of a school system, educational establishment or institution, or of a department or subdivision of one of the above. The employee must have as his primary duty work that is directly related to academic administration or general academic operations of the school in whose operations he is employed.

Exempt academic workers must perform all of the required duties and must be compensated on a salary or fee basis of at least \$155.00 per week **or** must perform all of the required duties and be compensated on a salary basis which is at least equal to the entrance salary for teachers in the school system, educational establishment, or institution by which he or she is employed.

Individuals engaged in the overall academic administration of an elementary or secondary school system include the superintendent or other head of the system and those of his assistants whose duties are primarily concerned with administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program. In individual school establishments those engaged in overall academic administration include the principal and the vice principals who are responsible for the operation of the school. Other employees engaged in academic administration are such department heads as the heads of the mathematics department, the English department, the foreign language department, the manual crafts department, and other departments. Institutions of higher education have similar organizational structure, although in many cases somewhat more complex.

**13. Administrative Trainees.** The exemption does not include employees training for employment in an administrative capacity who are not actually performing the duties of an administrative employee. However, an administrative employee does not lose his or her status merely by undergoing further training for the job performed.