



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: GENERAL INFORMATION APPLICABLE TO EXEMPTIONS FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS FOR WHITE-COLLAR WORKERS **NUMBER:** ES.A.9.2

ISSUED: 6/24/2005
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CHAPTER: [RCW.49.46.010\(5\)\(c\)](#),
[RCW 49.46.130\(2\)\(a\)](#),
WAC 296-128-500 – 540 **SEE ALSO:** ES.A.9.3 - 8,
[ES.A.8.1](#) and [ES.A.8.2](#),
[ES.A.9.1](#), [ES.A.10.1](#),
[ES.A.10.2](#) and
[ES.A.10.3](#)

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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.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

The administrative policies for the white-collar exemptions have been separated into individual policies and are identified by the following numbers.

ES.A.9.2	General Application
ES.A.9.3	Executive (Short test)
ES.A.9.4	Administrative (Short test)
ES.A.9.5	Professional (Short test)
ES.A.9.6	Computer Professional
ES.A.9.7	Outside Sales
ES.A.9.8	Definition of Fee Basis

GENERAL APPLICATION

1. On August 23, 2004, the U.S. Department of Labor published revised regulations for the “white collar” overtime exempt regulations, including executive, administrative, professional, and outside sales positions. The State regulations on these exemptions have not changed. The federal regulations, 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. For more specific information on federal regulations, check with the U.S. Department of Labor at their toll free # 1-866-487-9243 or their website at [CFR Title 29](#) or with a qualified consultant, to determine how changes in federal overtime requirements affect the specific circumstances.

Washington state overtime regulations generally follow the pre-August 23, 2004 federal overtime regulations. Because the federal regulations changed, there will now be some cases in which the federal regulations are more favorable to workers, and some in which the state regulations are more favorable.

Each of the administrative policies on these exemptions contains a chart with a summarized comparison of the state and federal regulations.

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. Executive, administrative, and professional workers must meet all of the state requirements for the exemptions 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. Employees in executive, administrative, professional, computer professional, and outside sales positions are exempt from the Minimum Wage and Overtime Act, **RCW 49.46**, and its provisions. The Department of Labor & Industries has opted to base the interpretations in these administrative policies from pre-August 23, 2004 U.S. Department of Labor regulations, 29CFR Part 541. Also see #8 below regarding state vs. federal exemptions.

4. Exemption to Minimum Wage and Overtime for Certain Types of Employees (RCW 49.46.010 (3)(c)). [RCW 49.46.010\(3\)\(c\)](#) removes from the definition of “employee” for purposes of minimum wage and overtime individuals employed in “a bona fide executive, administrative or professional capacity” or in the capacity of “outside salesman.”

The statute does not define the terms “executive, administrative, professional, or outside salesman”, but delegates that authority to the Department by rulemaking. The Department’s rules defining the above terms are found at WAC [296-128-500](#)-540, including the computer professional exemption adopted by the department in 1998.

5. General Considerations When Determining Whether an Employee is Exempt from Minimum Wage and Overtime as Executive, Administrative, Professional or Outside Sales.

Employers are not required to claim these exemptions. They may pay minimum wage and overtime to all of their employees. Employers choose to claim the exemptions and it is their burden to demonstrate that a particular exemption applies. Exemptions to the wage and hour laws are to be construed narrowly. Employers should carefully check the exact terms and conditions of an exemption before applying it.

A title alone is not sufficient to meet the requirements of these exemptions. The exemption is determined by the employee's actual job duties performed and on the actual payment on a salary basis the equivalent of \$250 per week. Should an exempt worker's duties or method of payment change during their employment so that they no longer meet the exemption's criteria, the worker would no longer be considered exempt and all minimum wage and overtime provisions would apply from the date the criteria were no longer met.

In addition to "duties" requirements, executive, administrative, and professional employees must be compensated on a "salary basis" in order to qualify for the exemption from minimum wage and overtime. The amount of the weekly salary determines which test is to be applied. If the employee is not paid by the week, the requirement will be met if the salary translates into the appropriate weekly equivalent. A salary must be a true salary, not a mere "ruse" for treating the employee as an hourly worker. See Administrative Policy [ES.A.9.1](#) for Questions and Answers About Salary Basis Regulation, [WAC 296-128-532](#) and [WAC 296-128-533](#) for private and public employers adopted effective February 21, 2003. The salary basis regulations apply to executive, administrative, and professional workers.

All of the applicable requirements of the related section must be met for an exemption to apply and merely meeting one or two requirements does not fulfill the exemption.

Application of or recognition of these exemptions will be on a case-by-case basis depending on the relevant facts.

If the specific requirements of a particular exemption are not met, employees are entitled to the payment of overtime for hours worked in excess of forty per week, regardless whether they are paid on a salary, hourly, or other basis.

6. See [ES.A.8.1](#) entitled "Overtime" and [ES.A.8.2](#) for brochure entitled "How to Compute Overtime" for specific examples of how to compute overtime when an exemption is not met.

7. If the worker meets all of the criteria in the short test, the requirements of the long test are not considered. If the worker does not meet the requirements of the short test, all of the criteria in the long test must be met.

8. For the purposes of this administrative policy, the short test applications will be provided for each applicable exemption. This policy does not include an explanation of the long test applicable to the executive, administrative and professional exemptions. If there are questions about the long test, contact the department. The L&I offices can be found in the telephone directory and on-line at [L&I Office Locations](#) or contact the department in Olympia, WA at 1.360.902.5316.

9. The short test does not apply to employees in an academic administrative exemption in an educational setting. See [ES.A.9.4](#), paragraph 10.

10. Each exemption is summarized separately in administrative policies:

Administrative Policy Number	Title
<u>ES.A.9.3</u>	Executive
<u>ES.A.9.4</u>	Administrative
<u>ES.A.9.5</u>	Professional
<u>ES.A.9.6</u>	Computer Professional
<u>ES.A.9.7</u>	Outside Sales
<u>ES.A.9.8</u>	Definition of "Fee Basis" payments