ADMINISTRATIVE POLICY

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

TITLE: **EXEMPTION FROM MINIMUM WAGE AND OVERTIME REQUIREMENTS FOR <u>COMPUTER PROFESSIONAL</u> POSITIONS**	**NUMBER: ES.A.9.6** **ISSUED:** **6/24/2005** **REVISED:** **7/15/2014**
CHAPTER: **RCW.49.46.010**(3)(c), **RCW 49.46.130**(2)(a), **WAC 296-128-535**	**SEE ALSO: ES.A.9.2 - 5 and ES.9.7 – 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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<u>COMPUTER PROFESSIONAL (WAC 296-128-535)</u>

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 federal regulations on the professional exemption split that exemption into learned, creative and computer employees. State regulations contain separate definitions for professional and computer professional. The State regulation on the computer professional exemption 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 a summarized analysis of both state and federal regulations for the computer professional exemption. Greater details of the state computer professional 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 their website at their toll-free number 1-866-487-9243, or at their website @ http://www.dol.gov/whd/regs/compliance/fairpay/ or with a qualified consultant, to

determine how changes in federal overtime requirements affect the specific circumstances.

Requirements under state regulations	Requirements under new federal regulations	Differences between state and federal regulations
Employees classified in computer professional occupations must meet all of these requirements: 1) Meets minimum rate of pay of at least $27.63 per hour; 2) Must be employed as a computer systems analyst, computer programmer, software engineer, software developer or other similarly skilled worker in the computer field; 3) Primary duty must consist of: - Application of systems analysis techniques and procedures; - Design development, documentation, analysis, creation, testing or modification of computer systems programs; - The design, documentation, testing or modification of computer programs related to machine operating systems; - A combination of the duties in item 3. 4) Employees must be highly skilled with a high degree of knowledge and ability to apply their knowledge, and to use discretion and judgment in their duties.	Employees classified in "computer related" occupations must meet all of these requirements: 1) Meets minimum salary or fee requirement of not less than $455/wk **or** not less than $27.63/hr if paid hourly; 2) Must be employed as a computer systems analyst, computer programmer, software engineer, software developer or other similarly skilled worker in the computer field; 3) Primary duty must consist of: - Application of systems analysis techniques and procedures; - Design development, documentation, analysis, creation, testing or modification of computer systems programs; - The design, documentation, testing or modification of computer programs related to machine operating systems; - A combination of the duties in item 3.	Washington's minimum salary for overtime-exempt workers is $250/wk vs. the new federal minimum of $455/wk. Both state and federal hourly wage requirement is $27.63/hr. State regulation WAC 296-128-535 outlines the type of knowledge and duties that establish the computer worker as a "professional employee". For the purposes of **WAC 296-128-530** professional, if a person meets the knowledge and duties test of WAC 296-128-535 and the educational requirements in WAC 296-128-530, and is paid a salary of no less than $250 per week, he or she will be considered a professional who has knowledge of an advanced type in a scientific field and would be exempt under the professional exemption.

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. Computer professional 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. Computer Professional Employees Are Exempt. Those employees who meet the definition of computer professional duties and pay requirements are exempt from the Minimum Wage Act and from payment of overtime wages.

4. History of Federal Computer Professional Exemption. In 1992, the U.S. Department of Labor promulgated rules to establish that certain computer professionals are exempt from overtime. First, the general definition of "professional" found in **29 CFR 541.3** was amended by adding specific language referencing computer industry employees (541.3(a)(4)) and by adding language that certain computer industry employees who are paid hourly are still exempt as long as the hourly rate is at least $27.63 (CFR 541.3(e)). Second, a new rule was promulgated, 29 CFR 541.303, which spelled out in greater detail the specific computer-related duties that an employee must perform to be considered an exempt professional under 29 CFR 541(4) and clarified that no particular level of education is required to invoke the exemption.

5. History of Washington State Computer Professional Exemption. In 1998, the Department of Labor & Industries, with the intent to achieve conformity with the federal rules, decided to make the principles in the federal law applicable to certain computer industry professionals in Washington State. In doing so, the Department promulgated **WAC 296-128-535**, which is almost identical to the federal rules, to specifically define the types of duties that a computer industry employee must perform in order to be exempt from overtime. WAC 296-128-535 also clarifies that these computer industry workers need not necessarily hold a degree.

6. Knowledge and Duties of Computer Professional Exemption May Quality an Employee Under Both the Computer Professional or Professional Exemptions. For computer professionals, WAC 296-128-535 outlines the type of knowledge and duties that establish the computer worker as a "professional employee". For the purposes of **WAC 296-128-530**, if a person meets the knowledge and duties test of WAC 296-128-535 and the educational requirements in WAC 296-128-530, and is paid a salary of no less than $250 per week, he or she will be considered a professional who has knowledge of an advanced type in a scientific field and would be exempt under the professional exemption. See Administrative Policy *ES.A.9.5*.

7. Computer Professional Employees Paid On An Hourly Basis. If the computer professional is not paid a salary but is paid hourly, the exemption from overtime applies only if the hourly rate of compensation is paid an hourly rate of no less than $27.63 for all hours worked. Like the federal provision, this is different than the norm where hourly employment would *not* be exempt. If the hourly rate is less than $27.63 per hour, the *hourly* employee is not exempt from the requirements of the Minimum Wage Act, despite meeting the duties test. The Computer Professional exemption is satisfied if the employee meets the computer professional classifications, primary duties, and highly skilled requirements in **WAC 296-128-535** **(1)** and **(2)**, and is paid on an hourly basis equivalent to $27.63 per hour.

8. Duties Test Must Be Met. A computer system analyst, computer programmer, software engineer, software developer or other similarly skilled workers will be exempt if they perform the following duties.

> **8.1** Primary duty must include the application of systems analysis techniques and procedures to determine hardware, software, or system functional specifications, or

> **8.2** Following user or system design specifications to design, develop, document, analyze, create, test or modify any computer system, application or program or prototypes, or

> **8.3** Designing, documenting, testing, creating or modifying computer systems, applications or programs for machine operation systems, or

> **8.4** Any combination of the above that requires the same skill level.

9. The professional exemption applies only to highly skilled employees who:

> **9.1** Possess a high degree of theoretical knowledge and understanding of computer system analysis, programming and software engineering, and

> **9.2** Have the ability to apply that knowledge and understanding to highly specialized computer fields, and

> **9.3** attain the level of expertise and skill through a combination of education and experience in the field, and

> **9.4** Consistently exercise discretion and judgment in the application of the specialized knowledge, and

> **9.5** Engage in work that is predominantly intellectual and varied in character.

10. Employees Not Included In This Exemption. This exemption does not apply to trainees or employees in entry level positions learning to become proficient, or employees in computer systems analysis, programming and software engineering who have not attained the level of skill and expertise that allows them to generally work independently and without close supervision. It does not include computer operators, or employees engaged in the manufacture, repair, troubleshooting, or maintenance of computer hardware and related equipment or to employees working under a collective bargaining agreement.