

**CONCISE EXPLANATORY STATEMENT**  
**Chapter 296-128 WAC, Minimum Wages**

Public Hearings: July 15, July 16, July 17, August 5, August 6, August 7, and August 15, 2019

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**Table of Contents**

I.	Purpose of Rulemaking.....	[page 2-2]
	a. Background.....	[page 2-2]
	b. Summary of the Rulemaking Activities.....	[page 2-2]
II.	Changes to the Rules.....	[page 2-3]
III.	Comments on Proposed Rules.....	[page 3-288]
	a. Comment Period.....	[page 3-3]
	b. Public Hearings.....	[page 4-4]
	c. Summary of Comments Received on the Proposed Rules, Preliminary Cost-Benefit Analysis, and Small Business Economic Impact Statement and Department Response.....	[page 4-213]
	d. Summary responses to selected individual comments that were comprehensive or particularly representative.....	[page 214-288]
	1. Response to Comments by Association of Washington Business (AWB).....	[page 214-222]
	2. Response to Comments by Public Utility District No. 1 of Chelan County (Chelan PUD).....	[page 223-229]
	3. Response to Comments by Independent Business Association (IBA).....	[page 230-235]
	4. Response to Comments by Klickitat County.....	[page 236-240]
	5. Response to Comments by National Federation of Independent Business (NFIB).....	[page 241-249]
	6. Response to Comments by Washington Farm Bureau.....	[page 250-254]
	7. Response to Comments by Washington Food Industry Association (WFIA).....	[page 255-263]
	8. Response to Comments by Washington Hospitality Association.....	[page 264-269]
	9. Response to Comments by Washington Nonprofits.....	[page 270-276]
	10. Response to Comments by Washington Retail Association.....	[page 277-288]
IV.	Appendix A: Overtime Exemptions – Federal/State Duties Tests Comparison Chart.....	[page 289-295]

## I. Purpose of Rulemaking

The Department of Labor & Industries (department) engaged in this rulemaking to ensure the regulations in Washington State set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide executive, administrative, and professional (EAP) employees who it intended to exempt. With these adopted rules, the department intends to restore protections so that employees who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will receive them, and to implement a mechanism to ensure that the tests for the exemptions remain up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.

### a. Background

The rules for the MWA exemptions for executive, administrative, professional, and outside salespersons were last updated in 1975, with the exception of the inclusion of an exemption for computer professionals in 1998. When the definitions became outdated, the protections intended by the MWA eroded, and employees who the Washington State Legislature intended to protect received neither the protections of the MWA nor the higher salaries, above-average benefits, and greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption of bona fide EAP and outside sales employees from the MWA's protections. In addition, because the definition has become outdated, employers no longer have an efficient and reliable means of identifying which workers are, or are not, entitled to these protections.

### b. Summary of the Rulemaking Activities

The department held informal stakeholder meetings to seek data, pose scoping questions, and discuss potential draft rule concepts. The department also released two pre-proposal draft versions of the rules and held feedback sessions across the state to discuss the pre-proposal drafts before the department filed the CR-102. The CR-102 was filed on June 4, 2019, and stakeholders were able to provide formal public comment in person at public hearings, by email, by fax, or by mail. Driven by the high level of stakeholder engagement, the department extended the public comment period by an additional two weeks.

The department used input contributed by stakeholders during the process to prepare each draft of the proposed rule language. While many questions were resolved during the process, the department continued working with stakeholders to address stakeholder concerns and refine the language of the rules.

## II. Changes to the Rules

The following are the changes between the proposed rules and the rules as adopted, other than minor editing:

### WAC 296-128-530 Professional

- Subsection (2)(b)—The department added language to this subsection to provide further clarity that “[t]he requirements of WAC 296-128-545 do not apply to the teaching professionals described in this subsection.”

**WAC 296-128-535 Computer Professionals**

- Subsection (1)(c)—The department added illustrative tables for the hourly threshold phase-in schedule provided in subsections (1)(c)(i)-(1)(c)(iii).
- Subsection (1)(c)(iv)—The department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded average provided by the Employment Security Department (ESD) for Paid Family and Medical Leave purposes.

**WAC 296-128-540 Outside salesperson**

- Title: “Outside salesperson” —The department updated the title of the subsection from “outside salesman” to “outside salesperson” to make the rule language gender neutral and match the current wording of RCW 49.46.010(3)(c).
- Subsection (4) —The department added language to this subsection to provide further clarity that “[t]he requirements of WAC 296-128-545 do not apply to the outside salespersons described in this subsection.”

**WAC 296-128-545 Salary thresholds**

- Subsections (1)-(9)—For those EAP exemptions subject to salary threshold requirements, the department extended the implementation phase-in from six years to eight years. With consideration of stakeholder feedback, this extended salary threshold phase-in gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.
- Subsection (10)—The department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded average provided by ESD for Paid Family and Medical Leave purposes.
- The department added illustrative tables for the salary threshold phase-in schedule provided in subsections (1)-(9).

**III. Comments on Proposed Rules**

The purpose of this section is to respond to the oral and written comments received through the public comment period and at the public hearings.

**a. Comment Period**

The public comment period for this rulemaking began on June 4, 2019, and ended September 20, 2019. The department received over 2,200 written comments.

**b. Public Hearings**

<b>Location</b>	<b>Number Attended</b>	<b>Number Testified</b>
July 15, 2019-Tumwater	84	22
July 16, 2019-Seattle	115	46
July 17, 2019-Bellingham	57	17
August 5, 2019-Ellensburg	50	25
August 6, 2019-Kennewick	72	19
August 7, 2019-Spokane	137	37
August 15, 2019-Vancouver	72	16

**c. Summary of Comments Received on the Proposed Rules and Department Response**

The department has analyzed all of the comments received on the proposed rules in detail and responds to these comments below. Comments on the proposed rules were initially reviewed and sorted into one of over 20 major categories. Each of these major issue categories was then subdivided and sorted into more detailed issues before being assigned to staff for analysis and response. Responses are organized within the categories listed below. While this list represents the majority of all the comments, some individual comments may not be listed if the issue raised and response provided are adequately represented and additional entries would be duplicative. The department also provided summary responses to some selected, individual comments that were more comprehensive or that the department considered to be particularly representative of the comments received. The department has responded to the substance of the comments it received. In some cases, final rule language was changed as a result of comment review and analysis; in other cases, the responses indicate why a change was not made.

<b>Comments by Section</b>	<b>Page</b>
<b>1. Economic Impacts</b>	<b>9-69</b>
<b>a. Impacts on Business</b>	
1. Businesses will leave/start elsewhere	9
2. New rules will be a burden to businesses	10
3. The changes to the rules are not sufficiently flexible	14
4. Employers have flexible options to comply	19
5. This requires additional analysis	20
6. New rules will cause prices to go up	20
7. New rules will be an administrative burden	21
8. New rules will hurt competition with other states/globally	22
9. New rules will have positive effect on the economy	24

<b>b. Impacts on Jobs</b>	
1. These rules will negatively impact hiring	25
2. These rules will create jobs	27
<b>c. Impacts on benefits</b>	
1. These rules will impact general benefits	30
2. These rules will impact incentives	32
<b>d. Impacts on Small Businesses</b>	
1. These rules will be bad for small businesses and nonprofits	33
2. Employers are currently taking advantage of employees	36
<b>e. Regional Economic Impacts</b>	47
There should be different thresholds for different areas of the state	
<b>f. Impacts on Nonprofits</b>	
1. These rules changes would require additional funding	55
2. These rules will have a negative impact on nonprofits	57
3. These rules will have a positive impact on nonprofits	62
4. There should be different requirements for nonprofits	63
5. Nonprofit workers should be allowed to opt out of these rules	65
6. These rules would impact nonprofit services	65
7. Educate other agencies and legislature and advocate for additional funding for nonprofits	69
<b>2. Impacts on Employees</b>	<b>70-131</b>
<b>a. Impacts on Status</b>	
1. This rule will force a change in status that will hurt worker morale	70
2. These rules will improve worker morale	73
<b>b. These rules will protect workers</b>	74
<b>c. Impacts on Career Ladder</b>	
1. These rules will negatively affect career ladder and middle management positions	80
2. These rules will mean exempt workers have to do more work	83
<b>d. Impacts on Employee Flexibility</b>	
1. Changes to these rules will negatively impact workplace flexibility	84
2. Changes to these rules will positively impact workplace flexibility	92
3. Concerns about seasonality of work	93
4. Part-time employee concerns	94

5. Comp time	95
<b>e. Negative impacts of working overtime</b>	96
<b>f. Impact on Wages</b>	
1. Decreased pay	112
2. Employees should be paid fairly	113
<b>g. Positive impacts of the rules and working less</b>	124
<b>3. Salary Level</b>	<b>131-159</b>
<b>a. Multiplier – other options</b>	
1. Alternative salary thresholds	131
2. Use the CPI-W to set the salary rate instead of based on the minimum wage	136
3. Concerns with employer size calculations	137
4. Employees should get overtime for working over 40 hours per workweek	140
5. Everyone should receive overtime	142
<b>b. Untie from Minimum Wage</b>	
1. Use the federal standard for the salary level	144
2. Others	
i. Do not increase the threshold with the minimum wage	149
ii. Other concerns with salary threshold	151
iii. Salaries should be an agreement between employee and employer	152
iv. Threshold should take into account housing/benefits/bonuses/commissions	153
3. Raise the salary threshold above 2.5x minimum wage multiplier	154
<b>c. Agree with salary threshold</b>	159
<b>4. Duties Test</b>	<b>159-172</b>
<b>a. The duties tests should align with the federal requirements</b>	159
<b>b. The duties tests should be the determining factor for these rules, not a salary threshold</b>	161
<b>c. The duties tests need to be further clarified</b>	163
<b>d. There should be exemptions to the duties tests</b>	164
<b>e. Differences between state and federal duties tests need further explanation</b>	166
<b>f. Questions/concerns with duties tests</b>	167
<b>g. Create additional exemptions</b>	171
<b>5. Phase-in Schedule</b>	<b>172-179</b>
<b>a. The effective date for the rules should be pushed back</b>	172
<b>b. The roll-out period for the salary threshold increases should be longer</b>	174

c. Salary threshold phase-in schedule is too long	177
d. We should wait until the federal rules take effect before making any rules updates	177
e. Support phase-in schedule	178
6. Legal concerns	<b>179-185</b>
a. These rules are in violation of existing law	179
b. This decision should be up to the legislature	183
c. Proposal brings protections back in line with historic norms	183
7. Economic Analysis	<b>185-192</b>
a. Additional analysis is needed	185
b. The economic analysis that has been done is incorrect	188
8. Miscellaneous	<b>193-215</b>
a. Provide guidance	193
b. Tracking hours	193
c. Compliance	193
d. Misc. comments	194
e. Miscellaneous support for the rules	198
f. Thank you	214

1.a.1 Economic Impacts on Business: Businesses will leave/start elsewhere	Response
"Lower the chances of businesses moving to Washington State."	<p>These comments highlight a few common misconceptions about the executive, administrative, and professional (EAP) rules. First, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP employees who it intended to exempt. Second, employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the MWA. Third, the level of impact on employers will be dependent on which compliance strategy they choose to utilize. Some of the potential options to comply with the adopted rules and salary thresholds may mitigate costs and include:</p> <ul style="list-style-type: none"> <li>● <b>Converting current exempt salaried employees to non-exempt, salaried employees and paying overtime</b> <ul style="list-style-type: none"> <li>○ Track hours of work for non-exempt, salaried employees</li> <li>○ Pay overtime for hours worked over 40 per week</li> <li>○ Provide other protections associated with the MWA</li> </ul> </li> <li>● <b>Limiting hours worked by employees to 40 per workweek</b> <ul style="list-style-type: none"> <li>○ Convert current salaried, exempt employees to salaried non-exempt or hourly non-exempt</li> <li>○ Track hours of work and limit hours of work to 40 per week, or less</li> <li>○ Provide other protections associated with the MWA</li> </ul> </li> <li>● <b>Converting current salaried exempt employees to hourly non-exempt employees</b> <ul style="list-style-type: none"> <li>○ Pay formerly salaried employees on an hourly basis</li> <li>○ Pay overtime (time and a half the employee's regular rate of pay) for hours worked over 40 per week</li> </ul> </li> </ul>
"Increase businesses moving out of Washington State."	
"Other unintended effects will be caused by reduced business incomes, employers departing the state or decreasing their head counts."	
"If you continue down this path, it will differentiate WA even more as unfriendly to business, and those businesses will choose to leave or expand in more business friendly states."	
"It will drive out all entrepreneurs because they won't be able to afford to do a start-up business here."	
"Proposal could lead to outsourcing and offshore work to offset costs."	
"If these rules were adopted as currently proposed, I would consider closing my business and relocating to another state that supports small businesses and appreciates the opportunity we provide our employees."	
"I have concerns that with change will make many companies outsource internal IT jobs."	
"From a (\$10-\$15) 50% increase in minimum wage to the proposed changes in exempt status, these are inflation-inducing and business-crippling regulations that are not supported by any proven economic model. They are forcing higher costs, lower employment, and businesses fleeing the state which will have massive long-term ramifications for the legislated budget that continues to be increased, mismanaged, and haphazardly allocated."	
"I think this will make people that currently have good jobs end up having to work for outsourced companies."	
"This law will do great damage to the Washington State Economy as anyone looking to move here to establish a business, or move a business here, will quickly look elsewhere. This idea is bad for the great State of Washington."	
"Removing the federal exempt status for Salaried employees, designed for businesses just like mine, to a level of almost twice the minimum wage would force me out of the state."	



<p>“Proposal could push new businesses to surrounding states.”</p> <p>“It is difficult to justify our continued business in WA State when the costs and requirements for employers continue to rise year after year.”</p>	<ul style="list-style-type: none"> <li>○ Provide other protections associated with the MWA</li> <li>● <b>Maintaining exempt status</b> <ul style="list-style-type: none"> <li>○ Meet salary threshold requirements in adopted WAC 296-128-545 for salaried, exempt workers</li> <li>○ Ensure employees meet the duties test requirements, so employees would appropriately remain exempt from overtime and other MWA provisions</li> </ul> </li> </ul>
<p><b>1.a.2 Economic Impacts on Business: New rules will be a burden to business</b></p>	<p><b>Response</b></p>
<p>“The burden of this new O/T rule comes at the same time as another HUGE burden the increasing minimum wage.”</p>	<p>As discussed above (see potential compliance options outlined in response 1.a.1), employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the Minimum Wage Act (MWA). The level of impact on an individual employer will be dependent on which compliance strategy the employer chooses to utilize. To the extent that employers choose to raise salaries or instead provide MWA benefits, the probable increases in pay, including due to overtime and minimum wage coverage and the increased payroll to cover the hours sick workers take under the paid sick leave provisions, are considered transfer payments. Although the department is not required to consider transfer payments in its final Cost-Benefit Analysis (CBA), because such payments are equally valued as between employers and employees, the department chose to analyze these payments to provide stakeholders additional information about the relative costs and benefits of the transfer payments that may occur with the rules update. Through the analysis in the final CBA, the department determined that benefits of adopting the rules outweighed the potential costs. Based on the estimated costs as detailed in the department’s final CBA, the annualized total administrative cost of these rules is estimated to be \$13.65 million within the 10-year timeframe. The quantitative annualized benefits are estimated to be \$18.33 million to \$18.91 million over the same period. The many potential benefits of the</p>
<p>“There seems to be an assumption that all employers have a significant amount of money that they are not sharing with their workers and could afford to meet this proposal if forced to do so. For many businesses, this simply isn’t true. The increasing number of regulations each year contributes to continuously rising costs, making it difficult for those who aren’t in a few select industries to remain in compliance and stay in business.”</p>	
<p>“Time and time again, Washington is loading more and more costs on farmers who are just trying to pay the bills and make ends meet. Add these unreasonable and unreasoned edicts to the turmoil of trade wars and you will have created a doubtful future for farming and farm families.”</p>	
<p>“These rules may be viewed by some as well intentioned but in fact add changes that are staggering in weight, it changes definitions that will make bringing in new family members to a farm much more difficult.”</p>	
<p>“There are employers that take advantage of the system, but why should we effectively punish all employers and all employees for the poor choices of the few.”</p>	
<p>“Concern is that as you add more and more rules, the waters get muddier and muddier for a business owner to try and sift through. The goal of this should be to also make it clearer and easier to implement and understand both to employer and employee.”</p>	

<p>“Causes lower productivity because of the burden of needing to keep track of every hour during the pay period in anticipation of the eventual 40 hour limiting factor.”</p>	<p>adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries and illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees’ families.</p> <p>Because the relative impact on employers will depend on the compliance strategies adopted, in many instances there may not be significant transfer payments. For example, if employers choose not to schedule affected workers over 40 hours per workweek (and thus they do not work overtime), the weekly earnings for those workers will not change even if they are reclassified as nonexempt under the adopted rules.</p> <p>In other circumstances where there are transfer payments, the payments may benefit employers as well as the employees who receive them. For example, when local workers receive higher incomes as a result of transfer payments, local employers benefit from the workers’ purchase of their goods and services. Such purchases also have a multiplier effect, increasing local economic activity more broadly. And employers may benefit from workforce stability if transfer payments increase their employees’ incomes, because fairly compensated employees are less likely to seek new employment.</p> <p>Additionally, the adopted rules greatly increase consistency with the equivalent federal rules. The state currently uses two duties</p>
<p>“Looking back at the last 5 years, if each exempt employee were paid \$80k, it would have wiped out all profits for profitable years”          “If more burden is put on my shoulders, I will have to close my doors, meaning none of my employees will benefit from these ‘rules’.”</p>	
<p>“Our studies show the financial impact on our organization will increase our payroll expenses 60% by January 2021; this drastic need to increase our revenue will put the survival and sustainability of organization and many like us at risk of closing down. We hope you will take this into consideration.”</p>	
<p>“If these rules were adopted as currently proposed, I would likely have to go out of business as the rates we would have to charge would prohibit business. This simply will put us and may other businesses in jeopardy.”</p>	
<p>“If these rules were adopted as currently proposed, I would be forced to shut down. Margins have been slashed. This would bring us negative even with raising prices.”</p>	
<p>“Mandating salary increases (that already can’t be calculated on an hourly basis) would put a crushing burden on us and we’d likely have to close up shop.”</p>	
<p>“If these rules were adopted as currently proposed, I would have to file chapter 11 as would not be able to pay any debt.”</p>	
<p>“This may cause smaller grocers and C-Store owners to close their businesses. Our profits margins are already razor thin, adding the additional burden based upon the proposed rules would cause some of our business to become unprofitable and therefore closed.”</p>	
<p>“Considering the margins in retail, the inflationary impacts, and baseline increases in employment costs, there will be no way retail can be sustained in this state.”</p>	
<p>“This extreme rate hike would force us to convert our current positions that are salary (exempt), to hourly (non-exempt) immediately. This</p>	

<p>change would unnecessarily increase our administrative costs by over 100% in time keeping, payroll administration and reporting.”</p>	<p>tests, and the adopted rules combine the two duties tests into a single test that aligns more closely with the duties test used at the federal level. The updated state duties tests and federal duties tests are similar in their descriptions of the job duties that the employees must perform and their focus on the duties actually performed, rather than on the job title or on the duties that an employer writes into a position description. These changes will make classification simpler for employers, which reduces analysis and compliance costs and increases the likelihood that workers are correctly classified.</p> <p>The department has also taken into consideration stakeholder feedback and has taken further steps to mitigate the impact of the rules as they are implemented. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The department is also committed to developing and implementing a robust outreach and education program to help employers comply.</p> <p>Finally, the scope of the impact of the adopted rules on the overall state economy is limited because exempt EAP workers make up a small percentage of the total workforce. As projected in the final CBA, the share of the affected workers is between 0.5% and 0.8% of total state employment in most years and never exceeds 1.4% in any year.</p>
<p>“WA state rule makers make it hard to do business by continuing to raise pay rates and taxes unless you’re a Puget Sound based business.”</p>	
<p>“Stymie small and large business startups.”</p>	
<p>“Geographic differences and concern about the compression of wage scales present challenges for us, too. ...the likelihood of pay compression that would result from this proposed rule change is also a particular concern for colleges and universities. Increases in exempt salary thresholds could result in negligible differences in pay between those in more and less senior roles, initiating an unsustainable ripple effect throughout the pay structure.”</p>	
<p>“Those of us in Agriculture, these edicts create an impossible financial hurdle, these rules are a massive overstep by state government and is threat to continuing our family business.”</p>	
<p>“In many cases we are spending more than we receive to cover the cost of our labor force. This rule will only compound the issue.”</p>	
<p>“Let’s make this a win-win instead of a win for some and loose for others.”</p>	
<p>“We believe this proposed change in the salary threshold will have negative consequences for many of our farmers who have managers (including family members) who may be the next generation to take on the tradition, lifestyle, and business of family farming.”</p>	
<p>“Agriculture is the second largest employer in Washington State and artificial changes to minimum salaries and wages have profound impacts on the economic viability of our industry.”</p>	
<p>“This would be detrimental to all large and small employers.”</p>	
<p>“If I need to pay my employees overtime wages that effectively eliminates profitability for many procedures therefore I will need to reduce hours to stay within the 40 hour work week to have some flexibility to see these additional patients when it occurs.”</p>	
<p>“The salary threshold is simply too high for many industries, especially the grocery and convenience store industries.”</p>	

<p>“The grocery business is one of the toughest industries there is with very low margin. This is another way to make it harder to survive in this industry.”</p>	
<p>“It would be very difficult to operate our company without exempt employees and fatal to operate having to pay 80,000 for each of these employees.”</p>	
<p>“The jump up to 79K within 6 years represents a 128% increase. That means an employer with a small number of employees will be having to give huge raises every year to comply. Is it not reasonable to expect that any employee’s salary will more than double in 6 years.”</p>	
<p>“Increasing administrative structure can inhibit each college’s ability to innovate. When empowered and supported, staff and faculty together can truly innovate – and bring forward creative, proactive collaborative solutions to their community’s changing economic and social needs.”</p>	
<p>“Washington state is putting our ability to sustain our business model, the same business model that allows us to pay our people fairly, now at risk.”</p>	
<p>“LNI needs to look at different trades. Being a construction company we have very little work that takes place during the winter months. Our employees know this and realize that yes, during the summer you may work some overtime since I busy season, but you have all winter to work shorter days and still get compensated for it. If these changes happen all my employees will now get laid off permanently for the winter as I won’t be able to afford to keep them working.”</p>	
<p>“It is unreasonable, unsustainable, and unrealistic for the state to impose this type of drastic change on businesses who are still adjusting from the recent changes regarding Minimum Wage, Paid Sick and Safe Leave, and Paid Family Medical Leave.”</p>	
<p>“Increased salaries and the expense of accounting for overtime may still affect tuition and fee charges. Ultimately, students would bear an increased burden. Many of our universities serve large populations of low-income students who struggle financially and simply could not bear this increased cost.”</p>	

<p>“The new thresholds proposed by LNI will increase the cost of labor for our medical centers, potentially raising the cost of patient care.”</p>	
<p>“We operate on a very slim margin and cannot absorb the increased costs of salaries that would more than double over six years, in addition to increases in the minimum wage, increased payroll taxes, rising costs of benefits, etc.”</p>	
<p>“We work on fixed income from manufacturers so we have no way of passing any cost on to recover any business cost put on us.”</p>	
<p><b>1.a.3 Economic Impacts on Business: The changes to the rules are not sufficiently flexible</b></p>	<p><b>Response</b></p>
<p>“The policy as drafted shifts focus to make salary the primary test. This test, applied universally, does not equitably account for regional, industrial or occupational differences nor does it accurately paint the entire picture of the total compensation packages awarded to employees. This one size fits all approach results in significant unintended consequences, especially to one’s dignity of work.”</p>	<p>While the adopted rules include a statewide salary threshold, the rules provide significant flexibility to employers in how they choose to comply (see potential compliance options outlined in response 1.a.1).</p>
<p>“Proposal compels employer to increase wages for an entire group of employees while limiting flexibility. The unsubstantiated salary exemption threshold effectively raises the minimum wage for an entire group of employees who would not otherwise have necessarily been subject to wage increases. Although the intent is to protect certain non-exempt employees, as proposed, employers are compelled to make significant salary increases, again with no contextual justification provided by L&amp;I for the exemption threshold. Clearly, such significant increases in compensation will adversely impact all business in Washington and have a chilling effect on hiring, training, and ultimately on consumer spending.”</p>	<p>The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department’s authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of “employee” under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.</p>
<p>“Let the business owner determine what is best and most healthy for their employees. The competition is hard enough without more regulations influencing my bottom line.”</p>	
<p>“By forcing employers and employees to interact in limited ways, you erode freedom of choice.”</p>	

<p>“Believe the proposed changes are an example of a “one size fits all” rule change that does not take into account the creative ways that companies manage their compensation programs.”</p>	<p>The adopted rules include statewide salary thresholds based on the department’s consideration of stakeholder input and the data summarized below:</p>
<p>“The proposed rules are a one-size-fits-all approach that is clearly not practical for all industries in all regions and cities of the state.”</p>	<ul style="list-style-type: none"> <li> <p><b>The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.</b> The state’s current rules, set in 1976, permit an employer to choose one of two “duties tests” to assess a worker’s exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. <i>See, e.g.,</i> Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.</p> </li> </ul>

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salary workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short-duties test, was paired with the salary level equivalent to the historic levels of the former long-duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the

objectives of its rules. Based in part on USDOL's experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state's adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salary workers in the West Census Region was most consistent with meeting Washington's objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,372 per week. A salary level of 2.5 times the minimum wage is consistent with this level.

- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,305 per week. A salary level of 2.5 times the minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the Minimum Wage Act's protections although there has been no change in



their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

The adopted rules also include a minimum hourly threshold of 3.5 times the state minimum wage, phased-in over three years, for computer professionals who meet the duties test requirements and are paid on an hourly basis. This hourly threshold was arrived at by considering stakeholder input and reviewing the 2018 average hourly wages for 15 computer professional occupations (Occupational Employment Statistics survey (OES) data). Average hourly wages for computer professional occupations ranged from \$30.08 per hour to \$75.95 per hour, with the mean average wage of \$51.92. The department also looked at how the federal hourly rate threshold was originally set by the FLSA in 1990 (and then later adopted by the state). At the time, the federal hourly rate threshold equaled 6.5 times the federal minimum wage. Updating this formula using the current federal minimum wage would equal \$47.13 per hour. Because Washington minimum wages are substantially higher than the federal equivalents, using a 6.5 times

	<p>the state minimum wage would not realistically capture Washington computer professional wages.</p> <p>Like the original computer professional threshold rules, the adopted rules include a higher hourly threshold because computer professionals who are paid on an hourly basis are not guaranteed a set weekly amount and do not enjoy the income stability and other benefits of salaried employees. Computer professionals may also be paid on a salary basis if they meet the minimum salary threshold.</p>
<p><b>1.a.4 Economic Impacts on Business: Employers have flexible options to comply</b></p>	<p><b>Response</b></p>
<p>“Business have a gradual phase-in to plan for these changes, also have a number of options to work with this same rule. They can also stop having their employees work extra hours for free. They can raise salaries. They can pay overtime. Or they can hire another worker to do the extra work. It is a win-win for workers and our economy.”</p>	<p>As discussed above (see potential compliance options outlined in response 1.a.1), employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the Minimum Wage Act (MWA). The level of impact on an individual employer will be dependent on which compliance strategy the employer chooses to utilize.</p>
<p>“Nothing about this proposal causes wages to go up.”</p>	
<p>“There are a number of options at your disposal when this threshold fully phases in in 2026. You could simply send your workers home at the end of a full workday and figure out how to run your business or your non-profit within a normal work week. Or you can send your workers home and hire someone else if you really need all that extra work. Or you could pay them overtime pay for hours worked over 40 hours a week. Or you could raise their salaries above the threshold. But again, if you do, that's a choice that you're making.”</p>	
<p>“All employers have options. We can raise salaries, pay some people overtime during crunch times, or hire more help. No employer is required to raise people’s salaries above the threshold.”</p>	
<p>“The good news is that restoring overtime doesn’t have to cost employers a penny. They can simply send their workers home at the end of a full workweek or stop robbing the economy of thousands of jobs by squeezing five jobs’ worth of work out of every four workers.</p>	

<p>That’s not an “efficiency,” that’s gaming the system, and robs our economy in Washington of thousands of jobs.”</p>	
<p>“A lot of business owners are saying this will make it so they have to switch their employees to hourly and pay them less. That's not because of this. That is a business owner's decision to do that.”</p>	
<p><b>1.a.5 Economic impacts on Business: This requires additional analysis</b></p>	<p><b>Response</b></p>
<p>“Consider the impact of these pre-draft rules on the hospitality careers and our community and economy.”</p>	<p>The department prepared a robust final CBA and the analysis is based on industry and occupation type. The final CBA analyzed the potential costs associated with the adopted rules and determined that benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2. Accordingly, the department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85 and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05, and it has taken a number of steps to mitigate the impact of the rules as they are implemented, including a delayed implementation/phase-in for the salary thresholds, alignment with federal standards in many areas, and developing and implementing a robust outreach and education program to help employers comply.</p>
<p>“There needs to be more collaboration with local economic development departments, chambers of commerce, etc. before making blanket decisions that affect so many.”</p>	
<p>“Consider the overall economic impact and harm these draft rules could have on our state’s economy.”</p>	
<p>“Consider the overall economic impact these draft rules could have on our state’s economy, particularly on my employees and businesses like mine. The hospitality industry is not the only sector that may have to drastically shift because of the outcome of these draft rules.”</p>	
<p>“There needs to be prudence and careful analysis to the taxpaying businesses in a variety of industries which may be here today and gone tomorrow should the rules be unsustainable.”</p>	
<p>“Request thoughtful consideration to the impacts this rule would have on Washington’s farmers and ranchers, as well as modification to the proposal to accommodate these concerns.”</p>	
<p><b>1.a.6 Economic Impacts on Business: New rules will cause prices to go up</b></p>	<p><b>Response</b></p>
<p>“Increased salaries and the expense of accounting for overtime may still affect tuition and fee charges. Ultimately, students would bear an increased burden. Many of our universities serve large populations of low-income students who struggle financially and simply could not bear this increased cost.”</p>	<p>The adopted rules do not require employers to raise the price of goods and services. The level of impact on employers will be dependent on which compliance strategy they choose to utilize (see potential compliance options outlined in response 1.a.1). For example, if employers choose not to schedule affected workers over 40 hours per workweek (and thus they do not work overtime), the weekly earnings for those workers will not change even if they are reclassified as nonexempt under the adopted rules, thus</p>
<p>“The new thresholds proposed by LNI will increase the cost of labor for our medical centers, potentially raising the cost of patient care.”</p>	

	<p>reducing or eliminating the potential need to raise prices of goods and services.</p> <p>If employers choose to maintain the exempt status of their current salaried exempt workers and raise the salary of those workers, employers have the discretion to decide how to offset the cost of increasing employee wages and are not required to raise the price of goods and services.</p>
<p><b>1.a.7 Economic Impacts on Business: New rules will be an administrative burden</b></p>	<p><b>Response</b></p>
<p>“The anticipated cost of compliance with the recommendations as proposed go beyond increases in wages, adding administrative burden and expense for tracking and reporting.”</p>	<p>The final CBA produced by the department analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2.</p>
<p>“It would be very difficult to “record” those hours and determine what is incidental or not under the current labor law, even with mobile devices.”</p>	<p>As discussed in the final CBA, a salary threshold that is outdated or too low provides a less effective means to determine which workers the Legislature intended to cover by the MWA. Since the salary level tests work in tandem with the duties tests, a low salary threshold requires increased reliance on the duties test to determine whether a worker is exempt. This increases the burden on employers by requiring employers to engage in more complex and burdensome analyses of each individual employee’s actual job duties as performed in order to determine whether each employee is appropriately classified as exempt or nonexempt. In contrast, the salary threshold in the adopted rules appropriately reflects the likelihood a worker is legitimately exempt, and reduces the administrative burden for employers.</p> <p>Furthermore, while there may be additional record keeping associated with converting currently exempt workers to nonexempt status, these are requirements that employers already comply with. Employers must comply with the MWA recordkeeping</p>

	<p>requirements for their currently nonexempt employees, so changing the status of some employees from exempt to nonexempt does not create a new administrative burden.</p> <p>Finally, irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.</p>
<p><b>1.a.8 Economic Impacts on Business: New rules will hurt competition with other states/globally</b></p>	<p><b>Response</b></p>
<p>“All evidence points to a need to reduce the proposed levels for minimum wages and overtime pay rules for the state of Washington. Surely it is not the state’s goal to become the least business friendly state in the nation, curtailing economic growth which will hurt employers and employees, reduce incomes and jobs, and fuel inflationary cost increases.”</p>	<p>The level of impact on employers will be dependent on which compliance strategy they choose to utilize (see potential compliance options outlined in response 1.a.1). As discussed above, employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels strategy.</p>
<p>“This type of mandated wage increase and the timeline which was proposed will cause us to increase our tuition which is a major concern for parents and students and decrease our ability to be competitive in a regional market.”</p>	<p>As discussed above, the department prepared a final CBA, and the analysis is based on industry and occupation type. The final CBA analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2.</p>
<p>“Proposed rule would make it difficult for many of our member to compete and stay in agriculture.”</p>	
<p>“Imposing standards on farmers in Washington that are arbitrarily higher than standards in other states puts our farmers at a competitive disadvantage. Because farmers do not typically set their own prices and are subjected to the national and international marketplace, increases in input costs such as labor can squeeze these family businesses</p>	<p>The adopted rules also provide further protections for workers and encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers</p>

<p>perilously close to the edge of going out of business. This situation is especially true at times of low commodity prices. This proposal will have drastic consequences to the ability of our members to compete.”</p>	<p>by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.</p>
<p>“The proposed rules are particularly challenging to Darigold because neighboring states like Idaho already have significant cost advantages in the procurement, transportation and processing of dairy products. The greater extend that the Washington overtime rule deviates from federal or neighboring state overtime requirements, the more Darigold is disadvantaged in the marketplace. In other words, if Washington adopts the proposed overtime rule, Darigold will be further disadvantaged when compared to our significant competitors. The result could be lost business to other states and regions, less economically viable processing plants in the state and lower returns to our dairy farmer member/owners in Washington, causing additional economic stress across an already threatened segment of farmers.”</p>	<p>Additionally, Washington State is not unique in having standards that differ from the federal rules, so Washington-based businesses are not disproportionately disadvantaged compared to other states. Nevertheless, as discussed above, the adopted rules significantly increase consistency with the equivalent federal rules in many areas, reducing the costs of analysis and compliance for Washington businesses. These changes will make the evaluation of employees’ duties simpler and less burdensome for employers, and increase the likelihood that workers are correctly classified.</p>
<p>“Agriculture is variable and flexibility is essential to survival. Moreover, 97.9% of our product is sold out of state and holding us to a standard arbitrarily higher than that in other states is likely to push these Washington family businesses under.”</p>	
<p>“Our ability to attract faculty to come to Washington to engage in their research programs is going to be hindered by these rules because they will not be able to get the same funding that researchers in other states can because of the limitation on the number of workers they’re going to have to hire to do the same research that could be done in other states.”</p>	
<p>“Having become the most trade-dependent state over the last 40 years means that our employers and workforce compete globally for the work we all generate. The extraordinary lengths to which the proposed rules go would put our state at a significant disadvantage when competing for work.”</p>	
<p>“These hard and fast changes are making it increasingly difficult for businesses to remain competitive, not only on a global scale, but within the United States, making our state unappealing to large businesses that have the option of closing a plant and moving operations to a more</p>	

<p>business-friendly state. Those realities not only negatively impact state revenue, but the working families who will be affected by job loss.”</p>	
<p>“The rules seem likely to me to place a burden on summer camps... I genuinely fear that going to nearly \$80K by 2026 will put camps out of business. It’s too much, too fast, and for these types of positions, will force Washington summer camps to overpay vs the national labor marketplace, putting them at a competitive disadvantage to camps in other states. Families are often willing to look across state lines when shopping for a summer camp, and with wonderful camps in lower regulation mountain states nearby, I think Washington camps will suffer greatly.”</p>	
<p>“Our primary objection to the overtime rule referenced above is that in this case government is, in our opinion arbitrarily, increasing our costs and damaging our competitiveness, by proposing for adoption an overtime rule that is so far out of sync with jurisdictions in which our competitors operate.”</p>	
<p>“The majority of businesses will be forced to make hard decisions about future growth, which creates jobs, and whether or not it is economically feasible in the state of Washington given these added costs.”</p>	
<p>“A white-collar exemption level ramping up to almost \$80,00 is just one more “straw” that makes developing and expanding our business and producing jobs in Washington that much more difficult.”</p>	
<p>“Concerned that L&amp;I is proposing a standard that differs significantly from the federal Fair Labor Standards Act (FLSA) definition that will apply in other states. This will pose a management challenge for businesses that operate across state lines, as well as being a disincentive to employers considering where to locate or expand operations.”</p>	
<p><b>1.a.9 Economic Impacts on Business: New rules will have positive effect on the economy</b></p>	<p><b>Response</b></p>
<p>“The Department’s analysis points to increased worker productivity, as employers utilizing employees’ work hours more efficiently, and worker turnover is reduced.”</p>	<p>As described in more detail in response 1.a.2, to the extent that employers choose to raise salaries or instead provide MWA benefits, the probable increases in pay, including due to overtime</p>

<p>“This is an opportunity for Washington to lead the country again. We can prove that great labor standards and a strong economy go hand in hand.”</p>	<p>and minimum wage coverage and the increased payroll to cover the hours sick workers take under the paid sick leave provisions, are considered transfer payments. Transfer payments may benefit employers as well as the employees who receive them. For example, when local workers receive higher incomes as a result of transfer payments, local employers benefit from the workers’ purchase of their goods and services. Such purchases also have a multiplier effect, increasing local economic activity more broadly. And employers may benefit from workforce stability if transfer payments increase their employees incomes, because fairly compensated employees are less likely to seek new employment.</p>
<p>“More money in the hands of common people always means growth and prosperity at the local level on up. It makes perfect economic sense unless you’re just looking out for the rich and connected and not your constituents.”</p>	
<p>“A thriving, healthy, and growing middle class isn’t a consequence of economic growth — it is its primary source and cause. That’s why what’s good for the middle class is good for the economy. And high overtime standards have always been an essential good for the American middle class.”</p>	
<p>“Any money lost by paying more wages is generated back into the economy.”</p>	
<p>“These are crucial changes for Washington’s workforce and economy.”</p>	
<p>“This is the right move for Washington State and its economy.”</p>	
<p>“When workers around the country see how our state promotes and supports fairness for all workers, our economy as a whole benefits.”</p>	

<p><b>1.b.1 Economic Impacts on Jobs: These rules will negatively impact hiring</b></p>	<p><b>Response</b></p>
<p>“Proposal could lead to hiring freezes to contain costs.”</p>	<p>Similar to comments above, these comments highlight common misconceptions about the requirements of the EAP rules. First, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The adopted rules do not require an employer to take any specific action to comply with the MWA, such as adjusting salary levels. Rather, employers have many potential options to comply (see potential compliance options outlined in response 1.a.1). The level of impact on an individual employer will depend on which compliance strategy the employer chooses to utilize.</p>
<p>“The proposed salary threshold will result in the hiring of less entry level staff (e.g., college graduates) and will negatively impact the development of existing entry level staff.”</p>	
<p>“Contract members would be less inclined to hire entry level staff because their margins do not justify paying them overtime to work the extra hours they need to develop and advance into senior level positions (with corresponding pay increases).”</p>	
<p>“Our member contractors would be less inclined to hire entry-level staff such as college graduates because their margins cannot afford to pay them overtime to work the extra hours they need to develop and advance in the senior-level positions.”</p>	



<p>“Lower pay or job loss for some.”</p>	<p>As further discussed above, the department prepared a final CBA. The final CBA analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2.</p> <p>The adopted rules also have other positive effects. The adopted rules provide further protections for workers and encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.</p> <p>Finally, these updates to the EAP rules only address the white collar exemptions found in chapter 296-128 WAC. If workers are exempt based on other exemptions found within the MWA, then the adopted rules would not change their statuses.</p>
<p>“Layoffs.”</p>	
<p>“A dramatic rise in labor cost would force restaurant owners to raise prices, cut back hours and eliminate positions.”</p>	
<p>“Lower payroll due to reduction in pay for impacted employees or elimination of position.”</p>	
<p>“Concern that doing this will impact largely our ability to employ as many people as we do now simply because we will be forced to cut and/or revise our staffing strategy in order to remain profitable.”</p>	
<p>“Implementing the changes as proposed will certainly have unintended consequences in loss of jobs, loss of available time to work due to stricter overtime policies not to mention the potential loss of employers who either close altogether or move their businesses from SW Washington to Oregon.”</p>	
<p>“This is a MASSIVE burden and WILL cause businesses like ours to withhold hiring, reduce our full-time workforce, or move out of the state.”</p>	
<p>“This will lead to layoffs, less hiring, lower wages to make up the costs of implementing, etc.”</p>	
<p>“If these rules were adopted as currently proposed, I would be compelled to eliminate my manager’s position, move my room booking function overseas and rely on my automated software to direct housekeeping and maintenance on what tasks to complete.”</p>	
<p>“Unworkable for many businesses, and will, in my opinion, result either in elimination of many jobs that fit into that category, or business closures.”</p>	
<p>“Implementation of the proposed rules will require drastic changes in our operations and will cause significant worker displacements industry-wide.”</p>	
<p>“Our commercial customers will be approached with higher pricing proposals. It is expected that some customers will cease services, which will result in individuals with disabilities losing an employment opportunity.”</p>	

<p>“The timing of instituting this in 2020 is problematic. This is the year we will see a 12% increase in minimum wage which will undoubtedly lead to the need for greater efficiencies in our operations...or more simply put, some reduction in workforce. This will all but preclude our ability to take some staff to proposed minimums.”</p>	
<p>“Assuming an average of 5 hours per week of overtime per affected employee during the July-Dec 2020 and Jan-June 2021 periods, our member institutions estimate that our cost of overtime due to the proposed threshold will be in excess of \$50 million in FY 2020-21. Costs increases of this magnitude may lead to layoffs and program closures, harming, rather than benefiting our students and our employees.”</p>	
<p>“Likely consequences of the proposed changes would be a reduction in staff, a reduction in student services, altered or discontinued programming, an increase in student costs, or all of the above.”</p>	
<p>“Cost increases of this magnitude may lead to layoffs and program closures.”</p>	
<p><b>1.b.2 Economic Impacts on Jobs: These rules will create jobs</b></p>	<p><b>Response</b></p>
<p>“By receiving OT pay for OT work, it encourages employers to ask a reasonable amount of work from a single employee, and then offers incentive to hire more people if the job requires (instead of pushing previous employees to their breaking point, contributing to turnover and raising costs).”</p>	<p>The adopted rules have many positive effects (see potential benefits outlined in response 1.a.2). The adopted rules provide further protections for workers and encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.</p>
<p>“Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“Restoring overtime pay to on-call and other salaried workers would require employers to make more realistic headcount predictions and staffing decisions, instead of band-aiding processes on the backs of salaried workers expected to put in 50, 60, or more hours per week for 40 hours of pay.”</p>	
<p>“Overtime should be a wake-up call for employers that they need to hire additional workers, not just milk more labor from existing employees.”</p>	

<p>“It will help our economy by encouraging employers to hire more workers. Whether hiring more people or paying fairly for time worked, more money in employees’ pockets will boost the economy.”</p>	
<p>“When employers depend on overtime instead of hiring enough people to do the job this reduces employment opportunities.”</p>	
<p>“Employment suffers when what should be new positions are spread out via extra work among existing workers at no extra cost to the employer.”</p>	
<p>“Paying two people to do the work of three is obviously taking jobs, decreasing time for civic engagement among citizens and has real people responsible for such decisions not circuits or faulty hardware--technology.”</p>	
<p>“A change in the rule will give employers more incentive to hire and dedicate the appropriate amount of resources to get the jobs they have done.”</p>	
<p>“By receiving OT pay for OT work, it encourages employers to ask a reasonable amount of work from a single employee, and then offers incentive to hire more people if the job requires (instead of pushing previous employees to their breaking point, contributing to turnover and raising costs).”</p>	
<p>“Scarce skills would not be so scarce--and so expensive to hire--if they were not worked to the bone, because then there would be more openings for more people to fill who have those skills, creating demand to which the labor market will respond with increased supply. But employers have an interest to overwork the ones they have rather than add more workers because there is a fixed cost per worker, after which it is all profit for them. This system is anti-person and rigged against laborers and in favor of those with capital to invest. Please grant this overtime relief which will help me make the case that I too am not a mere resource to be tapped to the max until I leave.”</p>	
<p>“By raising this threshold it will lead to many employers to create new jobs instead of paying OT. And even if they don’t. The paid OT would be returned to the economy.”</p>	

<p>“I believe that fair compensation for overtime will encourage employers to hire more workers to share the work helping the existing employees to have healthier balance in their life and also helping the economy by employing more workers.”</p>	
<p>“The purpose of overtime pay is to penalize employers for adding hours to the work day, and encourage them to hire more people instead.”</p>	
<p>“If employers had to start paying overtime they would end up hiring more employees instead of over burdening the salaried employees. This improves employee quality of life, employee quality of work, improves work place safety, decreases employee turnover. All of which improves the employer bottom line.”</p>	
<p>“Business tactics, such as the emphasis on overtime. That minimize the likelihood of hiring additional workers can have the effect of putting more people on public assistance because of the lack of employment opportunities.”</p>	
<p>“This change may create more jobs! Stop expecting salaried employees to work long hours and hire more staff!”</p>	
<p>“Overtime is the government's way of inspiring an employer to hire more people when there is enough work rather than force employees to work more hours. It also levels the field as all employers will have the same working conditions rather than some overworking employees and gaining an unfair advantage over competitors that do not.”</p>	
<p>“If there is so much work that people are forced to work overtime, a better solution would be to hire more employees.”</p>	
<p>“If it's an 80-hour a week job, hire two people.”</p>	
<p>“This will incentivize businesses to employ more people, so not only will more people be able to work, but those that do will be able to stop working when their eight hours are over. It will also mean that if someone works overtime, they'll get paid properly for the time they took from the rest of their life.”</p>	
<p>“This might actually give a few people a job as employers are forced to stop the current practices of making folks work longer hours to finish their work.”</p>	

<p>“Washington unemployment will decrease because employers will be forced to staff correctly rather than pay people for their overtime work. This unfortunately means that individuals will likely work more than one job to get by, but ultimately, there will be more jobs for all.”</p>	
<p>“Raising the overtime threshold can stimulate job growth: As employers adjust staff schedules and workloads, they may find it advantageous to hire additional staff instead of paying overtime premiums for extra hours by existing staff. (As noted by the U.S. Department of Labor in its 2016 final rule, even Goldman Sachs and the National Retail Federation found this to be true—Goldman Sachs estimated that an increase in the national salary threshold from \$455 to \$970 per week would result in a total of 120,000 new hires nationwide, and an analysis by the National Retail Federation estimated that such an increase would create 117,100 jobs in the retail industry alone).”</p>	

<b>1.c.1 Economic Impacts on Benefits: These rules will impact general benefits</b>	<b>Response</b>
<p>“The overall impacts to the agency culture will suffer as a result of increased work- loads due to staff reductions, reduction and/or elimination of agency provided benefits; lack of growth opportunities and training and lowered morale as a result of reduction of services for the community and the ability for staff to continue to provide quality customer service.”</p>	<p>The adopted rules do not require employers to reduce benefits and leave offered to employees, and in many cases would provide additional protections for workers who are currently misclassified as exempt based on the outdated EAP rules.</p> <p>The level of impact on employers will be dependent on which compliance strategy they choose to utilize (see potential compliance options outlined in response 1.a.1). For example, if employers choose not to schedule affected workers over 40 hours per workweek (and thus they do not work overtime), the weekly earnings for those workers will not change even if they are reclassified as nonexempt under the adopted rules, thus reducing or eliminating the potential need to reduce employee benefits.</p> <p>As discussed in more detail in response 2.d.5, the MWA also allows both public and private sector employers to pay compensatory time</p>
<p>“For public sector employees, you negatively impact pension payments and retirement benefits.”</p>	
<p>“If instituted, the New Rule would limit our ability to bonus these people in the same way we can now and also could limit our ability to provide other compensation benefits such as healthcare or vacation days. I think the vacation days is the best reason not to pursue this ‘super minimum wage’. If moved to hourly, the people affected by the New Rule would gain some theoretical OT, but would lose any paid vacation beyond the State mandated minimum.</p>	

<p>Please consider these unintended consequences before proceeding. In a market that works at a 3-4% margin, you can bet that businesses will look to cut other benefits to make up for the difference. Which is exactly what we don't want to do."</p>	<p>("comp time") instead of overtime pay when the employee voluntarily requests comp time. The FLSA does not allow for comp time for private employers, but there may be circumstances where an employee meets the EAP exemption under the FLSA and is exempt from the federal overtime rules and does not meet the EAP exemption under state rules, so the employer therefore must still comply with the state overtime provisions. In these circumstances, an employer may allow an employee the option to request comp time instead of overtime and still remain in compliance with both the FLSA and the MWA.</p> <p>If employers choose to maintain the exempt status of their current salaried exempt workers and raise the salary of those workers, employers have the discretion to decide how to offset the cost of increasing employee wages, and are not required to reduce employee benefits. Additionally, while providing vacation leave, health insurance, and other benefits is of value to employees, these types of benefits are not guaranteed rights to employees protected by law. Employee rights under the MWA are protected. The state's paid sick leave laws also allow employers to use Paid Time Off (PTO) programs to satisfy their obligation to provide paid sick leave to employees so long as the PTO program meets certain minimum requirements. So employers who choose to convert their previously exempt workers to nonexempt also have the option to offer PTO to their staff and meet the requirements of the state's paid sick leave laws.</p> <p>Additionally, the salary threshold requirement has historically always been part of both the state and federal EAP exemption tests and it does not operate as "super minimum wage." The adopted rules update outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted</p>
<p>"It is more likely to lead to reduced hours for individual workers, leading to reduced incomes."</p>	
<p>"Exempt status employees receive extra paid leave in recognition for extra hours worked, and this would need to be adjusted or discontinued."</p>	
<p>"If moved to hourly, the people affected by the New Rule would gain some theoretical OT, but would lose any paid vacation beyond the State mandated minimum."</p>	
<p>"Many will receive less paid vacation as that benefit is typically tiered in higher education (e.g., exempt staff may start with four weeks while non-exempt staff are hired with two weeks of vacation leave time, which then increases with years of service)."</p>	
<p>"As such as a result of this proposal and change in classification from exempt, these part time executive professionals would be limited from participating in corporate events, travel, and training opportunities in order to control the costs associated with these non-profit producing activities."</p>	
<p>"May also force us to cut benefits."</p>	
<p>"Ultimately, the proposed amendments create a higher salary threshold that will increase the number of employees subject to significantly higher compensation. This equates to a forced wage increase that will limit hiring and training opportunities, limit employee and employer flexibility, and directly contribute toward exacerbating economic deceleration."</p>	
<p>"Issue with proposal that employee benefits (medical, dental, vision, 401k matching, life insurance, short term and long term disability, company vehicles, additional sick leave above state mandate and vacation) and bonuses will not be taken into consideration."</p>	

<p>“The New Rule would limit our ability to bonus these people in the same way we can now and also could limit our ability to provide other compensation benefits such as healthcare or vacation days.”</p>	<p>rules are lawful and consistent with historic norms, as described in the final CBA. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds, to prevent the thresholds from eroding over time.</p>
<p>“The employee benefit program will be evaluated to determine what plan changes could be made to help offset additional compensation costs. This could involve increasing the annual deductible limits and/or reducing plan benefit coverages.”</p>	
<p>“Healthcare coverage will be the first area impacted by this change as HSC will need to increase the percentage of premiums that employees will have to pay for their coverage. Other employer paid benefits such as Paid Time Off, Short-Term Disability and retirement contributions will be reduced or eliminated.”</p>	
<p>“If these rules were adopted as currently proposed, I would be forced to give my current salaried management staff a lower hourly rate of pay and would potentially no longer be able to afford their current health benefits.”</p>	
<p>“Work on Health Care – it’s what my employees need that I cannot supply.”</p>	
<p>“Our employees are paid at the highest level and have complete health care, dental vision as well as accidental death benefits. Because of that, we will get punished for doing the right thing for our employees.”</p>	
<p>“I would love to offer my employees healthcare and educational benefits but due to rising labor costs and an increasingly entitled labor pool that doesn’t want to work, I do not have an ability to do so and this will make it even worse.”</p>	
<p>“If I want to pay my employees less, but offer health benefits, I can’t.”</p>	
<p><b>1.c.2 Economic Impacts on Benefits: These rules will impact incentives</b></p>	<p><b>Response</b></p>
<p>“Setting the statewide base at \$80,000 will make most employers treat salespeople like hourly employees and productivity will decline as the incentives will no longer be there.”</p>	<p>The adopted rules do not require employers to adopt any particular pay structure, do not restrict bonuses, and do not require reduction of other incentives offered to employees. The level of impact on employers will be dependent on which compliance strategy they choose to utilize (see potential compliance options outlined in response 1.a.1). For example, if employers choose not to schedule</p>
<p>“The proposal would incentivize hours spent rather than work done, which is counterproductive for management or sales driven employees.”</p>	

<p>“Under these requirements we would have to reduce performance-based incentives, which would result in decreased overall business performance and employee opportunities to earn more.”</p>	<p>affected workers over 40 hours per workweek (and thus they do not work overtime), the weekly earnings for those workers will not change even if they are reclassified as nonexempt under the adopted rules, so such employers would not need to reduce employee incentives.</p> <p>If employers choose to maintain the exempt status of their current salaried exempt workers and raise the salary of those workers, employers have the discretion to decide how to offset the cost of increasing employee wages and are not required to reduce employee incentives to offset those costs.</p> <p>The adopted rules maintain the longstanding requirement under state rules that, for employees to whom the salary threshold applies, the employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities. Bonus compensation does not count toward the salary thresholds. The adopted rules do not change these longstanding standards. See the response in 3.b.2 for additional response to employee incentive concerns.</p>
<p>“Having six years of salary adjustments really takes away the opportunity for us to look at merit increases and performance increases, et cetera, because the dictated increases would not give us that flexibility anymore.”</p>	
<p>“All these professional position (sales, designers, business manager, operations manager and president) have the ability to make more during good years through commissions, profit sharing, or bonuses. This rule would cripple us during slower years.”</p>	
<p>“By not including piecework into the salary, I can no longer ‘incent’ my employees.”</p>	
<p>“It is not clear that bonus compensation can be included in calculating compliance with the salary threshold. Being unclear, small business owners may be forced to significantly alter the relationship they have with their employees. To keep employees exempt, employers may increase salaries, but remove bonus compensation. This is not a recipe for motivation and high performance with our organizations’ most important employees.”</p>	

<p><b>1.d.1 Economic Impacts on Small Businesses: These rules will be bad for small businesses and nonprofits</b></p>	<p><b>Response</b></p>
<p>“Small businesses and nonprofits create many good jobs in Washington. We think this proposal goes too far, and could end up hurting both workers and employers.”</p>	<p>The department has taken a number of steps to consider the impact on small businesses, as well as all employers. In compliance with the Administrative Procedures Act (APA), RCW 34.05, the department prepared a final CBA with an analysis based on industry and occupation type. The final CBA analyzed the potential costs associated with the adopted rules and determined that benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2. The department also prepared a small business</p>
<p>“Without the initial investment of resources, time and money, small businesses will fail.”</p>	
<p>“By continuing to increase you now reduce small business the ability to hire an outside sales force.”</p>	
<p>“Small employers must compete with larger ones and “service wage” jobs for talent: The idea of providing a slower phase in period for small</p>	



<p>employers is a fig leaf. Small employers are looking for talent and must compete in the marketplace. The absence of a special “service wage” in Washington means employers must also compete with a minimum wage plus tips for entry level employees. The experience in Seattle is instructive. Once large employers were required to pay \$15/hour, that became the standard at the earlier date. Seattle just increased the level for large employers to \$16 and now that is the lowest bar that all businesses have to adhere to in order to attract the same entry level management talent. In short, it is not really possible to segment the labor market. (See “Small Businesses Struggle to Hire Talent as Competition Increases”; <a href="https://smallbiztrends.com/2018/05/small-business-recruiting-competition.html">https://smallbiztrends.com/2018/05/small-business-recruiting-competition.html</a>).”</p>	<p>economic impact statement (SBEIS), and took steps to mitigate the impact on small business (See response 1.a.5 for more information on the mitigation strategies used by the department).</p> <p>As discussed above, the level of impact on employers will be dependent on which compliance strategy they choose to utilize, and they are not required to adjust salary levels (see potential compliance options outlined in response 1.a.1). The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.</p>
<p>“Small businesses and nonprofits create many good jobs in Washington. We think this proposal goes too far, and could end up hurting both workers and employers.”</p>	
<p>“You will kill small business across the state. Is that what you want? To kill small business owners and leave the field to big corporations?”</p>	
<p>“This proposal is definitely out of line and will only serve to hurt small business and the overall population.”</p>	
<p>“These proposed rules, coupled with other recent employment mandates in Washington, could negatively impact my small publishing and retail shipping business.”</p>	
<p>“Would significantly affect small business, especially those in the east side of the state where cost of living is significantly lower.”</p>	
<p>“Small businesses will be especially harmed as they compete with larger employers for talent and as those in service positions realize higher wages due to the minimum wage increases plus tip compensation. These increased costs come in addition to newly added requirements for employers to provide health benefits, sick and family leave days.”</p>	
<p>“This rule would mean that an assistant manager/manager of a small business would make more than the business owner. It would literally put small businesses out of business.”</p>	
<p>“The proposal will force small businesses to close their doors.”</p>	

<p>“This will make having a small business in Washington State almost impossible. Service businesses cannot function in that financial environment and will be forced to close.”</p>	
<p>“Owners of small business don’t even make the salary threshold...Small business will close.”</p>	
<p>“Cause too many hardships for small businesses.”</p>	
<p>“As a small business owner, this law would have a huge and very negative impact on my ability to employ people. My business simply doesn’t make that much money.”</p>	
<p>“Where do you draw the line for small business? We pay our fair share of taxes, provide a very good living for our employees and now you want to increase our cost again!”</p>	
<p>“I believe the proposed changes will harm, if not dissolve, small businesses throughout the state of Washington...This measure ensures a decline in revenue as well as consumer confidence.”</p>	
<p>“Attempting to recover 43 years without revision in 6 years is impractical and even harmful for many businesses, especially small business, and puts at risk regional, national and international competition for work.”</p>	
<p>“If a 1-person business must pay the owners 2.5 times the minimum wage or pay overtime for anytime over 40-hours, the business will either fail due to the overhead costs of operating the business or the owner will simply take the pay and then reinvest it within the business thereby circumventing this rule.”</p>	
<p>“Please consider significantly lowering this salary requirement. I am concerned as to what the effect will be on small businesses if these requirements are left in.”</p>	
<p>“The proposed minimum salary changes would be wildly disruptive and will have a negative impact on our industry, small business owners and their employees.”</p>	
<p>“Any substantial change would put a larger burden on small companies’ human resource and accounting functions which have new requirements placed on them every day.”</p>	

<p>“There is absolutely no sane reason for the State to be mandating minimum salaries for non-hourly employees, especially when it is far above what many small businesses can afford to pay.”</p>	
<p><b>1.d.2 Economic Impacts on Small Businesses: Employers are currently taking advantage of employees</b></p>	<p><b>Response</b></p>
<p>“Software companies regularly misclassify their workers as salaried and overwork their employees beyond 40 hours a week for no additional pay... Our state invests in educating and attracting these workers. The state should protect that investment for our long-term growth.”</p>	<p>As discussed in response to other comments, the department considered a number of factors when it considered whether to update the EAP rules, and what revisions were necessary, including:</p> <ul style="list-style-type: none"> <li>• The rules governing these exemptions have not been updated since 1976. In addition, the increase in the state’s minimum wage not only exceeds the state long test salary level of \$250/week but also the federal \$455/week salary threshold set in 2004. As such, the state and federal rules were not just ineffective at distinguishing between exempt and nonexempt workers, but failed to provide for the health, safety, and general welfare of the workers envisioned by the Legislature when it adopted the MWA;</li> <li>• The preliminary injunction and subsequent suspension of the 2016 federal rules by the Texas court highlighted the need for state action. The 2016 federal rules outlined the compelling need to not only update the federal salary threshold, but also to address the flawed methodology used in 2004 of pairing the weakest parts of previous long and short tests. Given the compelling record outlined in the 2015 Notice of Proposed Rulemaking and the federal final rules discussed above, the lack of sufficient federal protection magnified the need for the state action;</li> <li>• Eliminating the current long and short duties test structure and replacing it with a standard test that largely aligns</li> </ul>
<p>“As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it’s not because workers are working less.”</p>	
<p>“Salaried employees are forced to work too many hours.”</p>	
<p>“A better ‘salary’ proposal would be addressing the abuses that are perpetrated on workers by some unscrupulous businesses (split shifts, 6 day work weeks, excessive hours, etc.).”</p>	
<p>“Salary pay is a way for companies to legally mistreat and abuse their workers. There should be no legal way to mistreat workers. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to make time for what matters.”</p>	
<p>“I’ve had friends and family who were salaried and had to work 60 hours a week so that they actually made less per hour than their subordinates.”</p>	
<p>“Employers now almost believe they own their workers as if they are slaves.”</p>	
<p>“People are being exploited.”</p>	
<p>“Through our government’s inactivity, businesses have gone unchecked in their exploitation of our outdated salary rules.”</p>	
<p>“It is unjust with all the subsists and tax breaks low wage employers already receive to also get free labor.”</p>	
<p>“Time is money and employers shouldn’t get both.”</p>	

<p>“Overtime pay provides essential feedback to companies by encouraging them not to take advantage of their employees and to adopt practices that value everyone’s time.”</p>	<p>with the federal rules will make it easier for employers to understand and comply with the rules and will provide greater consistency across jurisdictions for employers and workers alike;</p> <ul style="list-style-type: none"> <li>• The 1976 standards for exemptions no longer accurately reflect the current expectations of exempt workers, given changes in the workforce over the last four decades; and</li> <li>• The outdated exemptions under the MWA affect what workers are eligible for the new employee rights under Initiative-1433 (I-1433), including paid sick leave and protection from retaliation. After I-1433, the MWA now provides protections for employees to receive their tips and service charges, accrue and use paid sick leave, and exercise all of their MWA rights free from retaliation or discrimination by their employer. The erosion of MWA protections thus affects access to more expansive rights than when the exemption was first created.</li> </ul> <p>With the adopted rules, important MWA protections will be restored and workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will do so. Finally, a mechanism will be in place to ensure that the test for exemption remains up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.</p>
<p>“Teachers are forced to work many hours after work without getting paid.”</p>	
<p>“Not paying a worker a salary or hourly pay that is a living wage is slavery.”</p>	
<p>“Salaried workers are putting in more and more hours but not getting paid for it.”</p>	
<p>“Employers will work people into the ground rather than go to the expense or effort of hiring.”</p>	
<p>“Low-level white collar employees should not be allowed to be taken advantage of just because they work in an office building.”</p>	
<p>“Employers prefer to add hours to the people they have on the payroll, because they may not be required to pay the additional costs on those hours beyond the 8 hour day.”</p>	
<p>“After having committed to market compensation, employers are free to work employees the most hours they will tolerate, in order to maximize return on business costs.”</p>	
<p>“I STRONGLY SUPPORT L&amp;I’s action to restore overtime rights. The salary threshold for overtime exemption MUST BE RAISED. Some bosses expect -- and even require -- unpaid overtime from employees who are paid only modestly. The threshold should be raised significantly so bosses can no longer exploit these workers. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”</p>	
<p>“Employers under staff and force staff to work overtime and then punish them for doing the work that was required on their annual evaluations.”</p>	
<p>“It’s a loop hole designed to save companies money but it’s harmful to workers and their families.”</p>	
<p>“Low paid salaried workers often end up overworked. They are expected to cover for staff shortages with no compensation and private time.”</p>	

<p>“Dislike having to be constantly on call checking emails all day when not in the office.”</p>	
<p>“Some overtime employees work unlimited required hours.”</p>	
<p>“Some employers require employees to leave early one day to reduce their hours so they no longer qualify for health insurance.”</p>	
<p>“Too often companies lean hard on salaried employees with uncompensated overtime demands.”</p>	
<p>“My physical, mental, and emotional health has been negatively impacted by the toxic workaholic-culture of my work place. The organization is solely interested in profit and deeply hierarchical...The result has been working late into the night and on weekends, with no overtime pay. I am put in positions where I have to skip meals or wake up at brutally early times to promptly respond to emails, make meetings, and meet superiors' expectations.”</p>	
<p>Technology is used as a scapegoat for declining job numbers, but if this were true we would have fewer jobs today for an increasing number of people than we did when Henry Ford decided to build horseless carriages instead of building a better horse. Paying two people to do the work of three is obviously taking jobs, decreasing time for civic engagement among citizens and has real people responsible for such decisions not circuits or faulty hardware.”</p>	
<p>“Employees are overworked and undercompensated.”</p>	
<p>“Big business got there on the backs of their workers. It is time for them to pay for what they have been getting for free.”</p>	
<p>“Salary pay is a way for companies to legally mistreat and abuse their workers.”</p>	
<p>“When a worker signs on for an exempt position the understanding is that their salary is for 40 hours a week. Expecting more hours than that without extra pay is bad policy.”</p>	
<p>“Employers take advantage of their salaried workers.”</p>	
<p>“All I know for sure is that having your workload double every year, but your pay stays the same for years is killing hard-working Americans while 90% of the wealth stays with the top 1%!!”</p>	
<p>“Employees are treated as indentured servants.”</p>	

<p>“Overtime pay exists so there is an incentive for employees to work longer hours. Without that incentive, they will be less motivated, more burnt out and less productive.”</p>	
<p>“Employees take advantage of weakening labor laws and categorize works as salary in order to exploit them.”</p>	
<p>“It’s bad enough that workers pay is so low but to force employees to give up their personal time without benefits not only is cruel it is corporate welfare at its worst.”</p>	
<p>“I’m writing to let you know that I’m paying attention to who supports forcing companies to stop trampling the rights of working people, and who stands for allowing the corporate theft of overtime pay to continue unabated.”</p>	
<p>“Salaried employees have to work until the job is done.”</p>	
<p>“It is currently possible to be a salaried employee, but be expected to work hours that essentially reduce you to earning about minimum wage for your time.”</p>	
<p>“The lack of compensation during overtime means that employers effectively steal time, all the while expecting that employees should simply be grateful to have a job.”</p>	
<p>“I just wanna support ppl who have their overtime pay stolen because of inactive greedy bribed policy makers.”</p>	
<p>“Classism and indentured servitude are alive and well in WA.”</p>	
<p>“The state should look at this issue but also the broader discrimination and outdated policies effecting all workers.”</p>	
<p>“Overtime is generally due to exploitation and bad project management. Segregating people into specific class distinctions/job qualifications allows for abuse and is a lazy form of Human Service Employee standards. Essential personnel are often mistreated, underpaid due to top heavy over paid executive positions.”</p>	
<p>“Expanding overtime protections will benefit some but it does not address the overriding issues hampering the opportunities for most employees to pursue meaning and prosperity in their lives while working in WA.”</p>	

<p>“The employer should be forced to pay some financial penalty for employees being overworked without exception.”</p>	
<p>“A low overtime exemption threshold encourages employers to waste employee time. Managers don't learn to help their employees be productive during their time at work because tasks can always be shoved into extra evening and weekend hours. There is no need to think about whether a compulsory all-day meeting is necessary if employee time is free.”</p>	
<p>“Stealing overtime is not making America great again. It is stealing from the poor to give to the rich.”</p>	
<p>“In education, particularly Washington State Community Colleges, faculty are required to do course prep, teach, grade, advise, participate in community service work (participate in committees), and professional development. It is not conceivable to complete all of these responsibilities in 40 hours.”</p>	
<p>“Working without pay is slavery, or at best indentured servitude.”</p>	
<p>“Companies are using this loophole to overwork employees without adequately compensating them because in the eyes of the state they have a "white collar" job.”</p>	
<p>“The corporations have had the upper hand for too long. The time is now to reverse wage inequities, and make corporations pay their workers a living wage.”</p>	
<p>“Support the proposed rule because employers have been keeping wages down for far too long despite the exponential growth in productivity of those employees.”</p>	
<p>“The federal government has failed its responsibility to workers, so it's time for the state to step up and restore overtime rights. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time.”</p>	
<p>“It is very important to have balance in one's life between work and family. Employers now almost believe they own their workers as if they are slaves.”</p>	

<p>“A teacher gets a salary. Required to do mountains of work outside paid time with curriculum development without book support and training, meetings, test corrections, test development and implementation, planning that always exceeds the planning time allowed in the “workday”, expected purchase of materials and some books from my salary just to name some of the time robbery.”</p>	
<p>“Each time, businesses have spoken against our government taking measures to right the injustices against the worker, against the people. The core of the issue is just that... the people. The people are being exploited. Their character is being used against them. Ethics have been traded in for lower labor costs. People are missing friends, family, and life to work for an employer that is not compensating them for any additional hours they work. Many businesses would simply tell their employees, "if you don't like it, go somewhere else." Unfortunately, this labor model has become the status quo. Through our government’s inactivity, businesses have gone unchecked in their exploitation of our outdated salary rules.”</p>	
<p>“The purpose of overtime pay is to penalize employers for adding hours to the work day, and encourage them to hire more people instead. Employers prefer to add hours to the people they have on the payroll, because they may not be required to pay the additional costs on those hours beyond the 8 hour day.”</p>	
<p>“Our health and our time is the most valuable thing we have. That is why workers have fought so long and hard to win the 8 hour day. Overtime with no additional penalty to those who assign it is theft.”</p>	
<p>“In the technical field we are burdened with the belief that since we have good compensation due to the high demand for our skills, that is reasonable to then expect us to work a number of hours per week limited only by "the needs of the project" or "whatever it takes," these being supposed to indicate your team attitude. What it really indicates is that having committed to market compensation, my employer is free to work me the most hours I will tolerate, in order to maximize his return on his costs.”</p>	



<p>“Like most people, to keep my job, and care for those who rely on me for shelter and clothing and food, I will tolerate a lot before I will subject myself and all who depend on my to the awful conditions of having no income or very little income from unemployment benefits that last only a short time. It feels like the state believes that skilled workers with lots of experience should have to put up with this exploitation of their need for a job, while others who earn less are mysteriously more entitled to free time.”</p>	
<p>“It’s pretty straight forward. No employee’s overtime hard work should benefit only the employer. This is outrageous that this is still how it’s done for ‘salaried workers’ which they are not. They really are just used and abused really.”</p>	
<p>“When employers depend on overtime instead of hiring enough people to do the job this reduces employment opportunities while harming the health of the workers.”</p>	
<p>“I am writing to urge you to restore overtime rights to salaried workers in our state. Big business got there on the backs of their workers. It is time for them to pay for what they have been getting for free.”</p>	
<p>“Workers should be compensated for hours worked over 40. Overtime takes away valuable time from their families, their hobbies, and their ability to live full lives. Employees take advantage of weakening labor laws and categorize works as salary in order to exploit them.”</p>	
<p>“Being paid premium time allowed me to have help at home which made my life much easier as I didn't have to worry...It's bad enough that workers pay is so low but to force employees to give up their personal time without benefits not only is cruel it is corporate welfare at its worst.”</p>	
<p>“Currently, my employer is taking advantage of me. I would like my extra hours of work to be recognized and compensated, and I want the same for every person who works more than forty hours a week.”</p>	
<p>“Not only did my husband's schedule often up-end our home life and dictate things like whether or not we could go out to dinner, to see friends, or be with family, the lack of compensation during those five</p>	

<p>years meant that his employer effectively stole months of his time, all the while expecting that he should simply be grateful to have his job.”</p>	
<p>“It is ridiculous and, frankly, exploitative for businesses to treat salaried employees making only \$30,000 or so per year like they treat workers who make three to five times as much. The idea that someone earning only \$35,000 a year is already just as well compensated for their time and energy as someone earning \$100,000 is patently false. Expecting that employee to work more than 40 hours a week without additional compensation because they happen to be salaried is, likewise, underhanded and demeaning.”</p>	
<p>“Those who work for lower salaries are likely using a much larger portion of that income for day to day necessities - housing, healthcare, food, utilities - than their higher paid co-workers. As such, they are automatically in a much more vulnerable position when attempting to negotiate compensation with their employers.”</p>	
<p>“If we aim to be a society that believes in and espouses the ‘dignity of work,’ should we not first see to it that those who work are treated fairly and with dignity by those who employ them? It is currently possible to be a salaried employee, but be expected to work hours that essentially reduce you to earning about minimum wage for your time. That is simply immoral.”</p>	
<p>“It should be noted that generally staff are exploited by forced volunteering, having to choose between using their delayed payment funds (vacation hours) or having no pay for days when the administration can't provide safe work conditions- a common practice in higher education- forced to travel when environmental conditions are hazardous. Classism and indentured servitude are alive and well in WA.”</p>	
<p>“I am writing to urge the state to look at this issue but also the broader discrimination and outdated policies effecting all workers. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. all the above and one caveat: the states management</p>	

<p>concepts are backward. Overtime is generally due to exploitation and bad project management. Segregating people into specific class distinctions/job qualifications allows for abuse and is a lazy form of Human Service Employee standards. Essential personnel are often mistreated, underpaid due to top heavy over paid executive positions.”</p>	
<p>“All working people rely on overtime to pay the basics - taking it away is theft. 8 hours for work, 8 hours for rest, 8 hours for home chores. Either pay more, or pay overtime. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance. Stealing overtime is not making America great again. It is stealing from the poor to give to the rich!”</p>	
<p>“Realistically, \$1800-2800/month is NOT a white collar job. That monthly income is very common (and expected) at blue collar jobs. Companies are using this loophole to overwork employees without adequately compensating them because in the eyes of the state they have a "white collar" job. The reality of it though is you can call it whatever you want, call it "gold collar", but that won't change the fact that the bare minimum wage attached to it is essentially a starving wage when you realize a person works 60-70hrs a week and only takes home \$2300/month that barely covers rent in the area. Disgusting. Do better Washington, we are smarter than this.”</p>	
<p>“The only reason this would be expensive for an employer is if that employer is depending on a very large number of workers putting in a very large number of hours for very low pay. And you know, if that's the case, that probably should change.”</p>	
<p>“With a lack of overtime protections, it's another way of this state showing support for corporate devaluation of personal time.”</p>	
<p>“Women and people of color -- who are often the least empowered workers -- are particularly impacted by these unfair practices. And unscrupulous employers can use their control over an employee's time to put them in abusive and harmful situations. Strong regulations would prevent this.”</p>	
<p>“Working extra hours without overtime pay is tantamount to slavery.”</p>	

<p>“We need to end the practice that allows employers to grind their workers down, cutting costs and underpaying them while unemployed folks wait for a smaller pool of worse positions.”</p>	
<p>“No overtime and no sick days for caregivers. And no holiday pay. No wonder there is such a shortage of skilled caregivers.”</p>	
<p>“Employers have come to rely on overtime-exempt salaried workers to be able to fiddle the books, to have both a lower headcount and lower overall salary. It is an unsustainable and inhumane model, and it's exactly the sort of abuse that necessitates collective bargaining.”</p>	
<p>“The employer should not have an incentive to put workers on salary.”</p>	
<p>“If overtime were mandatory professionals like me wouldn't have to worry so much about barely scraping by while the business owners raked in the cash at our expense.”</p>	
<p>“Providing hours of work without pay is slavery. Washington state can do better.”</p>	
<p>“Forced unpaid overtime has allowed my company to avoid hiring new people and just piled more and more work on top of us.”</p>	
<p>“The labor market is a market, yet the employers have been able to set the price paid for too long.”</p>	
<p>“Far too many workers are expected to work far more than 40 hours a week without getting paid for that extra time because of our outdated overtime protections.”</p>	
<p>“It has become the norm to overwork exempt employees because there is no financial disincentive. This is not the dignity that workers deserve, and it also allows Management to avoid hiring other workers, which limits job opportunities in our communities. The people of Washington deserve better.”</p>	
<p>“If the work beyond 40 hours is important enough to the employer, they can pay overtime for it. That time is time away from family, loved ones, friends, hobbies, and life. It should be paid as such.”</p>	
<p>“Employers definitely take advantage of employees who don't get paid overtime!”</p>	

<p>“Many employers will combine 2 or more positions in to one job expect exempt employees to put in the OT instead of hiring an additional staff member(s).”</p>	
<p>“It's easy for someone else to take credit for your work when nobody is keeping track of who actually put the hours in.”</p>	
<p>“Hours over 40 per week deserve a substantial premium, since a substantial hardship is placed on the worker's health, family life and quality of life. The employer will take advantage of the extra hours of labor without incurring cost of benefits to hire additional employees, if not required by law to pay a premium for current employees' additional hours over 40 per week!”</p>	
<p>“Employers like overtime because it does not include other benefit costs, like health care, etc., even if they pay time and one half.”</p>	
<p>“End corporate greed and manipulation; citizens deserve fair, compensated pay/treatment. End citizens united!”</p>	
<p>“Businesses have stripped away overtime from most workers in recent decades, hence worsening the inequality in American society.”</p>	
<p>“Salary should be outlawed because it turns people into slaves. Slavery was supposed to be abolished in this country. So let's quit making slaves of salaried workers and pay them decent compensation for their long hours!”</p>	
<p>“As long as employers expect to get free work from their salaried employees, workers with disabilities and chronic illnesses will continue to burn out and lose our chances at these jobs, time and again, if we're even considered. It should look attractive to an employer, in financial terms, to not have any one employee relied on to the degree that they must work overtime.”</p>	
<p>“It's time to correct this long pattern of exploiting American workers. Please do this tiny bit to change the slide into widespread poverty among workers in Washington.”</p>	
<p>“In my opinion, salaried jobs should reward efficiency. They should not be a sleight of hand method by employers to pay a non-competitive wage.”</p>	

<p>“Businesses like ours think they can bully workers into working extra time without overtime pay. We give folks fancy titles with low pay to make folks thinks these are managers, when many are only managing themselves and the work in front of them.”</p>	
<p>“Employers here use the existing rules to avoid paying for people’s overtime.”</p>	

<p><b>1.e Regional Economic Impacts: There should be different thresholds for different areas of the state</b></p>	<p><b>Response</b></p>
<p>“Here in Snohomish County, we’ve heard concerns from many employers, including several our aerospace manufacturers, local non-profits, and small businesses. Small businesses and nonprofits create many good jobs in Washington. We think this proposal goes too far and could end up hurting both workers and employers.”</p>	<p>The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department’s authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of “employee” under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.</p>
<p>“Consider the huge negative impact that this rule would have on small business in lower cost of living areas of the state.”</p>	
<p>“Reconsider taking actions that will make rural Washington state a more difficult and expensive place to do business.”</p>	
<p>“The proposals would cut deeply into existing business payrolls and existing business norms, creating new unwieldy criteria and excessive minimum-pay ranges that will not only curtail current economic growth; it would have devastating consequences for our rural as well as non-rural communities throughout Central Washington.”</p>	
<p>“The proposed rules appear to be adjusted for the cost of living in Seattle without regard to other areas of the state... As you can see in the attached graphic [or calculated for yourself at <a href="https://www.payscale.com/cost-of-living-calculator/Washington-Seattle">https://www.payscale.com/cost-of-living-calculator/Washington-Seattle</a>] the \$80k per year salary threshold in the proposal equates to about \$52k here in Spokane... If you were to force Spokane businesses such as ours to pay wages by the Seattle standard, our \$80k would be effectively the same as having an employee at \$125k in Seattle.”</p>	
<p>“My executive colleagues on the west side of the state whose responsibilities are exactly the same as mine, and whose compensation</p>	

<p>is equally generous relative to local standards and cost of living, would be exempt from this onerous weekly chore simply because the dollar salary figure happens to be above the EAP threshold. Why should those executives simply by virtue of living in a wealthier part of the state, be granted this gift of additional time and freedom to raise money and focus on their missions, while those in economically disadvantaged areas are saddled with government requirements that make their jobs more difficult and less focused on their missions?"</p>	
<p>"Some consideration for regionalization...for instance the cost of living in Seattle is 110% higher than Spokane."</p>	
<p>"Section 296–128-545 is proposing new salary limits that are unreasonable. It should be noted that the whole state does not live in Seattle or make Seattle-like incomes. When I looked into average household income by county, King county’s median family income was \$10,000 more on average when compared to the second highest county in our state and it was twice as much as two other counties in the state. Requiring small businesses to follow laws and salary levels that are closer to what you would find in Seattle is unrealistic and not helpful to small business."</p>	
<p>"3 <a href="https://www.fundera.com/blog/study-finds-business-owners-earn-less">https://www.fundera.com/blog/study-finds-business-owners-earn-less</a>. This is intended as a representative figure for earnings, recognizing that earnings vary by region and there is variation in the data. However, the scale of this difference between true small business owners and average wage and the proposed steps for overtime is not going to change with small variations. Average and median wages in King County, are higher than state and national earnings."</p>	
<p>"I found it curious in your Q and A earlier that you were sensitive to the impact that these changes have to small business economic and administrative impacts to small business, but then use that administrative burden as the reason to not to with regional advantage. In that sense, you’re putting the administrative burden as a higher priority to avoid rather than economic burden on small businesses. So I’d ask you to reconsider the regional advantage and being that burden administrative – administration on large businesses rather than being</p>	

<p>the burden on these rural or, you know, small market communities that are here.”</p>	
<p>“This one-size-fits-all approach is inappropriate to apply statewide because we have a lot of disparity in cost of living across Washington state, and most notably communities such as Tri Cities, Spokane and Vancouver are all border cities which will need to be able to successfully compete against Oregon and Idaho.”</p>	
<p>“The new rates are driven by the West Side of the State and are not far for the East Side of the State.”</p>	
<p>“The East side of the state does not have the expenses of the West side so considerations need to be made for that disparity.”</p>	
<p>“As a business in a rural low income area, where my service rates are lower to meet my customers income, this cost increase and subsequent service rate increase would be an undue burden to by customers. This might work in Seattle/King county, but not in Stevens County.”</p>	
<p>“The cost of living on the Western side of the state compared to Eastern Washington are vastly different...These sweeping changes that keep being made from Olympia NEVER consider the detrimental effects to businesses in Eastern Washington.”</p>	
<p>“L&amp;I staff explained that it would be impossible to factor regional adjustments into threshold based on regional differences in cost of living and other economic statistics, because some businesses operate in multiple areas of the state and it would be impossible for them to manage more than one set of numbers. And yet, somehow, these same businesses have the resources to adapt to a myriad of differences in sales tax and other assessments and local ordinances from county to county and municipality to municipality. Oregon has adopted a three-level minimum wage to account for differences in regional economic circumstances, with Portland higher than the standard wage and some rural counties lower, so clearly their business community is smart enough to figure it out. It may be more complicated, but it would be far fairer to make such regional adjustments in this case as well—if anyone is equipped to afford and manage the greater administrative burden, it is these larger statewide businesses not the small businesses and</p>	



<p>nonprofits in the poorest areas of the state. Without some accommodation for those who do not live and work in our state's wealthiest zip codes, a rule that purports to be about fairness in fact will achieve exactly the opposite."</p>	
<p>"I also believe there should be two studies, one for Eastern Washington and one for Western Washington. Just because something will be good for the people and economy of the Coast, does NOT mean it is good for the economy of Eastern Washington."</p>	
<p>"Some consideration for regionalization be factored in; for instance the cost of living in Seattle is 110% higher than Spokane and roughly the same for the Tri-Cities where not-for-profits provide crucial community functions in the void of significant public or private sector support."</p>	
<p>"Consider regionalization of salary levels. The difference in the cost of living between Seattle and the east side of our State is significant."</p>	
<p>"Mandating such steep overtime exemption rules fails to recognize a simple economic reality that not all communities are the same."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the Southeast King County businesses that provide jobs and important services in our community."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the South Sound businesses that provide jobs and important services in our community."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the King County businesses that provide jobs and important services in our community."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the Maple Valley businesses and non-profits that provide jobs and important services in our community."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the Snohomish County businesses that provide jobs and important services in our community."</p>	
<p>"The \$79,000 annual salary threshold is simply too much for the Eastern Washington businesses that provide jobs and important services in our community. Here in Spokane, we've heard concerns</p>	

<p>from many employers who would be detrimentally effected by this change.”</p>	
<p>“The \$79,000 annual salary threshold just isn’t practical for a lot of the Eastern Washington businesses that provide jobs and important services in our community.”</p>	
<p>“Raising professional wages to the \$80k minimum isn’t financially viable and is much higher than market wages in Spokane that are closer to \$45-\$55k range.”</p>	
<p>“I think the rates forecast for 1/1/25 are excessive for lower cost of living portions of the state...For eastern Washington state, I believe both the hourly minimum wage and the minimum weekly salary levels are too high.”</p>	
<p>“This is not about justice for the work force. It is about forcing us to pay more taxes. The higher minimum wages go and salary the higher the cost of goods go. It does not increase our living conditions but it does fill your tax coffers that if you could just get enough of our moneys your utopian dream tripe might just come true. Pure nonsense. Quit making the “backbone” of this country weaker.”</p>	
<p>“Forcing businesses to pay more wages means the state collects more taxes.”</p>	
<p>“WA state rule makers make it hard to do business by continuing to raise pay rates and taxes unless you’re a Puget Sound based business.”</p>	
<p>“When salaries go up, so do all the related employment taxes. So it isn’t just an additional \$XX per hour – even if we could calculate that. It’s what would have to be employment taxes that change month to month, which would make our accountant crazy and he’d probably charge us more.”</p>	
<p>“80,000 is too high a salary for the start of overtime exemption. Maybe it should be split between Seattle and the rest of the state.”</p>	
<p>“I ask that either you take a look again at the multiplier or take a look at the considerations that Oregon has implemented with their minimum wage with the three tiers and as you mentioned New York has implemented.”</p>	

<p>“Methodology that is used to determine the new threshold should consider geographic differences.”</p>	
<p>“All requirements, including how they are phased in, should be consistent across geography, industry and employer size. To do otherwise relies on overly broad assumptions about what makes an employer more “able” to meet the requirement, while increasing administrative complexity and confusion.”</p>	
<p>“Should be tied to the living cost of the City so it is not a much larger burden to those in lower cost regions of the State.”</p>	
<p>“We ask that the agency reconsider their threshold levels and continue to work with employees, businesses, and non-profits to develop a collaborative and innovative solution that will address employee and employer concerns while mitigating unintended consequences and disproportionate regional impacts.”</p>	
<p>“We believe the proposed new thresholds to be excessive and know it will disproportionately and negatively impact employees, particularly our rural communities. The proposed threshold establishes locational inequity.”</p>	
<p>“Clear consideration for regionalization. We have a diverse state, and the cost of living between Seattle and southeastern Washington is extreme (103% more). Established threshold amounts should reflect this through a regional adjustment similar to minimum wage in Oregon.”</p>	
<p>“Proposed threshold appears to be based on compensation standards for the King Count/Puget Sound region.”</p>	
<p>“There are also regional differences between Seattle and Spokane. With the cost of living differences between Seattle and Spokane it is not realistic to force Seattle type wages on a Spokane corporation. I have done some research between the two and someone making \$45,00 per year in Spokane would need to make \$80,000 per year in Seattle to keep the same lifestyle. Drastic changes like 2.5 times the minimum wage amount make it impossible for small businesses to absorb the hit. It really hurts the businesses and will make it difficult for us to grow our business. In the question and answer section there wasn’t really a good</p>	

<p>answer to why the salary overtime adjustment was not regional. I came away that it was not going to be regional because of the ease of implementing the law. The ease of implementing this is definitely not a good reason to make the whole state fit into a wage that would be geared more towards Seattle earners. If you are going to just complete one rate and not make it regional than you should gear your rate towards the lower end of the spectrum. We would strongly oppose anything over 1/5 times the Washington Minimum wage or set the standard at regional levels. If the state officials are going to put one rate in to make it easy then they should wait for the Federal Government to make its changes and follow those modifications as they happen.”</p>	
<p>“Consider indexing the EAP threshold to appropriately reflect regional variations in cost of living and salary expectations. If this is not possible, consider reducing the threshold for non-profit organizations.”</p>	
<p>“Apply regionalization. We have a diverse state, and the cost of living between Seattle and southeastern Washington is extreme. Established threshold amounts should reflect this through a regional adjustment.”</p>	
<p>“An alternate idea would be a variable exemption limit be looked at based on County location within Washington State.”</p>	
<p>“The Department is proposing a significant increase to the exempt wage without considering the regional impact statewide. While the proposed wage increase may support wages in King County, it does not support wages in Spokane County or Eastern Washington as a whole. If the Department is required to set a new exempt wage for the state, we suggest a regional approach. Separating out the counties with higher earnings from the counties with more rural communities and lower earnings. King County wages shouldn’t be forced into communities that can’t support it.”</p>	
<p>“Consider a regional approach to the state taking into consideration the counties with lower earners.”</p>	
<p>“This salary threshold does not reflect the significant differences in prevailing wages and living costs between the Central Puget Sound and more rural areas of our state. If a salary threshold is to remain a part of</p>	

<p>the determination of exemption eligibility, then a regionalized approach that accounts for local wage scales and costs of living should be adopted.”</p>	
<p>“Some consideration for regionalization...for instance the cost of living in Seattle is 110% higher than Spokane.”</p>	
<p>“I urge you to consider not adopting the proposed rules or modifying them to allow more localized wage mandates.”</p>	
<p>“There needs to be different rates depending on what area of the state you live.”</p>	
<p>“Concerned that this proposed salary criteria does not reflect the sizeable differences in prevailing wages and living costs between the Central Puget Sound and the more rural areas of our state...if a salary threshold is to remain a part of the determination of the exemption eligibility, we believe a standard that accounts for local wage scales and costs of living should be adopted.”</p>	
<p>“If the lower limit can’t be applied statewide, consider regional differences.”</p>	
<p>“This proposed salary threshold of 2.5 times the state minimum wage does not reflect the sizeable differences in wages and living costs between the Puget Sound area and rural parts of our state. A salary threshold needs to account for local wage scales and costs of living across different parts of the entire state.”</p>	
<p>“Reconsider their threshold levels and continue to work with employees, businesses and nonprofits to develop a solution that will address the concerns while mitigating unintended consequences and disproportionate regional impacts.”</p>	
<p>“Just like the State of New York has done, we would hope that you would look at regionalization.”</p>	
<p>“We should be looking at some other standard, something like average income by county rather than the minimum wage.”</p>	
<p>“Oregon when they did the change with the changes, they really took this in consideration and took Portland out of the equation and really looked at those differences, which I think the state of Washington potentially could do as well.”</p>	

1.f.1 Economic Impacts on Nonprofits: These rules changes would require additional funding	Response
<p>“We would like to see a real commitment from State Government to work with us on a similar plan to increase state funding for the Arts &amp; Cultural sector during a similar time frame.”</p>	<p>Although the department does not have authority to seek specific funding for either the non-profit or public sectors, the department is committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on the public sector and nonprofits. The department has also attempted to mitigate the potential fiscal impact for all employers. As discussed above, the adopted rules include a more extended salary threshold phase-in schedule than the proposed rules to give employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary threshold.</p> <p>As discussed above, the level of impact on employers will be dependent on which compliance strategy they choose to utilize, and they are not required to adjust salary levels (see potential compliance options outlined in response 1.a.1).</p>
<p>“If the funding comes up short, our agencies are still on the hook to meet these requirements.”</p>	
<p>“Should the State decide to move forward with these new standards, then the Governor and Legislature are duty bound to ensure that ECEAP preschool and all other state funded programs and services are adequately funded to comply.”</p>	
<p>“One of our greatest concerns about these proposed changes is that it does not take into account on how nonprofits will secure the additional revenue to remain in compliance.”</p>	
<p>“Work in tandem with the state legislature and the state budget process to make sure that there are not unintended consequences.”</p>	
<p>“If we were to pay our Supervisors and Managers overtime for being on-call, the financial impact on our agency budgets would be overwhelming. The current rate paid for our services would not come close to covering this expense.”</p>	
<p>“The unfunded mandate proposed in these overtime rules will have a devastating impact on our ability to serve those clients who are in crisis and need our services. Simply put, Supported Living agencies will not have the ability to meet these new overtime obligations under the current funding appropriated by the Legislature in the 19-21 biennial budget.”</p>	
<p>“Proposal will force our organization to raise money to make just a few top executives rich (by eastern WA standards) while front line staff have to wait even longer before we can find money to increase their compensation since the funds we’ve been working to raise for that purpose will have to go toward my salary instead.”</p>	
<p>“While compliance requirements and related expenses will remain increasingly costly facts of life, donations and reimbursement rates through state and federal contracts are not expected to increase at a</p>	

<p>level to cover increases in expenses necessary to continue our service levels.”</p>	
<p>“This rule as it is written simply cannot go into effect for Medicaid funded service providers until legislative funding is in place to support this proposed rule as the outcome would result in our inability to retain our valued employee’s simply due to lack of funding.”</p>	
<p>“If LNI proceeds with the phase-in of higher salary thresholds, our member institutions will likely need to submit fiscal notes to the Washington State Office of Financial Management to seek funding to cover the increased costs. We note that during fiscal year 2020-21 there will a “double whammy”: that fiscal year will contain two salary threshold increases: On July 1, 2020 the state threshold for employers with 51 or more employees will move 211% above the current federal threshold and then on January 1, 2021, the threshold for employers with 51 or more employees will increase by another 14.9%. The two increases in the coming fiscal year will result in a combination of higher salary costs and higher overtime expenses in the 2020-21 fiscal year, to say nothing of additional increased costs in the following fiscal years from 2021 to 2026.”</p>	
<p>“Can we also make a commitment to better help and fund arts and culture as we start moving in this direction?”</p>	
<p>“In order to increase the wages as defined in the proposed rules and not reduce other cots, agencies would need an increase in their state funding.”</p>	
<p>“Supported Living services are paid solely through funding appropriated by the Legislature. Unlike some industries that have clients who can privately pay for services, our clients qualify for services through a Medicaid waiver. There is no other funding source for Supported Living other than state funding.”</p>	
<p>“We cannot simply “pass on” this new cost to our customer, as the customer is the legislature, who sets our rates and has given us only small and sporadic increases to the “care management” portion of our rate over the last two decades.”</p>	

<p>“I do not feel the State is taking into account our [non-profit] ceiling on funding. We have no way to pass this on to our customers without councilmatic action, which has only occurred one time in the past 25 years.”</p>	
<p>“Many non-profits rely on governmental grants with legally set caps on awards and two year budgets. The Washington Legislature did not increase appropriations for such awards to provide for staff pay increases by nonprofits in adopting the two year biennial budget (which will be in place through the second step increase in the proposed schedule of over \$15,000 per employee per year over the initial step).”</p>	
<p>“It is also unclear whether the State would appropriate additional funding to minimize the impact on our state funded employees.”</p>	
<p><b>1.f.2 Economic Impacts on Nonprofits: These rules will have a negative impact on nonprofits</b></p>	<p><b>Response</b></p>
<p>“Continuing down the path as presented will make it nearly impossible to do our job, which is a job the state of Washington depends on us to do.”</p>	<p>As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p>
<p>“The rules as presently proposed create an unnecessary hardship for our staff, our operations and our charitable mission.”</p>	
<p>“If these rules were to change the gym would also suffer due to needing extra employees during big events.”</p>	<p>In compliance with the APA, RCW 34.05, the department prepared a final CBA. The final CBA analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA are included in response 1.a.2. The analysis in the final CBA is based on industry and occupation type. The available data-sources do not distinguish employers by for-profit vs. nonprofit status and the department is aware of no data that indicates that workers in the nonprofit sector would benefit less from the adopted rules than their counterparts in for-profit businesses. However, the department is committed to ongoing conversations with nonprofit stakeholders during the implementation phase-in of the adopted rules to gauge impacts on nonprofits.</p>
<p>“Our employees would be denied the opportunity to provide a special event for our clients. Something they look forward to.”</p>	
<p>“The proposed overtime rules will be disastrous to us and our ability to care for state-funded clients under Medicaid and other funding. For our agency, this is 90% of our nearly 300,000 hours of home care and over 8000 service “days” of adult day services to the same clientele.”</p>	
<p>“Past experience would cause us to believe the State will not adjust their compensation rates to us as a provider to cover additional costs resulting in the increase of overtime costs to impact our financial results in their entirety.”</p>	
<p>“It will also require us to spend more on administrative/overhead costs in relation to program mission costs, which for a non-profit can have unfortunate implications for grand and other funding.”</p>	



<p>“The multiplier used by L&amp;I for the new overtime exemption threshold is too high and the end result is a salary exemption that is unsustainable for Supported Living agencies.”</p>	<p>As stated above, the adopted rules also include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers, including nonprofits, more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary threshold.</p> <p>The department is also considering updating its Administrative Policies to provide additional guidance on which non-profits must adhere to the MWA and which non-profits may meet other exemptions under the statute. Examples of other exemptions are described in more detail below in response 1.f.4.</p> <p>Finally, the level of impact on employers will be dependent on which compliance strategy they choose to utilize, and they are not required to adjust salary levels (see potential compliance options outlined in response 1.a.1).</p>
<p>“Urge the State to balance its approach to increasing the exempt salary threshold with the realities of our business model and the challenges of the non-profit sector.”</p>	
<p>“The economic realities of nonprofit arts and cultural organizations should be taken into consideration when the State contemplates significant rule-making, especially outside of a legislative process.”</p>	
<p>“Like other arts organizations we rely heavily on volunteer labor and feel fortunate to be able to pay anyone anything.”</p>	
<p>“This is a one-size fits all solution that in some circumstances is merited. As applied to the arts, which is largely populated by passionate volunteers, it makes no sense.”</p>	
<p>“The economic realities of non-profit arts and culture organizations should be taken into consideration when the State contemplates such significant rule-making that will pose key budgetary challenges that threaten our artistic programming and financial well-being.”</p>	
<p>“Urge the State to balance its approach to increasing the salary threshold with the realities of our business models and the challenges of the non-profit sector.”</p>	
<p>“Proposed rules would have an adverse financial effect to all nonprofit agencies who serve the clientele of DSHS.”</p>	
<p>“Without a more balanced approach, it will have a negative impact nonprofit cultural organizations of all sizes”</p>	
<p>“I own an agency for Disabled Adults, We don’t get enough money to pay that for managers. This is going to shut me down.”</p>	
<p>“In the cases of most non-profits, the work flow is inconsistent. Around big fundraising projects, for instance, we may need to work extra hours. For myself and my staff, we generally take time off after the event to compensate for the extra time put into the event. If I had to pay myself and my staff an hourly rate and overtime for this, it would not only make it where we couldn’t afford to put on our fundraising event, but where our staff couldn’t afford to take the time off following the event.</p>	

<p>Not allowing this kind of flexibility can only lead to small non-profits like Maple Valley Youth Symphony not being able to afford our staffing and probably causing us to have to shut down, costing people jobs.”</p>	
<p>“Working in small government or non-profits, we don’t have the funding to pay high salaries so we may limit hours to part time. Many of the programs won’t be sustainable if employers are forced to pay a full week’s wage.”</p>	
<p>“We object to the significant increase of this threshold to \$57,356 in Year Two, which is burdensome and impractical. This is an extreme 16% increase, which is not needed to help distinguish between exempt and non-exempt bodies of work. Further, the threshold numbers continue to annually escalate considerably and are forecasted to reach \$70,200 a year, plus consumer price index adjustments, for all employers effective Jan. 1, 2026. This will be especially detrimental for our non-profit organizations.”</p>	
<p>“The rules as presently proposed create an unnecessary hardship for our staff, our operations and our charitable mission. These hardships transcend sectors, with representation including healthcare, youth service, disability services, education, and the development of low income affordable housing opportunities.”</p>	
<p>“Unlike the for profit sector, most non-profit services will not be able to recoup the increase in expenses and decrease in services this rulemaking (as proposed) will generate.”</p>	
<p>“To adapt to the new rule, we would have to close down Arts Corps, as a non-profit can’t afford these new changes.”</p>	
<p>“Concerned the various non-profit organizations who contract with the Department of Social and Health Services (DSHS) will have to reduce other critical positions to increase the pay for current exempt employees.”</p>	
<p>“The rules as presently proposed create an unnecessary hardship for our staff, our operations and our charitable mission.”</p>	
<p>“As our costs climb because of things like minimum wage and the impact of this overtime law decision, we have less money to invest with our non-profits or community sponsorships. Those requests for help</p>	

<p>average about 30 per week in Spokane alone. There will be a massive shortfall! Certainly an unintended consequence, but a real one nonetheless.”</p>	
<p>“Establishment of the proposed thresholds would financially harm and disadvantage our state’s hospitals compared to other states that follow the federal thresholds. The majority of hospitals in this state are either not-for-profit hospitals or public entities, many of which already operate with financially unhealthy or even negative operating margins. The proposal would increase costs for hospitals, further complicating their ability to sustainably provide care in their communities. Rural hospitals would be particularly impacted by the thresholds as they do not reflect the lower costs and prevailing wages that exist in more rural areas. The proposal would also impact our academic medical centers, making it more difficult for them to provide and compete with other states for positions based on grant funding.”</p>	
<p>“Many local governments will face serious budget crunches to support non-profits providing housing, counseling, health visitation, community services, tutoring, college preparation, childcare.... Local governments, non-profits and social service providing businesses which rely on local government funding have all found it difficult to maintain service levels due to the gap between the increased minimum wage in Seattle and governmental support, which is being echoed to a lesser degree with the increase in the state minimum wage. “Administrative” staff is a class that non-profits typically agree would be ok with having 40 hours plus overtime.”</p>	
<p>“The proposed rule creates unsupportable disparities with the Legislature’s determinations on pay for educators. This is particularly relevant for the many, perhaps majority of, nonprofits with educational missions.”</p>	
<p>“As a human service provider, our operating budget is dictated by the remuneration rates set in our contracts by the state of Washington. When faced with in an increase in costs, we do not have the option of “raising prices” or otherwise passing on the costs. Like many in the social service industry, our structure is already flat and lean. While the</p>	

<p>state may believe that employers will be able to bear the proposed increased salary costs, the reality is that we cannot give what we do not have. If the proposed rule is implemented, we will be faced with making difficult decisions that will have a series of negative impacts on our organization, our employees, and the clients and communities we serve.”</p>	
<p>“Most Clubs do not have sources of fixed, committed revenues, and their fundraising efforts are volunteer driven, with limited staff support in efforts to direct majority of raised revenue to programs, serving as many kids as possible. Therefore, when labor costs go up, we do not have the flexibility to raise prices for our services to balance our budgets.”</p>	
<p>“It is wholly unreasonable to expect that nonprofits can keep their doors open and provide services that relieve the burden of government and the private sector when exempt salaries will grow as high as \$80,000 in just six years; at the same time that job opportunity and income disparity is so great between urban, suburban and rural areas of our vast state.”</p>	
<p>“This proposed rule, if adopted, would severely impact our ability to continue to operate our low-budget non-profit arts organization.”</p>	
<p>“We can’t simply pass these costs on to our patrons. Our operating model of being accessible means we are committed to providing affordable arts, film and music for the community.”</p>	
<p>“We already face many challenges trying to operate a low-budget arts organization in a small community with limited resources.”</p>	
<p>“It remains our concern that the significant changes proposed could negatively affect productivity and morale on college campuses while simultaneously putting upward pressure on costs for students, and choking efforts to innovate. Ultimately, the associated higher costs of doing business could reduce the ability of not-for-profit colleges and universities to accomplish their missions and increase the cost of higher education in Washington.”</p>	
<p>“Accelerating the minimum exempt rate to \$80,000 in six years is not reasonable for non-profits and small businesses.”</p>	

<p>“The extensive amount of additional overtime pay that would result from the proposed LNI thresholds will not be covered by our current grants, which were written and funded before this transformational change was being considered.”</p>	
<p>“Much of the funding for research jobs comes from grants. If the cost of researcher salaries exceeds the funding, principal investigators may not be able to deliver on the goal of the funding. This could mean the loss of future grant opportunities and damage to the reputation of our research activities.”</p>	
<p>“Non-profits tend to operate pretty close to the bone and have minimal reserves and ability to absorb additional labor costs.”</p>	
<p><b>1.f.3 Economic Impacts on Nonprofits: These rules will have positive impacts on nonprofits</b></p>	<p><b>Response</b></p>
<p>“I love working in the non-profit sector because I get to take my value to work with me, BUT there is a huge problem exploiting the labor of staff and it needs to end.”</p>	<p>As described above, the department considered the many potential benefits of the adopted rules when it considered whether to update the EAP rules. Such benefits include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees’ families.</p>
<p>“People being overworked, especially in the nonprofit sector, nonprofit workers are not martyrs.”</p>	
<p>“I also want to speak as the executive director of a small non-profit. Restoring OT will help organization carry out our mission and live our values. We can't be for our communities or for social justice if that's dependent on our employees putting in extra hours without extra pay.”</p>	
<p>“In the nonprofit world, employers miss out on smart, qualified employees like me because of employers’ abuse overtime-exempt rules.”</p>	
<p>“These proposed rule changes are also wholly consistent with our mission and the stated mission of most of the non-profit community.”</p>	
<p>“By putting a little more money in the pockets of several hundred thousand workers, the rule change will be good for main street businesses and nonprofits. Those workers will have more discretionary income to spend and donate. Employers can expect less burn out, higher productivity, and less job-hopping. Giving working Washingtonians a little more control of their time will mean more time for volunteering and participating in community life.”</p>	

<p>“The higher threshold will be good for both nonprofit and for-profit employers... Both for-profit and nonprofit organizations rely on trained, motivated staff to stay in business. Turnover and burnout, which result from low pay and long hours, are extremely costly. Recruiting and hiring candidates, and then mentoring and bringing a new staff member up to speed all take time and cause overall productivity to suffer.”</p>	
<p>“I trust that Washington's innovative business owners and non-profits can adapt, you know, the same kind of adaptation that they require of their employees when they're asked to stay late at the office and they have to figure out who will take their kids to piano lessons or the dentist or who will take care of dinner that night or how late the child care center may depend on stays open.”</p>	
<p>“Especially if your non-profit model is delivering services to people in low-income communities, putting your employees in poverty to deliver those services probably isn't a good practice for your non-profit.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time.”</p>	
<p><b>1.f.4 Economic Impacts on Nonprofits: There should be different requirements for nonprofits</b></p>	<p><b>Response</b></p>
<p>“Many State and Federal rules and laws already have a component which exempts small nonprofits from being required to comply in the same way that for-profit entities do. Private market business have the ability to raise prices or in our case raise rents, in order to pay for increased costs. Nonprofits do not have this ability.”</p>	<p>The department does not distinguish between non-profits and other employers for several reasons. First, the Legislature authorized the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA.</p>
<p>“We are asking that the proposed annual amounts be re-evaluated, or potentially include a reduction for non-profits which generally attract employees whose primary motivation may be other than financial reward.”</p>	<p>The department’s rulemaking objectives include restoring protections so that employees who should receive the benefits of the MWA will do so, and to implement a mechanism to ensure that the tests for the exemptions remain up-to-date so future workers</p>
<p>“Please consider different limits for nonprofit employers.”</p>	<p>will not be denied the protections that the Legislature intended to</p>

<p>“Any chance of a non-profit exemption of the multiplier for small operations (under 50 employees)? Or, just a maximum 1.25 – 1.50 multiplier for small non-profit organizations?”</p>	<p>afford them, regardless of whether they work for a nonprofit or for-profit business. As discussed above, the department is aware of no data that indicates that workers in the nonprofit sector would benefit less from the adopted rules than their counterparts in for-profit businesses.</p> <p>Second, the department’s authority to introduce an approach to setting salary thresholds that is dependent on an employer’s nonprofit versus for-profit status is uncertain. The statutory definition of “employee” under RCW 49.46 does not differentiate between employees employed by nonprofit versus for-profit employers, nor does it establish different standards or rights for employees based on such variations.</p> <p>Finally, the Legislature has provided other exemptions that apply to certain non-profit employees. For example, caregiving organizations may find that some of their workers could be subject to the “sleep or reside” exemption found in RCW 49.46.010(3)(j). The “sleep or reside” exemption exempts from the MWA workers whose duties require that they reside or sleep at their place of employment or who otherwise spend a substantial portion of their work time subject to call. Other charitable organizations charged with childcare responsibilities may find that another exemption, such as found in RCW 49.46.010(3)(i), applies to their employees. Workers who meet the criteria for these exemptions are exempt from the MWA and corresponding rights, including overtime.</p>
<p>“Please exempt not for profits and non-profits from this ruling.”</p>	
<p>“There should be different steps for non-profits and small businesses; and, there should be a step from 1.25 up to 1.5 times minimum wage.”</p>	
<p>“L&amp;I’s responses to these concerns have not recognized that there should be a different set of standards for non-profits because they are fundamentally different than similarly sized businesses.”</p>	
<p>“The record fails to provide documentation of why the employees of non-profits with public service missions and very small businesses should have higher overtime compensation triggers than the employees of retail and service sector giants.”</p>	
<p>“If the Department is willing to consider whether the higher salary threshold should be phased in based on employer size or geographic location, then we suggest employer type (non-profit vs. for-profit or government) and industry also should be considered.”</p>	
<p>“Consider an exemption for the performing arts or possibly non-profits in general. An often-cited differentiating factor between for-profit and non-profit employment is that employees find more purpose-filled work in non-profits. The performing arts require workhours at nights and on weekends that we offset with comp-time benefits.”</p>	
<p>“Asking that this conversation go to the stakeholders, and you have a conversation with the nonprofits and all the other sectors that will not benefit from this rule just because it’s a one-size-fits-all rule, and that’s not equitable when it comes to these kind of decisions, and we really need to have a different plan and a different conversation.”</p>	
<p>“Request that you consider a different threshold for not-for-profits. Rather than the 2.5, perhaps somewhere between 1.5 and 1.75 so, again, that we can assume the costs of these increases.”</p>	
<p>“We also ask the Department to consider designing additional provisions that would create specific salary thresholds for the local non-profits which would enable our Washington 501I(3) organizations to comply.”</p>	

<p><b>1.f.5 Economic Impacts on Nonprofits: Nonprofit workers should be allowed to opt out of these rules</b></p>	<p><b>Response</b></p>
<p>“Our employees, including me, do this work out of a sense of passion and love. We know we are underpaid. Our board of directors knows we are underpaid. We have done everything we know to do to create more earned and contributed income and still cannot find a way to pay ourselves more. Imposing this requirement would throw us into disarray and confusion, distracting us from our core mission. We are basically poorly paid volunteers and we know it. We choose it. I could make more money being a bagger at Safeway, but I’d rather be doing this job no matter what the pay.”</p>	<p>The adopted rules do not include an opt-in option for employees. An opt-in approach increases the risk of worker exploitation. Under-informed workers may not fully understand the rights they are asked to give up, or may feel economic or other pressure that prevents them from making an unbiased, fully informed choice. An opt-in system also creates a disincentive for employers to appropriately classify and compensate employees. Finally, an opt in system could lead to coercion and abuse by employers who could pressure vulnerable employees to opt in. The burden is not on employees to claim or prove that the exemption does not apply to them. The adopted rules maintain the requirement that employers have the burden to show an employee meets the executive, administrative, or professional, computer professional, or outside sales exemptions.</p>
<p>“The rule should take into account if people choose to serve in non-profits and social service agencies with lower salary expectations so long as they have that security.”</p>	
<p>“People choose to work for non-profits out of a desire to work providing public service. This is a choice. Most people working for such small non-profits understand that they will be working over forty hours a week in salaried positions to meet their own personal desire to serve the mission of the non-profit.”</p>	
<p>“Is there any reason to allow non-profit arts and cultural workers to opt out if they want to opt out, keeping the power with the workers?”</p>	
<p><b>1.f.6 Economic Impacts on Nonprofits: These rules would impact nonprofit services</b></p>	<p><b>Response</b></p>
<p>“Proposal to increase this level to \$49,140 per year for year one (for large employers, which we are) and to annually increase this figure is unreasonable and would negatively impact the arts and culture services and programs we provide to our communities.”</p>	<p>The level of impact on employers will be dependent on which compliance strategy they choose to utilize, and they are not required to adjust salary levels (see potential compliance options outlined in response 1.a.1).</p>
<p>“With the proposed standards for exempt positions, we will be forced to direct more of our ECEAP funding to managers and away from our preschool teachers and other front staff. This is not sustainable.”</p>	<p>As stated above, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers, including nonprofits, more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The</p>
<p>“These proposed rules are putting at risk the organizations who are the backbone of many communities at a time when we are already seeing costs to operate increase, while at the same time dealing with</p>	



<p>decreased incentive for community members to give (changes in tax structure for donations).”</p>	<p>extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary threshold. The department is also committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.</p> <p>Non-profit organizations may also wish to explore other exemptions from the MWA that could apply to their employees, including those described in response 1.f.4.</p>
<p>“The proposed Executive, Administrative, Professional &amp; Outside Sales Rulemaking stands to negatively impact both our workforce and our ability to continue to deliver on our charitable mission to those in the communities we serve.”</p>	
<p>“The Executive, Administrative, Professional &amp; Outside Sales Rulemaking (WAC 296-128-500 through WAC 296-128-545) stands to negatively impact both our workforce and our ability to continue to deliver on our charitable mission to those communities we serve.”</p>	
<p>“Given that we lack the ability to increase our revenue to account for rapid increases in labor costs, if the minimum salary level for exempt status is set too high many Y’s will be forced to cut back staff and/or cut service to the communities we serve impacting children, adults, and seniors who need us most and rely on our services and our commitment to financial assistance.”</p>	
<p>“Consider both the financial impact that the proposed rule will have on supported living agencies and their staff and the human impact it will have on the clients that we serve.”</p>	
<p>“Our overarching request is that L&amp;I reject these rules at this time. These rules will be harmful to Supported Living providers and their clients, in addition to other social service agencies across our state.”</p>	
<p>“Consider a solution that allows us to continue to do that job and serve seniors and people with disabilities with the care that they so desperately need.”</p>	
<p>“The Executive, Administrative, Professional &amp; Outside Sales Rulemaking (WAC 296-128-500 through WAC 296-128-545) stands to negatively impact both our workforce and our ability to continue to deliver on our charitable mission to those communities we serve.”</p>	
<p>“As we prepare for increases in minimum wage, exempt wages and compression adjustments, our association will have a \$220,000 negative impact in 2020, forcing unprecedented increases in fees to our service participants.”</p>	

<p>“This will lead to fewer current clients being served, very few new clients being served, and agencies closing their doors permanently.”</p>	
<p>“Given we will never compromise quality or the health and safety of those we serve we will likely have to close several locations leaving many clients we serve without a service provider of their choice or institutionalization. This then places the public at risk and can lead to irreparable consequences to our states most vulnerable citizens.”</p>	
<p>“Our ability to provide quality services to clients and communities would be significantly compromised.”</p>	
<p>“Some examples of the impact that the proposed rulemaking will have on the non-profit sector include: The elimination or reduction of overnight enhancement experiences for youth including recreation camps, leadership conferences, and college tours... Persons with developmental disabilities will be impacted as agencies would face difficulties responding to and resolving crisis, issues, and the support needs of clients served 24 hours a day, 365 days a year... ... Staff salaries may increase and we will need to raise rates for non-subsidized families, and begin to limit the number of State subsidized children we can afford to accept... The proposal will cause us to eliminate or cut back our participation in activities, such as community events and activity fairs. Evening and weekend services will be reduced to limit the amount of potential overtime... ... The proposed rules would almost certainly result in a need to reduce the hours spent traveling, thereby limiting the number and type of trainings in which our staff and managers could participate.”</p>	
<p>“Our clients would be denied the opportunity to gather with their friends and enjoy an experience not part of the typical day. Many of our clients live outside their family home, and these additional events are something they cherish. This proposed rule will reduce their quality of life, leaving them at home alone, and not feeling included in their community.”</p>	
<p>“Client impacts... ability to provide quality, efficient and timely service to those most at-</p>	

<p>risk on our region will be comprised as our staffing levels are expected to be reduced including longer hold times for callers and inability to respond to short notice transportation requests. The number and types of trips provided will be reduced as a result of increased operational costs...</p> <p>outreach efforts will be decreased to reduce travel costs and limited staffing...</p> <p>HSC does not currently charge clients for the services provided, however; HSC will likely have to implement a fee structure for services. Those with low-incomes, seniors and others who will not be able to afford a fee will be unable to get to medical and other basic services.”</p>	
<p>“Given that we lack the ability to increase our revenue to account for rapid increases in labor costs, if the minimum salary level for exempt status is set too high many Y’s will be forced to cut back staff and/or cut service to the communities we serve impacting children, adults and seniors who need us most and rely on our services and our commitment to financial assistance.”</p>	
<p>“With the proposed threshold increase for businesses with over 51 employees, we could afford to keep only 4 of our 19 exempt employees – unless our Grant Funders are able to increase our funding for Personnel accordingly. Due to the fact that most of our exempt employees are in management roles and oversee 24/7 homeless shelters and supportive housing services, this would jeopardize our ability to provide services and potentially reduce the number of clients we are able to serve.”</p>	
<p>“As a result, we anticipate the following impacts of the rule-making as is currently proposed once it is fully implemented by 2026:</p> <ul style="list-style-type: none"> <li>-Many of our 138 Clubhouses will have to reduce their operating hours to control labor costs;</li> <li>-Many of our members will reclassify most of its professional employees into hourly, non-exempt staff, which will in turn affect morale, reduce on-the-job flexibility, and potentially contribute to a higher turnover of employees seeking the flexibility exempt positions generally provide;</li> </ul>	

<p>-Multi-day and overnight college trips and other leadership development activities for our teen population will be eliminated or significantly reduced, affecting nearly 19,000 teen members across WA state;</p> <p>-Many Clubs will eliminate or significantly reduce its after-hours family outreach programs which contribute to community-building, stronger parent-Club relationships and better life outcomes for our members;</p> <p>-Several Club organizations will have to cancel or postpone its current expansion plans into rural and underserved communities. As of right now, we are aware of at least 3 new Boys &amp; Girls Clubs in pending status due to this rule-making process.”</p>	
<p>“Ultimately, our concern is that students will bear the burden of changes recommended. Students are the primary revenue source for private, not-for-profit universities, which is why colleges work mightily to keep all costs down, especially non-student service costs.”</p>	
<p>“The impact of the proposed rules and salary levels on non-profit service providers will be especially impactful. There will be members of our community that desperately need services, including children, THAT WILL NO LONGER BE ABLE TO RECEIVE THOSE SERVICES.”</p>	
<p><b>1.f.7 Economic Impacts on Nonprofits: Educate other agencies and legislature and advocate for additional funding for nonprofits</b></p>	<p><b>Response</b></p>
<p>“We ask that you educate the County and other state departments about this change so that they can adjust their contracts and service plans, to increase funding to continue service.”</p>	<p>As is described in more detail in response 1.f.1, although the department does not have authority to seek specific funding for non-profit organizations, the department is committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.</p>
<p>“Our organization has multiple service contracts with the Department of Social and Health Service, DSHS. We will be informing them of this change, but we ask that you educate DSHS and other state departments about this issue so they can adjust their contracts and service plans.”</p>	
<p>“Educate DSHS and other state departments about this rule change. It is imperative to work with state agencies that contract services to non-profits in order to secure a commitment to raising contract rates in order to account for this increased cost of doing business.”</p>	
<p>“Since each of the nonprofit organizations who serve individuals with developmental disabilities contracts with the state to deliver services</p>	

the state dictates and to individuals the state refers to them, we request you advocate for additional funds to be in the Governor’s supplemental budget request.”	
“In order to prevent layoffs at CWU and other state agency employers, please work closely with the state legislature to ensure that the costs will be fully covered in the state budget.”	
“Commit to influence the decision makers in your sister agencies to fund these costs in their future budgets.”	
“We ask that you educate DSHS and other state departments about this issue so they can adjust their contracts and service plans which from our point of view, are structured to rely upon minimally variable labor costs.”	
“HSC has government contracts with the Washington State Health Care Authority (HCA) and the Department of Transportation (DOT). The contracts will be impacted either through increased costs to the state or reduced services and standards. HSC will advise the departments of the proposed changes and also requests that Labor and Industries notify these departments of the changes so that impacts may be evaluated well in advance of implementation. HSC has not received an administrative increase from HCA since 2015 and if these changes are implemented, HSC will be further limited on its ability to provide adequate staffing levels to address client needs and provide quality services. Additionally, DOT will need to evaluate impacts to client services through their Consolidated Grant Program and respond accordingly.”	

<b>2.a.1 Impacts on Employee Status: These rules will force a change in status that will hurt worker morale</b>	<b>Response</b>
“Lower self-esteem for managers whose titles will now be supervisory at best or whose positions will disappear altogether.”	The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The adopted rules do not require employers to reduce career advancement opportunities
“Managers would be demoted to supervisor, paid less, have less responsibilities and will indubitably have a decreased morale as they’ve lost the opportunity and title they had.”	

<p>“Change the job titles and job descriptions for impacted positions.”</p>	<p>offered to exempt or nonexempt employees and do not require employers to restrict management positions to only exempt employees.</p>
<p>“When the implementation date approached for President Obama’s proposed federal changes, we converted a number of salaried employees in the \$40,000-\$43,000 range to hourly. These employees actually lost money. Rather than earning overtime, their hours were monitored and they often end up working 37-39 hours per week. They also forfeited flexibility that came with being salaried. Clocking in and out changed their relationship with their supervisors and their perspective of their job status.”</p>	<p>As discussed above, employers also have many potential options to comply with the adopted EAP rules (see potential compliance options outlined in response 1.a.1). One potential option to comply with the adopted rules is to convert currently exempt salaried employees to non-exempt, salaried employees. This strategy would allow employees to continue to be paid on a salary basis with predictable earnings.</p>
<p>“This will cause too many people to have to go hourly and employees like being exempt.”</p>	
<p>“Unintended consequence of exacerbating this pay difference and demoralize our already low-paid direct care workforce.”</p>	
<p>“The only alternative is to tell part-time managers or professionals that they will need to be paid hourly and that they will need to clock-in, clock-out, take set breaks, etc. This will devastate them and their self-worth and we will have a hard time filling these positions.”</p>	<p>Finally, many workers will see increased benefits and protections based on their reclassification. In many cases, these protections will likely improve worker morale. Employers also maintain the option to provide significant flexibility to their workers whether they are exempt or not (see response 2.d.1 for examples of flexibility options employers can offer their employees).</p>
<p>“Many employees feel that being exempt is a privilege and something they have worked hard to get to as a result of your salary levels, rates of increase are only going to cause them to have to lose that benefit.”</p>	
<p>“There will be a morale hit for employees being transitioned to nonexempt pay status.”</p>	
<p>“These managers and supervisors have worked long and hard to get to this point, and going back to hourly would feel like going backwards or being demoted. There’s a sense of higher worth when an employee doesn’t have to be tied to a time clock.”</p>	
<p>“The salary threshold as proposed would cause us to reclassify the majority of our exempt staff. The effect on employee morale. When this was proposed by the federal government over two years ago, it was our own employees who had the most negative reaction. All of the staff saw the change from exempt to hourly as a loss in status. They also saw the confinement of set hours as a loss of flexibility and an interruption of the work life balance we have tried to offer.”</p>	

<p>“We fear that the shift will be viewed as taking away from the affected employees, who will feel they are losing their status as exempt employees.”</p>	
<p>“Requiring businesses to reevaluate an employee’s exempt status annually to determine whether to increase salary or change to nonexempt status is disruptive and destabilizing for both the employer and employee.”</p>	
<p>“When communicating this change, employees shared that they felt an hourly role was a lesser position that would result in reduced flexibility. Hourly employees must be paid for all time worked, which requires them to monitor and track freedoms, or have them restricted altogether, such as at-home laptop and mobile phone use, travel, flexible time away from the office for appointments and obligations. Employees shared that they may have been hourly at an earlier point in their career, but they worked hard to be in a role that is exempt and the change felt like “a step backwards.” It was repeatedly referred to as a ‘demotion’.”</p>	
<p>“While the intent of this regulatory update is to improve the lives of employees and contribute to economic stability, the current proposal would instead have seriously negative impacts for many of the people it is purporting to help.”</p>	
<p>“An abnormally high threshold, as proposed in the current proposed rules, would force us into managing an increasingly modern, digital age workforce in under outdated FLSA laws. And we can assure you, we have tried to repeatedly use the “fluctuating workweek” method of pay (hourly exempt) that the Department is recommending and found that to be even more problematic. It leaves our employees feeling they really are not getting paid properly for extra work done. That creates, in our estimation, an even bigger potential misuse by any bad employers out there than the one this rule is trying to solve.”</p>	
<p>“The grocery and convenience store industries have low-profit margins. Although most managers will meet the duties tests, our companies cannot afford to raise the salaries in order to meet the salary threshold in order to keep their schedules flexible. They will then need to be re-</p>	

classified, which can be detrimental for the companies and the employees.”	
“Previous salaried managers will now be hourly Supervisors at best or will see their position eliminated.”	
“To keep my doors open, I may have to take employees off of salary, which would hurt them as well.”	
“Employees would make overtime pay during peak season, but I would have to cut their hours to part time during the slow season that coincides with the holidays and winter. None of my professional employees would trade the stability of a salary for overtime pay during peak season.”	
“I am particularly interested in preserving my ability to provide my employees with predictable wages from week-to-week, and month-to-month.”	
“Changing employees hourly will cause them to have huge wage swings from month to month.”	
“Employees are paid on a salary basis so they can get a full check every week regardless if they work a full week or not.”	
“For non-profits and small business that could survive, this could greatly reduce productivity in employees, creating a situation where employees would need to “milk the clock” on some days and have to race to get things done on other days. This would not only reduce productivity, but quality of work.”	
<b>2.a.2 Impacts on Employee Status: These rules will improve worker morale</b>	<b>Response</b>
“When you wind up getting paid less than those you supervise because they are hourly and get overtime and you are salaried and don't, not only does it make it hard to get ahead, it is also demoralizing.”	As described above, many workers will see increased benefits and protections if they are reclassified. In many cases, these protections will likely improve worker morale. The department considered the many potential benefits of the adopted rules when it considered whether to update the EAP rules. Such benefits include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected
“Employers may complain at first, but measures like these will increase morale, spread the workload wider, and overall give the entire local economy a stronger foundation. Please pass this bill.”	
“It is only fair that the people who do the work and are essential to the success of the business get rewarded fairly. When people are forced to work long hours without extra pay it is demoralizing, it takes important	



<p>time away from relationships with family and friends which are essential to a healthy society, and it ultimately has a negative impact on the business due to decreased morale and productivity.”</p>	<p>workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees’ families.</p>
<p>“To business owners, your employee turn-over will be lower. They will get sick less often. They will have the energy required to do a good job and then go home.”</p>	
<p>“It can also allow workers feel that they are actually cared about, meaning that they will feel far better about working for their employer, feel happier because they will understand that their employer will not unduly overwork them.”</p>	
<p>“Expected to work long hours without overtime pay brings down morale, and lowers productivity in the workplace.”</p>	
<p>“This would help employee turnover.”</p>	
<p>“It feels demeaning, it wears me out, and it makes it hard for me to feel like my rights are in common with others...You try that, where you have to work constantly to provide yet have little personal time left to do so yourself in person---see what that does to your family life and relations--and see if you think overtime is a good idea, you know?”</p>	

<p><b>2.b These rules will protect workers</b></p>	<p><b>Response</b></p>
<p>“We can afford to treat people better than this if we embrace progressive labor and tax policies.”</p>	<p>As discussed above, the department considered a number of factors when deciding whether to update EAP rules, and what changes were needed. The adopted EAP rules will restore important MWA protections so that workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will receive those protections. The update also ties the salary threshold to the state minimum wage, which is updated annually based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) and so provides a mechanism to ensure that the tests for the exemptions remain up-to-date, so future workers will not be denied the protections that the Legislature intended to afford them.</p>
<p>“The working class have brought Washington State to where it is today with blood, sweat, and tenacity. We love this state and want our State Government to have our backs.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. I often work more than 40 hours a week, but I don't get an extra dime for all those extra hours. And it's not just me — salaried workers are putting in more and more hours — but we're not getting paid for it. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	

<p>“Aside from the obvious benefit that overtime pay provides for employees, it's also just good business: overtime pay provides essential feedback to companies by encouraging them not to take advantage of their employees and to adopt practices that value everyone's time.”</p>	
<p>“Workers are human beings with families, communities, and lives outside of work — our time counts, too. Please act so as represent voters, not capital--an economy in a free, democratically governed society must be regulated to harness its operations for the benefit of society, not for the benefit of only that part of society with capital to invest. The economy is not for enriching people; it is for enriching society, and thereby, people, with reasonable regard for rewarding hard work but also reasonable regard for balance, fairness, and our shared goal of freedom to live well and prosperously. People whose world views value only materiality should not be allowed to take over and run the show and force their lack of meaningfulness and inability to appreciate the fullness of life, on all of us.”</p>	
<p>“Protecting our workers protects our families and helps with Physical and mental health for young families!!!!”</p>	
<p>“Regular time up to 32 hours...overtime between 33 and 40 hours...double time between 41 and 50 hours...triple time over 50 hours. Most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“Although I don’t work salaried jobs, my support for this is solid. Too often companies lean hard on salaried employees with uncompensated overtime demands. This would be a step in the right direction in protecting ALL workers.”</p>	
<p>“If it's an 80-hour a week job, hire two people! We are treated as indentured servants to a system that trades our time for rent and sustenance and nothing more. It's time to change the way the citizens of this state view labor, workers, and each other.”</p>	

<p>“Importantly, these positions are taken on by a disproportionately large percentage of people of color in our state and our country. Restoring overtime protection is one very small step toward addressing structural racism.”</p>	
<p>“I am writing to you to support giving a real value to underpaid employees time because there should be value on both sides to make the circumstances for overtime the exception not standard practice.”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. Over worked and financially underappreciate employees. Leading by example and showing that we can be equitable as a state can restore equity in home and work life balance. I urge you to consider addressing this issue head on and change the rules as we know them. Give everyone the same fighting chance for homeland work life balance that you give to having WA being one of the most progressive of the states and one I am proud to be a resident of.”</p>	
<p>“I would encourage the state to review, make appropriate recommendations and institute a rule that allows for equity for all. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. Thank you for your time.”</p>	
<p>“The new rules will give workers and their families more time to lead healthy, meaningful lives. When workers are asked to work long hours, they will be more fairly compensated, helping to lift workers and their families out of poverty. These are crucial changes for Washington’s workforce and economy.”</p>	
<p>“Updating the overtime threshold is also expected to strengthen protections for Washingtonians across gender, race and ethnicity.”</p>	
<p>“We're just returning to a norm of a 40 hour workweek as opposed to introducing some radical new theory of work. This is something that we used to take for granted.”</p>	
<p>“What this law does is ensure that the employers are fully supporting their people as they work, making sure that they have the tools that they need to get the job done in a time that is reasonable for that job.”</p>	

<p>That does not in any way, shape or form rule out a flexible work schedule or any sort of ability to take time off to be a human being.”</p>	
<p>“In lieu of the culture of collective bargaining by workers, it's incumbent upon the State to implement protections for those workers.”</p>	
<p>“In higher education, advanced researchers in multiple job categories are experiencing increased pressures on both time and wages. These pressures disproportionately affect certain populations such as women, people of color, and international scholars, and contribute to the host of problems of inequity in the workplace.”</p>	
<p>“I believe that these changes in overtime paid sick and safe leave protections are necessary to protect those most vulnerable to predatory workplace behaviors.”</p>	
<p>“This ruling is one step in a long journey towards more equitable and humane conditions for American workers. Throughout our nation’s history, labor movements have fought to decrease the number of working hours in a week, eventually attaining the 40 hours that is now viewed as standard. Today, many companies see their productivity and employee satisfaction increase when they shorten work days to 6 hours, or work weeks to 4 days. However, the average work week for a salaried worker is 49 hours. Restoring overtime protections is the only way to ensure that the average salaried worker in Washington state is fairly compensated for their labor.”</p>	
<p>“This law would benefit the low and middle wage earners.”</p>	
<p>“Enforcing overtime rules for new and young IT staff would ensure that companies would need to at least acknowledge the business operation, and work towards minimizing the chaos, either through better staffing or better processes.”</p>	
<p>“Without overtime protections, overtime exempt individuals lose out on getting the rest every human is entitled to and deserves, no matter what their pay rate. No overtime protections for workers fosters a culture in which competition to work more and more each week becomes the exclusive metric for promotion. In a time when worker productivity is higher than ever before, the idea that overtime exempt</p>	

<p>status should exist anywhere in this country is shameful and is the literal antithesis of liberty that the US espouses and for which many workers have fought and died for. All workers NEED overtime protections.”</p>	
<p>“For worker safety, for fairness at work, for healthier, happier, and a more liberated populace, we must increase overtime protections and work towards abolishing overtime-exempt status outright.”</p>	
<p>“It has been proven that more money in the economy only feeds and strengthens an economy; People who have more money are likely to spend it on things they need or splurge because they aren’t financially strained. Some overtime will always occur and will be cheaper than hiring another part-time person, but it will make that threshold more visible and make businesses be able to decide if the current staff is overloaded and if hiring another person would be more economical for the budget and the longevity of their workforce.”</p>	
<p>“These are welcome and important updates to protect workers' rights to be paid fairly.”</p>	
<p>“The proposed rule will extend minimum wage coverage to an estimated 8,734 workers who were misclassified as exempt under the current rules.”</p>	
<p>“The proposed rule will extend sick leave coverage to an estimated 8,356 workers who were misclassified as exempt under the current rules.”</p>	
<p>“The proposed rule will extend overtime coverage to an estimated 77,631 workers in 2020 and 252,915 workers in 2026, restoring the overtime-to-minimum wage ratio to its historic levels.”</p>	
<p>“As stated in the CBA, “the proposed rule will improved clarity to both workers and employers, and restoration of entitled benefits for misclassified employees – The updated salary level provides a bright-line rule within the test, making it easier for employers to identify employees who may be exempt and more difficult for employees to be misclassified.” This change should generate better protection for workers from retaliation, fewer complaints and litigation for employers.”</p>	

<p>“The Department has provided additional compelling arguments for the rule change, including 1) reduced demands for social service as wage rates and overtime payments provide economic security for working families; 2) more local economic activity from transfer payments, and 3) more employment opportunities, including, we would add, the possibility that some currently part-time employees will be offered more hours to fill in for workers who are working less unpaid overtime.”</p>	
<p>“For too long, the exceptions meant to cover highly compensated senior management have been abused to cheat rank-and-file workers. Expanding and strengthening the overtime rules is an important step in addressing income disparity.”</p>	
<p>“Surely anyone who struggles to support their family needs the legal protections of the state’s overtime, minimum wage, and sick leave laws. It is also in the public interest to provide these protections.”</p>	
<p>“The proposed update to Washington’s overtime threshold will benefit workers, families, employers, and communities across our state.”</p>	
<p>“Increased income for workers now means increased benefits later from Social Security...a more secure retirement.”</p>	
<p>“This is a very expensive state to live in! Step up and protect all workers, give us the chance to have a health work, home life and get paid to do so.... Many are already leaving the state due to over taxation , expensive road tolls, and not letting us get the pay we deserve only limits us from making decisions of an unhealthy life and moving out of state!”</p>	
<p>“We need rules and laws like this to ensure people are treated fairly.”</p>	
<p>“The change would also strengthen overtime protections for 246,000 salaried workers in the state who are likely eligible for overtime protection right now, but who may be misclassified as exempt. Setting an appropriate threshold brings clarity to the rights of employees who are already covered and to the responsibilities of their employers. Many salaried employees paid above the current \$455-per-week threshold are entitled to overtime pay because their primary duties are not executive, administrative, or professional. This includes workers in</p>	

<p>scores of occupations, such as paralegals, dental assistants, and copy editors. Most bookkeepers are entitled to overtime pay, for example, but many do not know it, and neither do their bosses. With a salary threshold at 2.5 times the minimum wage, this ambiguity goes away—employees paid less could be sure of their rights, and employers would know their responsibilities.”</p>	
<p>“Time is one resource that we can never get more of. Just as workplace regulations protect people’s health and safety, they also need to value and protect workers’ time.”</p>	

<b>2.c.1 Impacts on the Career Ladder for Employees: These rules will negatively affect career ladder and middle management positions</b>	<b>Response</b>
<p>“Proposed increase will likely have a negative impact on the career ladder and opportunities in my business.”</p>	<p>The adopted rules do not require employers to reduce career advancement opportunities offered to exempt or nonexempt employees and do not require employers to restrict management positions to only exempt employees. They only require employers to comply with the MWA, using any of the options discussed above.</p> <p>Furthermore, the level of impact on employers will be dependent on which compliance strategy they choose to utilize. Employers are not required to adjust salary levels. Some of the various compliance options are discussed above in response 1.a.1.</p>
<p>“Will have to decrease or eliminate planned opportunities for hourly staff’s professional growth into supervisory and/or management positions.”</p>	
<p>“Many positions require irregular hours, and some employees take a lot longer than others to learn. With an exempt position, an employer can have some control over the costs to train a new employee, and an employee would have access to meaningful training opportunities. This law would destroy opportunities where both parties would willingly enter if the state allowed them to.”</p>	
<p>“If these rules were adopted as currently proposed, I would Not be able to afford managers and would be forced to use supervisors to run the restaurant.”</p>	
<p>“By forcing employers to offer positions in a specific way, employers frequently simply will no longer offer those positions to unskilled or inexperienced employees, thus reducing the opportunities for someone who is new to an industry to learn and grow.”</p>	
<p>“Fewer opportunities for junior managers who want to grow as managerial tasks will be divided upon fewer and more senior</p>	

<p>managers. This lack of opportunity will translate into lower pay and fewer opportunities for career growth.”</p>	
<p>“My wife teaches at a not-for-profit private school in Washington State and makes ~\$40,000/year. She is concerned that she will be prevented from working in excess of 40 hours per week which she feels will prevent her from achieving successful outcomes in her classroom.”</p>	
<p>“The increase plan to almost triple the minimum seems excessive. This is going to cripple businesses’ like ours and force us to cut mid-level management positons.”</p>	
<p>“To eliminate a tool in attracting someone to management, will be a big deterrent.”</p>	
<p>“Our industry has a difficult time attracting employees who want to move into management. We are not unlike any number of industries facing the same issues. To eliminate this tool in attracting someone to management will be a big deterrent.”</p>	
<p>“It is already very difficult to get and keep managers in this industry due to the fact that service staff make the full minimum wage so with tips they are taking home over \$25 per hour which means they make as much money as executive level managers in our business.”</p>	
<p>“Middle manager (department head) positions are needed to allow employees time and room to evolve and grow into General Management roles. These positions are how previous supervisors learn finances, budgeting &amp; basic human resource skills that upper management was otherwise responsible for.”</p>	
<p>“Concerns that adopting this high of a salary threshold would erase mid-career management positions that are critical to climbing the hospitality ladder. Removal of the mid-career positions and leaving all managerial positions to upper management would undercut the workforce in an already tough labor market.”</p>	
<p>“Adopting a salary threshold tied to any multiplier of the state minimum wage will create a wage gap between employees and management and will ultimately harm jobs by eliminating middle-management positions.”</p>	



<p>“Adopting any multiplier of the minimum wage would create a wage gap between my employees and management. Undercutting and harming my employees by removal of the middle-management career ladder rungs would not benefit them, my business or the state economy.”</p>	
<p>“Adopting a salary threshold tied to any multiplier of the minimum wage could erase those mid-career management positions that are critical to climbing the hospitality career ladder. Removal of the mid-career positions and leaving all managerial positions to upper management would undercut the workforce in an already tough labor market.”</p>	
<p>“I am concerned what the proposed overtime rules would do for grocery and convenience store employees who are seeking to be promoted into higher management positions. Under the proposed rule, many critical middle management positions in the industry will likely revert to hourly and this may impact employee morale.”</p>	
<p>“1.5x multiplier would work for Spokane Seed company but if it goes over that then we would look into eliminating mid management positions and possibly not hire for positions that may be coming up.”</p>	
<p>“If these rules were adopted as currently proposed, I would lose my ability to employ quality Managers.”</p>	
<p>“Undercutting and harming my employees by removal of the middle-management career ladder rungs would not benefit them, my business or the state economy.”</p>	
<p>“The ability to develop and promote workers into mid-management and executive positions, as we scale our business, will be severely hampered, as will our ability to effectively incentivize salespeople.”</p>	
<p>“What I am concerned about is with the salary levels that are being proposed, that it’s in such a high barrier to entry that some of the first-step-on-a-ladder positions that the restaurant business has potentially offered won’t be available to these people anymore.”</p>	
<p>“When you have an environment where businesses can start up and grow then more people will have jobs, more people will be able to</p>	

move up and be trained in Management, and more people move up the income ladder.”	
“Concern is about the future of the hospitality industry and its career ladder.”	
“Increase will likely have a negative impact on the career ladder and management opportunities in my business.”	
“Employee growth and training opportunities will be reduced or eliminated.”	
“New positions will be paid less and will have less responsibility.”	
“This increase will likely have a negative impact on the career ladder and opportunities in my business.”	
“Contract members’ existing entry level staff would see their upward growth stagnate, as work normally assigned to these workers, would instead be assigned to senior level staff earning in excess of the proposed salary threshold.”	
“I want to ensure my ability to provide more upward career growth opportunities for my employees and with this proposal that remains unclear.”	
<b>2.c.2 Impacts on the Career Ladder for Employees: These rules will mean exempt workers have to do more work</b>	<b>Response</b>
“The executive director or other OT exempt employees will have to do more work because they can’t afford to pay other employees overtime.”	The adopted rules do not require employers to assign more responsibility to exempt employees. The adopted rules also do not require employers to restrict management duties to only exempt employees.
“We have had doubled the workload of managers to have enough funding available to pay their salary level that is above the most recent Obama proposal levels.”	The level of impact on employers will be dependent on which compliance strategy they choose to utilize, and they are not required to adjust salary levels (see potential compliance options outlined in response 1.a.1).
“Additional responsibilities will be distributed to managers who exceed the minimum salary requirements.”	
“More work for senior managers...This will increase their negative health issues and prevents them focusing on growing/supporting their work force. In essence, their efforts to protect the bottom line will have to supersede anything else.”	
“For those who do then become an AGM, they would have twice as much work as they used to for minimal pay increases as they are now	If employers choose to maintain the exempt status of some current salaried exempt workers and raise the salary of those workers, employers have the discretion to decide how to offset the cost of

<p>taking over sensitive items from many other departments; not only hindering their own ability to grow but being very taxing on their day to day. Standard hour expectations would likely increase to close to 12 hours a day in order to supervisor all the different departments and shifts daily.”</p>	<p>increasing employee wages and are not required to assign more responsibility to a small group of employees.</p> <p>The adopted rules also provide further protections for workers and encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.</p>
<p>“Less responsibility for some, more responsibility for others.”</p>	
<p>“Would be forced to combine positions...these new positions would then be forced to take on multiple departments and much more responsibilities. That being said that person would then also be much more heavily required to have previous management experience.”</p>	

<p><b>2.d.1 Impacts on Employee Flexibility: Changes to these rules will negatively impact workplace flexibility</b></p>	<p><b>Response</b></p>
<p>“Look into ways to accommodate businesses that need to meet the needs of their customers outside of normal business hours such as evenings and weekends.”</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. While certain specific types of flexibility may be offered more readily to some exempt workers, flexibility is not a protected right under the rules and its broad availability is not the purpose of the rules.</p> <p>The adopted rules also do not require employers to limit the flexibility offered to exempt or non-exempt employees. There are many ways employers can offer flexibility to non-exempt employees. For example, employers can allow employees to flex their schedules to take time off during the week and then make up the time they miss during the same workweek. Employers could also consider offering compressed work schedules such as four 10-hour shifts to allow employees a day off during the week to attend to personal obligations. Remote working options can also allow employees flexibility and are not limited by exempt versus non-</p>
<p>“The proposed changes pose key budgetary and operational challenges that threaten our artistic programming and introduce new obstacles to our business that, by its nature, is not on a routine ‘9-5’ schedule.”</p>	
<p>“Agriculture is unlike many other industries because it involves multiple production variables and requires flexibility in work schedules.”</p>	
<p>“Agriculture needs flexibility to deal with changes in natural conditions, and this proposed arbitrarily high threshold impedes that necessary flexibility.”</p>	
<p>“I was able to become a better employee/manager when promoted to a salary position. I could adjust my schedule not only to better fit the needs of my store, department, employees and customers but my family as well. To go back to an hourly regulated position and to have wagecost constraints placed back on me will limit my productivity and my flexibility to meet the needs of those mentioned above. I feel that this change would be a huge step backwards.”</p>	

<p>“An important part of all business and employee growth is regular engagement in industry and community events that may be significantly curtailed under this proposed rule.”</p>	<p>exempt status. While employers are required to track the hours of non-exempt employees, recordkeeping requirements under the MWA do not require employees to clock in and out on a time clock in the office.</p>
<p>“Salaried employees are able to adjust their schedules as needed to support other members of their department or store. They can react to changes that are not predictable such as weather, large customer orders, or a community event may impact the store after the schedule is written. If managers become hourly employees, they are locked into a set schedule, which makes them lose the flexibility to manage as needed.”</p>	<p>The adopted rules also benefit employees in many other ways. In compliance with the APA, RCW 34.05, the department prepared a final CBA. A summary of the estimated costs and benefits from the final CBA are included in response 1.a.2.</p>
<p>“Currently our salaried employees can adjust their schedules as needed to support other members of their store. This flexibility allows our salaried employees to react to changes that are not predictable such as weather, large customer orders, or a local event that may impact the store after the schedule is written. If managers become hourly employees, they are locked into a set schedule, which makes them lose the flexibility to manage as needed to meet the needs of the communities we serve.”</p>	<p>As discussed in more detail in response 2.d.5, the MWA also allows both public and private sector employers to provide compensatory time (“comp time”) instead of overtime pay when the employee voluntarily requests comp time, which allows for additional flexibility in scheduling. The FLSA does not allow for comp time for private employers, but there may be circumstances where an employee meets the EAP exemption under the FLSA and is exempt from the federal overtime rules and does not meet the EAP exemption under state rules, so the employer therefore must still comply with the state overtime provisions. In these circumstances, an employer may allow an employee the option to request comp time instead of overtime and still remain in compliance with both the FLSA and the MWA.</p>
<p>“Outside of a union contract that requires managers to be hourly, salaried employees have made conscious decisions to remain salaried. As a salaried employee they are able to adjust their schedules as needed to support other members of their department or store team. They can react to changes that are not predictable such as weather, large customer orders, or a community event may impact the store after the schedule is written. If managers become hourly employees, they are locked into a set schedule, which makes them lose the flexibility they need to effectively manage their departments.”</p>	<p>The adopted rules also do not require employees to work traditional business hours. Nothing in the rules limit an employer’s ability to use flexible scheduling to meet business needs and to provide employees with flexible work arrangements. However, as stated above, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt, so to the extent that some employers might make business decisions that reduce their employees’ flexibility, the department also considered the</p>
<p>“Managers would lose the critical element of flexibility in the restaurant industry which allows for them to provide more effective service to their customers.”</p>	
<p>“Due to the nature of salaried positions and our industry, it is more practical for the company and its employees – if they are able – to flex their time to meet the needs of their profession, as well as personal and family obligations.”</p>	

<p>“Committed staff may still do overtime secretly because they’re so passionate, but that puts the board at risk and force the paid staff to be dishonest when they really want to treat their career – their job like a career instead of an hourly job.”</p>	<p>significant, offsetting benefits of ensuring that workers are appropriately classified.</p> <p>Finally, the adopted rules encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours. Hiring additional employees may also assist with scheduling concerns.</p>
<p>“L&amp;I states in its Q&amp;A document that employers will not have to pay their salaried employees a higher rate because of the proposed rule, that they can treat salaried employees as non-exempt and pay overtime. This is simply not feasible for our industry. Our Supervisors and Managers are “on call” for our clients to respond to any emergency that may arise. This is necessary, given the complex medical and behavioral health conditions many of our clients have.”</p>	
<p>“You might suggest that we could simply convert our salaried employees to hourly, but that is just not realistic. Ours is not a 9-to-5 organization. Our events occur during the day and night and all hours on the weekends, even sometimes at midnight. Our five salaried employees are dedicated to the organization and we are invested in them. They understand the needs of the organization, which includes flexibility in their hours or being on-call.”</p>	
<p>“The worst part of being non-exempt is the additional workload and nuisance of having to track and report all hours, in a job with a highly variable and sometimes almost random schedule from day to day and week to week, and which requires my being on-call 24 hours per day.”</p>	
<p>“Often my work happens outside of the traditional working hours. Being a salaried professional allows me the autonomy to manage my career successfully.”</p>	
<p>“We rely upon our exempt employees to be available for the needs of our clients at times that may and will fall outside of “normal” business hours. We are required by contract with DDA to provide 24-hour response to emergent needs of the individuals we support.”</p>	
<p>“The assumption that the added costs of overtime could simply be avoided by instructing the employees not to work overtime is based on insufficient understanding of the nature of the work performed by our many thousands of professional employees whose duties meet the test to be overtime exempt. A substantial amount of work by employees in</p>	

<p>higher education institutions supports teaching, research, student residential life/student success services, and healthcare and is work that cannot be limited to a nine to five, Monday through Friday schedule.”</p>	
<p>“We have employees who must travel all over the state to visit job sites so their hours are very irregular and are often spent in traffic. We provide a company truck and a tablet so that they can work remotely, so keeping track of their hours would be next to impossible.”</p>	
<p>“It will be a hardship if the executive team becomes hourly employees. Having the flexibility to meet needs/demands when operating a 24/7 non-profit business is the only thing keeping us a float and allowing us to continue to provide services for Medicaid residents.”</p>	
<p>“Consider this proposal to be discriminatory to parents especially women. In order to address the needs of professional women who are interested in maintaining a greater connection with their young families, part-time schedules (less than 40 hours per week) are occasionally available... These women may be paid at an hourly rate exceeding these thresholds, but due to their 50% or 80% salaries, they would not exceed the proposed weekly threshold.”</p>	
<p>“Many exempt employees <i>like</i> being exempt because it gives them more flexibility and it gives them a higher status.”</p>	
<p>“My concern, in your new proposed rule is that it doesn’t consider the nature of the freedom provided to our team members (you call them employees). Our salaried team members can flex their schedule to increase or decrease their time in any given week based on what they want to do outside of work (work life balance) and inside of work (workload to get done).”</p>	
<p>“If the proposed salary threshold is adopted, “salaried-exempt” workers will likely be converted to “hourly” resulting in less flexibility and may be seen as a demotion.”</p>	
<p>“The benefit of flexibility far outweighs potential hourly overtime compensation.”</p>	
<p>“Our people enjoy the salary flexibility they have with being able to leave during the day for a Doctor’s appointment, family school function,</p>	

<p>person time or other items because they know they just have to get their job done. If the salary levels get higher we will have to put people on hourly and they will lose that benefit that so many want. It will cause us to have to put a strict policy in place that people cannot work a little extra or extra hours if they need so they can get caught up with their positions, which then will cause them to stress more as they are constantly behind and not able to ever catch up.”</p>	
<p>“The rules will have an immediate impact on flexible work schedules and management opportunities for employees.”</p>	
<p>“Exempt employees would be disappointed if they were changed to hourly because of loss of flexibility.”</p>	
<p>“Some EAP employees may not always work a full 40 hours and may lose that flexibility with having to account for each hour worked.”</p>	
<p>“The all-inclusive nature of the rules as proposed disregard the developments in the workplace and family structure shifts over the last four decades. Today’s workers are provided flexible scheduling, remote work options and schedules that over a month’s time would reflect “full time” hours but on a weekly basis would not be possible with the rules as proposed.”</p>	
<p>“This will kill the benefits and flexibility I give my salaried Licensed professional agents that work in my office. If they truly work overtime, they are paid. They are commission and trade a couple hours paid off for kid’s doctor’s appointments, etc. for a few minutes overtime here and there.”</p>	
<p>“Flexibility of being on salary allows employees to take care of family or other need and manage the job at the same time.”</p>	
<p>“Employees that are moved from exempt to nonexempt are losing flexibility in their schedules and careers. Workers will lose this flexibility and consequently creating hardships with childcare, school pick up and drop off, etc. Flexible work schedules, with an exempt status, help families manage the daily landscape of working parents.”</p>	
<p>“Mandatory reclassification of an entire group of employees from exempt to non-exempt (hourly) status also adversely impacts employee and employer work flexibility that hourly classification provides. Exempt</p>	

<p>classification enables those employees who seek to work on limited or alternative work schedules to have the flexibility to do so. And employers have the flexibility to accommodate seasonal changes in demand without additional administrative burdens or expense. This is particularly true in the manufacturing, hospitality and retail sectors. Mandatory reclassification will compel employers to not only assume added compensation expense, but added administrative burdens of scheduling, tracking, and properly compensating formerly exempt employees. Reclassification will undermine current flexibility and associated costs will ultimately be passed on to the consumers.”</p>	
<p>“This would force good senior full time employees to be on the clock, and not flexible for their shifts and or things like dr, kids conferences, or other items that they can adjust weekly now.”</p>	
<p>“This hurts salaried, exempt workers more than it hurts the company by preventing the worker to manage their time and schedule as they see fit. To be exempt, you are paid to perform a job and perform it satisfactorily- you are not paid for face-time or based upon how long you’re sitting in a chair.”</p>	
<p>“It would also reduce our employees’ workplace/work time flexibility. Lots of managers and supervisors appreciate the flexibility of being on salary to take care of their family or other needs, while managing their job at the same time. The switch to an hourly schedule would remove that flexibility.”</p>	
<p>“Lots of managers and supervisors appreciate the flexibility of being on salary to take care of their family or other needs, while managing their job at the same time. The switch to an hourly schedule could remove that flexibility.”</p>	
<p>“The affected employees will lose flexibility, autonomy and responsibility associated with exempt status. Elimination of this category of mid-level exempt positions would likely be perceived by employees as a demotion and may create an unintended barrier to what has been a valuable pathway to career advancement and tool for workforce development.”</p>	



<p>“One of the greatest benefits of my job, is that I have the flexibility to tailor my work schedule to the needs of my personal life...your proposal actually cripples our ability to make a living, on our terms, and really enjoy the work/life balance that we create ourselves.”</p>	
<p>“This law change would make telecommuting much harder if not nearly impossible.”</p>	
<p>“What the state doesn’t understand is most employees who are exempt enjoy the status of being able work more or less hours in a single week depending on the work load.”</p>	
<p>“There is a false assumption in this proposal that all companies are abusing all exempt employees. There is no question that exempt employees work more than 40 hours; most work 50 depending on the program season. At times they also work less than 40 hours and benefit from the welcomed flexibility to attend a child’s activity school, leave early on a Friday, or set a Monday morning dental appointment.”</p>	
<p>“The large percentage of employees that would have to be reclassified as non-exempt would lose their schedule flexibility, and could also receive cuts to their health and vacation benefits to offset increased costs.”</p>	
<p>“Even in the best-case scenario, some employees may lose hours, flexibility in schedules, and other benefits of being an exempt employee if their positions are reclassified as hourly. This could be through reduced hours or discouraging attendance at events after normal business hours to avoid overtime obligations.”</p>	
<p>“If these rules were adopted as currently proposed, it would have a much greater negative impact on our salaried managers (our only salaried employees) than it would on our business as we would be forced to put our managers on hourly and they would be required to never exceed 40 hours. We have never required our managers to work more than 40 hours/week on average and they don’t, but they set their own schedules and we do allow them to work more than 40 hours one week so that they can have more days off in another week. They enjoy having that option.”</p>	

<p>“There is a false assumption in this proposal that all companies are abusing all exempt employees. There is no question that exempt employees work more than 40 hours at times. At times they also work less than 40 hours and benefit from the welcomed flexibility to attend a child’s activity at school, leave early on a Friday, or set a Monday morning dental appointment.”</p>	
<p>“The current overtime rules allows our managers the freedom to make their own schedule and not worry about the clock. We all appreciate the freedom that is afforded to us by the current rules. It fits our lifestyle of working hard and playing hard.”</p>	
<p>“There is also a great convenience of not having to punch the clock. We need not worry about our hours and it takes a weight off our shoulders. We are able to budget our time how we see fit.”</p>	
<p>“Far from the claims of the “policy experts” and other proponents supporting these extreme exemption level increases, our salaried staff are not doing work they are ‘not being compensated for.’ Those proponents miss the essential nature of a salaried position and the flexibility it provides. Our salaried managers are paid well for, as well as have additional workhour flexibility, because they handle cover those off-hour management and leadership responsibilities.”</p>	
<p>“The majority of our staff work a combination of first and second shift hours, where they regularly flex their schedules to work heavy hours in some weeks and lighter hours in other weeks. Our employees appreciate and prefer this flexibility that allows them to structure their lives around other endeavors.”</p>	
<p>“The greatest concern about the proposed salary threshold adjustments is the lost flexibility. Many of these employees are in early to mid-level professional careers and supervisory roles. Employees need types of roles that provide flexibility to manage their workload to create the desired and healthy work-life balance.”</p>	

2.d.2 Impacts on Employee Flexibility: Changes to these rules will positively impact workplace flexibility	Response
"Some salaried employees don't have a set schedule and have to plan their life around when their employer wants them to work."	As described in more detail in response 2.d.1, the adopted rules also do not require employers to limit the flexibility offered to exempt or non-exempt employees. There are many ways employers can offer flexibility to non-exempt employees. For example, employers can allow employees to flex their schedule to take time off during the week and then make up the time they miss during the same workweek. Employers could also consider offering compressed work schedules such as four 10-hour shifts to allow employees a day off during the week to attend to personal obligations. Remote working options can also allow employees flexibility and are not limited by exempt versus non-exempt status. While employers are required to track the hours of non-exempt employees, recordkeeping requirements under the MWA do not require employees to clock in and out on a time clock in the office.
"Some salaried workers are required to work overtime then have to stay to cover shifts as well."	
"I find the flexibility argument to be particularly unconvincing. If the high-paid lawyers here today who testified against the overtime threshold can manage to track their hours for billing purposes, I am sure employers can manage to do the same with zero loss of dignity or flexibility."	
"There are lots of ways to have a flexible schedule without making someone a salaried employee."	
"You can't eat flex time."	
"There is nothing about hourly pay that prevents somebody from working remotely."	
"There's nothing keeping an employer from allowing their hourly employees to have a flexible schedule."	
"Flex-time is considered like a benefit, to justify low salaries."	
"Salaried employees become quasi slaves. They are often required to be available and solve problems 24/7. With no on call compensation. And fired for complaining. It's slavery and robbery of family life and downtime to avoid burnout."	
"Sporadic work hours makes it hard to budget money and figure out how to cover my expenses. Yet, I had to plan my life around when my employer wanted me to work. I didn't have a set work schedule."	
"Many salaried workers feel that they must work around the clock or at least stay in touch with work and respond to email or phone contacts seven days a week."	
"What flex-time we do have is considered like a benefit, to justify our low salaries."	
"There should be an understanding between employer and employees- either overtime pay or flexibility."	

<p>“Employers should allow flex time to manage hours by letting employees who work extra hours one day flex hours on another day.”</p>	
<p>“Americans work way too much. We commute for hours. Work through lunch. Often get work emails, texts, and calls outside of standard hours, rarely if ever get breaks, are interrogated about sick days (which should be wellness days), get almost no vacation time (and if we do our work is often foisted on others or piles up for our return), often work through holidays, are expected to attend after work and weekend events, seminars, and "team-building exercises", take on additional work tasks and roles of others without upgrades in pay, go for years without raises, and are often expected to have meetings and take calls at ungodly hours because of globalization. All of this with zero job security. Way too many jobs are contracted out at this point. Something has to change...”</p>	
<p>“I feel the employer is beginning to feel that he/she owns the employee's time and effort. This is not healthy for employer or employee.”</p>	
<p><b>2.d.3 Impacts on Employee Flexibility: Concerns about seasonality of work</b></p>	<p><b>Response</b></p>
<p>“Making the professional employees hourly would kill the flexibility we have to deal the cyclical nature of our business, where extra hours are needed during peak warm months and less are needed during the cold months.”</p>	<p>While flexible, seasonal scheduling may be used by some employers, seasonally-based scheduling is not a protected right under the rules and is not the purpose of the rules. The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. These standards are consistent for all employers throughout the state. The adopted rules do not change the application of the EAP exemptions for any specific industry or sector. The department is also aware of no data that indicates that seasonal workers in any sector would benefit less from the adopted rules than their counterparts performing non-seasonal work.</p>
<p>“Positions that typically are extremely busy in some seasons but less busy in others, that are regularly “on call,” or that have irregular hours from week to week could create new administrative challenges for universities and result in fluctuating compensation for employees throughout the year.”</p>	
<p>“Due to the nature of construction, some days or weeks may be short; some may be long. The nexus of weather, product delivery, and subcontractor availability do not run on a standard schedule. Add to this the seasonality of construction and forcing positions that should rightly be salary into hourly can have many consequences; from</p>	

<p>increasing the cost of housing, to employees having drastic swings of hours and income between seasons.”</p>	<p>As discussed above, employers also have many potential options to comply with the adopted rules (see potential compliance options outlined in response 1.a.1). One potential option to comply with the adopted rules is to convert currently exempt salaried employees to non-exempt, salaried employees. This strategy would allow employees to continue to be paid on a salary basis with predictable earnings.</p> <p>Additionally, the adopted rules encourage employment opportunities within the state. Overtime protections serve to spread employment among additional workers by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours. Hiring additional employees during busy seasons may also assist employers in avoiding overtime costs.</p>
<p>“This proposal does not consider the unique scheduling and seasonality issues inherent in our industry, nor does it consider the cost of living discrepancies across the state.”</p>	
<p><b>2.d.4 Impacts on Employee Flexibility: Part-time employee concerns</b></p>	<p><b>Response</b></p>
<p>“I see that your salary threshold calculations are based on a 40 hour work week. I’m wondering if working part time is being taken into consideration when you are developing the proposed rules. What law makers aren’t seeming to understand is that many exempt employees like being exempt because it gives them more flexibility and it gives them a higher status. Working in small government or non-profits, we don’t have the funding to pay high salaries so we may limit hours to part time. Many of the programs won’t be sustainable if employers are forced to pay a full week’s wage. The only alternative is to tell part-time managers or professionals that they will need to be paid hourly and that they will need to clock-in, clock-out, take set breaks, etc.. This will devastate them and their self-worth and we will have a hard time filling these positions. I hope you will propose a rule that pro-rates the salary threshold for part-time exempt employees.”</p>	<p>The adopted rules set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees whom it intended to exempt. Those standards include both duties tests and salary thresholds. If employees do not meet both the applicable duties test and the related salary threshold, they are entitled to receive the protections of the MWA no matter the number of hours they work. Similarly, the FLSA does not treat part-time workers differently, and requires them to meet both the duties and salary tests for the exemptions.</p> <p>Employers have many potential options to comply with the adopted EAP rules, and one of the compliance options includes converting currently exempt salaried employees to non-exempt salaried employees. In this scenario, employers would track the hours of non-exempt salaried employees, ensure that they make at least minimum wage for all hours worked, and pay overtime for</p>
<p>“Are part-time salaried employees being taken into consideration?”</p>	
<p>“Propose a rule that pro-rates the salary threshold for part-time exempt employees.”</p>	

<p>“The threshold should be pro-rated for part-time exempt employees as we often use different artists, assistants and crew depending upon the needs of each production.”</p>	<p>hours worked over 40 per week. For salaried non-exempt employees with fluctuating hours, in order to apply a rate of one half of the hourly rate to compensate the employee for the overtime hours worked, the following three requirements must be met:</p> <ol style="list-style-type: none"> <li>1. There must be a clear mutual understanding between the employer and the employee that the salary is straight pay for all hours worked in the week.</li> <li>2. There must be a clear and mutual understanding between the employer and the employee that overtime will be compensated at one-half times the regular hourly rate.</li> <li>3. The overtime must be paid contemporaneously with straight-time pay.</li> </ol> <p>If the employer fails to establish a specified number of hours per week for which the salary is intended to compensate the worker, it will be assumed that the salary is based upon a 40-hour workweek, and thus, 1-1/2 times the worker’s regular rate will be due for all hours worked in excess of 40 in each work week. <i>Fiore v. PPG Industries, Inc.</i>, 169 Wn. App. 325, 279 P.3d 972 (2012). The department’s administrative policies provide more guidance on overtime requirements for employees with fluctuating workweeks.</p>
<p>“Pro-rate the threshold for part-time employees.”</p>	
<p>“Regardless of the amount set for the salary threshold, we also recommend that the threshold be pro-rated for part-time employees. This seems consistent with the objective of the proposed rules and would make the impact more manageable for employers.”</p>	
<p>“Propose that this level be pro-rated for part-time exempt employees.”</p>	
<p>“The proposed rule does not allow for prorating salaries for FTEs on a reduced workload. Many large employers offer on and off-ramping opportunities for employees who temporarily reduce their workloads for special circumstances such as family or medical leave and are paid a prorated share of their full-time salary. Such agreements allow individuals to take advantage of a short-term, flexible work schedule...ensure that the final EAP rules provide recognition of these circumstances (especially those that legally protected accommodations) to allow for pro-ration of the threshold for individuals on a reduced workload where the full-time equivalent salary would meet or exceed the threshold.”</p>	
<p><b>2.d.5 Impacts on Employee Flexibility: Comp time</b></p>	<p><b>Response</b></p>
<p>“Non-profits’ proposals for <b>compensatory time</b> with a trade of time based on high workload and low workload seasons should be considered...It is vital to have a compensatory time for non-profits whose mission is dependent on staff working more than 40 hours a week for short periods of time for events (including major organizing events related to school calendars, responding to natural disasters, legislative sessions, elections, fundraising, etc.). A reasonable rule would set 1.25 to 1.5 hours of comp time for a maximum of 14 weeks</p>	<p>The MWA allows both public and private sector employers to pay compensatory time (“comp time”) instead of overtime pay when the employee voluntarily requests comp time. See RCW 49.46.130(2)(b); WAC 296-128-560; Administrative Policy ES.A.8.1. However, under the FLSA, private employers cannot satisfy their overtime obligations by providing comp time and must pay overtime-eligible employees an overtime premium for any hours worked over 40 in a workweek. The FLSA only allows the use of</p>

<p>of work over 40 hours per week (based on legislative session of 105 days and that the Legislature expects its own employees to work over 40 hours a week for that period).”</p>	<p>comp time instead of overtime pay for a public agency that is a state, a political subdivision of a state, or an interstate governmental agency under certain circumstances. Because the adopted rules differ from the FLSA regulations, there may be circumstances where an employee meets the EAP exemption under the FLSA and is exempt from the federal overtime rules, but does not meet the EAP exemption under state rules and therefore must still comply with the state overtime provisions. In these circumstances, an employer may allow an employee the option to request comp time instead of overtime and still remain in compliance with both the FLSA and the MWA. For example, where the duties test is the same under the adopted rules and the federal rules, employers could allow those employees who earn more than the federal salary threshold but less than the state salary threshold the option of requesting comp time instead of overtime. Employers have the obligation of ensuring compliance with both federal and state law.</p>
<p>“We feel like the wage threshold is presented as a one size fits all without consideration of whether the employer offers hour-for-hour comp time, for example, something like that, or does not give any consideration for the cost of the benefits that are provided. It’s simply a snapshot of how much someone makes on their paycheck, and that isn’t a realistic picture of someone’s economic picture. And so it feels like a one size fits all that is not tenable for an employer such as my public agency.”</p>	
<p>“The regulations should state that compensatory time worked is allowed i.e. I can work more than 40 hours without overtime compensation this week to take extra time off next week. Tracked in timekeeping system with employer approval. (With some limits – for instance a 30 day rolling window or within the same month etc.). This would not be guaranteed but an employer provided benefit allowable under the regulations.”</p>	
<p>“Consider some sort of flex time or comp time into this rule so that during those periods of high hours, those hours could be banked, and then when I am not required to put in so much time I could then use those hours. That would keep me on a constant salary, and it would also help my employer in that the cost would not fluctuate so drastically.”</p>	

<p><b>2.e Impacts on Employee Flexibility: Negative impacts of working overtime</b></p>	<p><b>Response</b></p>
<p>“When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	<p>The department recognized many of the potential benefits of ensuring that the EAP exemptions only apply to “bona fide executive, administrative, or professional” workers as described in the Minimum Wage Act. RCW 49.46.010(3)(c). Some of the potential benefits of the adopted rules include, but are not limited</p>
<p>“My children and family were sadly neglected as I attempted to meet compliance standards at work for a job that is never finished.”</p>	

<p>“Parents need time to raise their kids. When parents don’t have time with their kids, the kids are negatively affected behaviorally and emotionally which leads to criminal behavior, health care costs, and demolished lives.”</p>	<p>to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees’ families.</p>
<p>“Becoming salaried is sold to workers as an upgrade in status but this is not the case --being salaried leads to emptiness, anxiety, and fear because employers shame and guilt employees to work more hours.”</p>	
<p>“Many workers have broken health before retirement age.”</p>	
<p>“Many employees miss time with their families, have long commutes, and have a hard time making ends meet.”</p>	
<p>“Low pay causes families to not be able to afford childcare.”</p>	
<p>“Low pay causes families to not be able to afford the cost of living.”</p>	
<p>“When employees are forced to work overtime their health suffers.”</p>	
<p>“Excessive overtime also has a disproportionate effect on single parents with child care responsibilities.”</p>	
<p>“When employees are forced to work overtime they miss school events and conferences.”</p>	
<p>“Citizens without time to engage in building community over profit will never lead to a stronger nation. Communities are first and foremost social structures, followed by economic possibilities.”</p>	
<p>“Losing all that time working was difficult as you cannot effectively raise children and have a solid family when you are constantly gone.”</p>	
<p>“Becoming salaried can come with increased expectations, longer hours, being available off hours and weekends, and a more expensive wardrobe because of the management position, and less money.”</p>	
<p>“Employees working overtime often have to work late into the evening.”</p>	
<p>“When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to make time for what matters.”</p>	
<p>“Overtime takes away valuable time from their families, their hobbies, and their ability to live full lives.”</p>	
<p>“Nonprofit workers are the backbone of Washington’s social safety-net. But the vast majority majority work long hours year round as salaried employees without adequate pay. Workers sacrifice their family and</p>	



community time, their health and their personal time despite working emotionally taxing jobs. Burnout is high and talent is lost.”	
“Working long hours negatively affects sleep and leads to exhaustion.”	
“Physical, mental, and emotional health is negatively impacted by the toxic workaholic-culture of work places.”	
“Overtime makes it difficult to date and find a partner.”	
“When employees work long hours they take personal short-cuts, eat fast food on the run, and live stressful lives.”	
“It was established in the 1930's that working more than 8 hours per day or 40 hours per week is detrimental to health and family. My ancient railroad IBEW union contract often refers to "overtime" as "PUNITIVE OVERTIME" acknowledging the damaging effects of over working employees and punishing management for these practices.”	
“When college faculty have to work such long hours and particularly at such low wages that they need to work 2nd and 3rd jobs their quality of life is eroded. Eventually excellent faculty become burnt-out, and feel unappreciated. Teaching is intrinsically rewarding wherein people feel their meeting a social purpose. But to continue to have high quality higher ed faculty, extrinsic needs must also be met with livable wages and a 40ish hour work week.”	
“Working overtime leads to employees to have no energy.”	
“Working long hours disrupts workers’ time to sleep, cook and eat, exercise, take care of children, spend time with family and friends, do other recreational activities, and participate in the community.”	
“Working long hours has also been linked to poor health, including stress, anxiety, depression, sleep deprivation, infrequent exercise, and higher fast food and alcohol consumption.”	
“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it’s not because we’re working less. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”	

<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself. I worked constant overtime at my last job and it destroyed my health forcing me to go on disability. Nobody should have to work more than 50 hours a week but they should be well paid if it’s a short term necessity.”</p>	
<p>“I worked 45 to 60 hours a week for nearly 20 years as a social worker. My children and family were sadly neglected as I attempted to meet compliance standards at work for a job that is never finished. Later I worked for hospice with a pay of supposedly \$25 per hour. With the hours I worked, I did the math and I was earning less than \$20 an hour.”</p>	
<p>“Working such long (and often irregular) hours has negatively affected my health and ability to sleep well. The exhaustion doesn’t only make me less effective at work, but it also keeps me from running errands, doing chores at home, and otherwise keeping my life outside of work pleasant and livable.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”</p>	
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<p>hours a week. Now less than 10% get overtime pay — and it’s not because we’re working less. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance. Do the right thing.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	
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<p>“And how to raise good citizens without time spent with them? Kids become behaviorally and emotionally crippled and the effect is paid in criminal behavior, costs to health care and demolished lives.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	

<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”</p>	
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<p>overtime exemption. When your workweek never ends, your life becomes a constant scramble and it's almost impossible to maintain your health, care for your family, and make time for yourself."</p>	
<p>"The federal government has failed its responsibility to workers, so it's time for the state to step up and restore overtime rights. I often work more than 40 hours a week, but I don't get an extra dime for all those extra hours. And it's not just me — salaried workers are putting in more and more hours — but we're not getting paid for it. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children's school performance."</p>	
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<p>"I live in Thornton and I have worked a salaried, overtime-exempt job for 50-60 hours a week. Many of co-workers have broken health before retirement age."</p>	
<p>"The federal government has failed its responsibility to workers, so it's time for the state to step up and restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it's not because we're working less. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children's school performance. Bosses will work people into the ground rather than go to the expense or effort of hiring."</p>	
<p>"I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to</p>	

<p>work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
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<p>“When I worked my salaried job, I was constantly making choices which clashed with my fiance and/or my employer. I may have had more success at the job had I not had a significant other in my life. I could then devote all my time to my job; but then, it's possible I would have had a shorter life expectancy.”</p>	
<p>“Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”</p>	
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<p>“I strongly support Washington state restoring overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“I missed school events, conferences. I even sent him to school sick because I could not stay home. It was expected the mgr. would cover all shifts needed. It is wrong to pay people in this manner. It’s a loop hole designed to save companies money but it’s harmful to workers and their families.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. I would picket my employer if I didn’t receive overtime for hours worked past 40. I would also organize my fellow workers to also picket the employer.”</p>	
<p>“This speaks for itself. OT should be paid once you surpass the 40 hours in a workweek as well as past 8 hours in a day.”</p>	
<p>“I am writing to state my support of efforts of the legislature to restore overtime pay for salaried employees AND hourly employees As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it’s not because we’re working less. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. I had to work until the job was done. I was committed to doing that. I was well enough compensated. When your workweek never ends, your life becomes a constant scramble and it’s</p>	

<p>almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. Hundreds of thousands of workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work 60 hours a week or longer — without any overtime pay. Long work hours negatively affect productivity, workplace safety, community involvement.”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to make time for what matters.”</p>	
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<p>“I am writing to urge you to restore overtime rights to salaried workers in our state. Salaried workers are putting in more and more hours — but we’re not getting paid for it. Long work hours negatively affect productivity, workplace safety, community involvement.”</p>	
<p>“I strongly support providing more workers with overtime protections; our time is valuable. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. Long work hours negatively affect productivity, workplace safety, community involvement.”</p>	
<p>“Restoring overtime pay will either provide the pay workers deserve or provide workers a balanced life by giving them their time back. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7%</p>	

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<p>"I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. I often work more than 40 hours a week, but I don't get an extra dime for all those extra hours. And it's not just me — salaried workers are putting in more and more hours — but we're not getting paid for it. When my workweek never ends, my life becomes a constant scramble and it's almost impossible to maintain my health, care for my family, and make time for myself."</p>	
<p>"Because I have an overly large job that requires extra hours at work, I have trouble getting in time at the gym or dating during the week."</p>	
<p>"Individuals who are expected to work long hours every week (and without additional compensation for overtime work) suffer as a result... they are likely to be sleep-deprived and to have insufficient time to spend with their family, to care for the needs of their children or other loved ones, to take care of their own health, and to enjoy adequate time for exercise, relaxation, grocery shopping, and healthy meal preparation. They take personal short-cuts, eat fast food on the run, and live stressful lives. Many such workers feel that they must work around the clock or at least stay in touch with work and respond to email or phone contacts seven days a week. This creates a harried, stressful lifestyle that takes a toll on our workers' health and well-being."</p>	

<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. I often work more than 40 hours a week, but I don’t get an extra dime for all those extra hours. And it’s not just me — salaried workers are putting in more and more hours — but we’re not getting paid for it. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance. I’m not certain that this proposed change will remedy my problem, but I’m sure the state could make it better if it was a priority.”</p>	
<p>“Overtime is a euphemism for overwork. Over 100 years ago, workers fought for the 8 hour day. The employer should be forced to pay some financial penalty for employees being overworked without exception. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself.”</p>	
<p>“I am writing to urge you to restore overtime rights to salaried workers in our state. Research has shown that excessive overtime seriously harms the physical and mental health of employees, leading to increased depression, diabetes, heart disease, heavy drinking, and impaired memory. Moreover, employers also experience undesirable results, including higher employee absenteeism and turnover, as well as productivity loss from factors such as employee’s impaired ability to make judgment calls, read other people’s faces, or manage emotional reactions. (See ‘The Research Is Clear: Long Hours Backfire for People and for Companies’ in the August 19, 2015 issue of Harvard Business Review at <a href="https://hbr.org/2015/08/the-research-is-clear-long-hours-backfire-for-people-and-for-companies/">https://hbr.org/2015/08/the-research-is-clear-long-hours-backfire-for-people-and-for-companies/</a>’).”</p>	
<p>“When I worked a salary job it affected my home life because I was gone a lot and received no extra money to make up for the time spent away. The company would require overtime since we could be worked for free.”</p>	
<p>“I missed out on family time, including time spending with my dying mother. I delayed getting necessary surgery done. I retired so I could take care of my health and family.”</p>	

<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. I often work more than 40 hours a week, but I don't get an extra dime for all those extra hours. And it's not just me — salaried workers are putting in more and more hours — but we're not getting paid for it. When your workweek never ends, your life becomes a constant scramble and it's almost impossible to maintain your health, care for your family, and make time for yourself. For public sector employees, you negatively impact pension payments and retirement benefits.”</p>	
<p>“How it affects children, families, and small businesses: long hours create extreme stress in a family (check out toxic stress). Having companies be liable for that time will decrease its abuse. It creates future more expensive problems in children growing into adults.”</p>	
<p>“How could I take care of my family, including aging in-laws, when I was working all of the time? It also prevented me from actively participating and supporting my community. A steady salary shouldn't require saying no to everything - and everyone - else except my boss.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When your workweek never ends, your life becomes a constant scramble and it's almost impossible to maintain your health, care for your family, and make time for yourself. I appreciate that Washington State is taking the lead in this issue. I think that by protecting workers, we build stronger communities locally and regionally.”</p>	
<p>“My unpaid overtime hours have affected my relationships and friendships in negative ways and have caused a great deal of stress and anxiety for myself and loved ones.”</p>	
<p>“As a parent it is obvious to me that time spent at work is time I am not able to mentor my child and mold them into a productive citizen. While</p>	

<p>I am the product of two working parents there is no denying that I would have been more prepared for being a productive citizen had my parents had more time to mentor and less time driving large profit margins.”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. Citizens without time to engage in building community over profit will never lead to a stronger nation. Communities are first and foremost social structures, followed by economic possibilities. A system designed to capture the value created by others will never provide the value needed to sustain itself. We must have a system designed to share value over capturing it. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance.”</p>	
<p>“These rules have the potential to improve the lives of hundreds of thousands of workers in Washington State who are currently exempt from overtime protections. Working long hours disrupts workers’ time to sleep, cook and eat, exercise, take care of children, spend time with family and friends, do other recreational activities, and participate in the community. Working long hours has also been linked to poor health, including stress, anxiety, depression, sleep deprivation, infrequent exercise, and higher fast food and alcohol consumption.”</p>	
<p>“Do the right thing and support bold action to restore overtime rights to underpaid and overworked salaried workers in the state of Washington. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to maintain your health, care for your family, and make time for yourself. Long hours have been shown to negatively affect productivity, workplace safety, community involvement, and children’s school performance. Do the right thing to protect the least of us.”</p>	

“Because of unpaid overtime in all of my professional positions and many of my hourly positions, I haven’t had enough time in decades for camping, travel and cultural activities connected with my heritage.”	
“I’m often too tired to fully enjoy my life outside of work because of how many hours I spend working.”	
“Freebies for the boss or corporation, for a variety of reasons having to do with respect for all humans, needs to be responsibly addressed. My low pay and the health problems I encountered actually end up costing the tax payer, enabling corporate welfare.”	
“It’s hard to maintain personal health and healthy relationships when the hours are too long and the pay is too low.”	
“Working more and spending less time at home, has cost missed holidays, Birthdays, and time with my Grandkids, and husband.”	
“It is hard on the sons and daughters of the workplace to attain their full education. They are more concerned with what's going on with Mom and Dad and so full and complete learning is lost.”	
“Because my employer expects me to spend so many hours at work, I miss out on things like community events.”	
“When people aren't paid overtime, they are left to pick up the pieces at home - the more time you work, the less time you have to take care of yourself, your family, and your community. We all pay a price for overworked employees.”	
“Excessive overtime lowers productivity and ruins lives.”	
“Because my employer expects me to spend so many hours at work, I miss out on things like family gatherings and church.”	
“When caregivers work overtime to make sure that their clients are getting the proper care it leads to burnout, anxiety, and is hard on their families.”	

<b>2.f.1 Impact on wages: Decreased pay</b>	<b>Response</b>
“When it comes to statutorily required on-call personnel, if you price them out of that market, they’re going to lose money in the long run because employers are going to have no choice but to cut their hours to	The adopted rules provide further protections for workers in many ways. In compliance with the APA, RCW 34.05, the department prepared a final CBA. The final CBA analyzed the potential costs

make up for that. And so if they don't have on-call hours and they're pushing through their week, they're going to come out behind rather than ahead."	associated with the adopted rules and determined that benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA is included in response 1.a.2.
"Inflationary pressures increase: Price increases will reduce incomes for individuals and businesses."	
"It will adversely affect my employees by reducing the number of hours I can schedule."	
"This rule would lower wages not raise them and would also affect bonus pay sine wage and hour makes it difficult to bonus hourly employees and at the higher levels we would be moving all to hourly like the chains do independent grocers pay more for department heads because of salary."	
"If these rules were adopted as currently proposed, I may have to cut hours and use more part time employees in my Brewery business."	
"We would have to engage in drastic base hourly pay cuts thereby losing our talented managers who provide the assurance of quality services."	
"There's a big downside to WA State's attack on salaried employees – less worker pay for less hours."	
<b>2.f.2 Impact on wages: Employees should be paid fairly</b>	<b>Response:</b>
"Nobody should have to work more than 50 hours a week but they should be well paid if it's a short term necessity."	With the adopted rules, important MWA protections will be restored and workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will receive those rights. Further, a mechanism will be in place to ensure that the tests for the exemptions remain up-to-date, so future workers will not be denied the protections that the Legislature intended to afford them.
"Denying workers overtime pay after 40 hours is another way of "taxing" workers who never get what they are worth."	
"Employees should be compensated for their time working."	
"Employees shouldn't have to work overtime in order to keep their job."	
"People deserve to be paid a decent wage for their time."	
"Don't shop at any store that doesn't pay their employees fair."	
"Overtime work without overtime pay is wrong."	
"Overtime protections should cover most salaried workers. I urge you to restore overtime rights by raising the salary threshold."	
	As described above, the department considered the many potential benefits of the adopted rules when it considered whether to update the EAP rules. Such benefits include, but are not limited to, the probable increase in pay to workers due to overtime and



<p>"If employers can't afford to pay people properly and treat them with respect, their business plan is no good and they shouldn't be in business."</p>	<p>minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees' families.</p>
<p>"Overtime pay is important for families because if parents aren't home they need to pay someone else to take care of their children."</p>	
<p>"Many highly skilled employees are paid so little that they have to get a second job."</p>	
<p>"Employees need overtime pay to pay for family needs such as healthcare, rent, and food."</p>	
<p>"Workers deserve a living wage and a better work/life balance."</p>	
<p>"Workers in WA state deserve basic respect &amp; pay for their work."</p>	
<p>"I'm glad L&amp;I wants to act responsibly and ethically. Require bosses to pay workers fairly."</p>	
<p>"This would restore some fairness to the compensation of many, especially in small communities where even a department head may not make \$70,000 a year."</p>	
<p>"We have a moral obligation to fight income disparity even if the federal government won't do so."</p>	
<p>"You either have to accumulate your retirement or hope that Social Security will meet your needs. What you make has a direct correlation on the Social Security you receive so employees should be paid for their work."</p>	
<p>"Working people should get fair pay for hours worked."</p>	
<p>"Campaign staffers are overwhelming underpaid."</p>	
<p>"Either pay more, or pay overtime."</p>	
<p>"Let's make sure people get paid adequately for their hard work."</p>	
<p>"I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption."</p>	
<p>"Only employees who are paid enormous salaries over and way above the working class should be exempt from overtime because their overtime is included in their wages and bonuses."</p>	
<p>"Restore overtime rights by raising the salary threshold for overtime exemption."</p>	

<p>“The threshold should be raised significantly so bosses can no longer exploit modestly paid workers.”</p>	
<p>“Employees with a low salary cannot support living expenses or save money for the future.”</p>	
<p>“It's not ethical to underpay workers who are already on the low end of the pay scale. Paying a low salary while demanding unpaid overtime creates dissatisfaction in the workplace and undermines production.”</p>	
<p>“We are not asking for more money. We are asking to be compensated appropriately so there is value to both employer and employee.”</p>	
<p>“Many faculty also teach "overloads" at their current institution or online at other colleges because of their low salaries.”</p>	
<p>“Realistically, \$1800-2800/month is NOT a white collar job. That monthly income is very common (and expected) at blue collar jobs.”</p>	
<p>“Families, communities, and the economy overall will be stronger when all employees receive fair compensation for their work and have sufficient time for rest, family, health, and civic participation.”</p>	
<p>“Fair is fair, and the current threshold is far too low. People in the low to middle income range need to be paid for their work, and that includes overtime.”</p>	
<p>“Someone that works should be compensated according to how much time, energy, and effort they put into working regardless of whether or not they are salary or hourly employees or managers, etc.... Everyone deserves their fair share, especially, due to the fact that they put in the work for it.”</p>	
<p>“Like the \$15min wage bill, this bill will ensure that workers receive proper compensation for work they are already doing.”</p>	
<p>“I love my work with children and families, and would like to be compensated for my time working with more children who need me.”</p>	
<p>“Just because people get paid an annual salary doesn't mean they should have to work overtime in order to keep their jobs. They should get paid more for working more but their time is priceless.”</p>	
<p>“I don't believe luck should have anything to do with being correctly and adequately compensated for your labor to include overtime pay when working more than 40 hours/wk or 8 hours/day. This should be</p>	

<p>the law of the land. Too many labor activists fought and died for these standard for corrupt politicians to take them away behind our backs!!”</p>	
<p>“To me it is a fundamental violation of the ethical contract between capitalist and labor....overtime work without overtime pay is just wrong and highlights the exploitation that is inherent in our corrupt economic system that makes slaves of labor out of their desperation to just survive!”</p>	
<p>“The new proposal made by Governor Jay Inslee and Labor and Industry is a great start to help ensure salaried employees receive fair compensation for a position that has potential to work them far more than 40 hours per week.”</p>	
<p>“I believe that it is really important for every workers needs to be treated fairly if working salary minimum hours is 50 or 55 the rest of the hours should be overtime at least to help us to survive the raise of the cost of leaving to pay for family needs and all necessities, health care, rent, bring food to our tables not having to bring the leftovers from the place you work to survive because what you make is not enough because of the cost of leaving everywhere. It doesn't matter how much the state or the federal government increase the minimum wage if the rent and the cost of living goes up as well. The state should also create a law to keep the rent affordable.”</p>	
<p>“I consistently work with people who are overworked and undercompensated for their work, their time, and their energy. I am so excited to support this initiative for equity of pay, and really general equity in the workplace.”</p>	
<p>“You either have to accumulate your retirement or hope that Social Security will meet your needs. What you make has a direct correlation on the Social Security you receive. Demand to be paid for your work!”</p>	
<p>“All in all, something should be done to compensate salaried workers - either an overtime premium should be factored in or the salary structure should be amended to reward all employees (including salaried personnel) for extra time invested in the job, regardless of what that job is.”</p>	
<p>“Washington State workers deserve to be paid for all of their time.”</p>	

<p>“Let's make sure people get paid adequately for their hard work.”</p>	
<p>“But those who are paid a low salary and work more than 40 hours per week without additional compensation are working an hourly wage equivalent that cannot support living expenses much less any attempt to save money for the future, especially in high cost-of-living places like the Puget Sound region. It's not ethical to underpay workers who are already on the low end of the pay scale. Paying a low salary while demanding unpaid overtime creates dissatisfaction in the workplace and undermines production.”</p>	
<p>“Underpaid workers deserve the benefits of overtime pay. We need to curb employers’ tendencies to take advantage of the employee’s time. We have put laws in place to protect citizens, such as protecting the use of sick time. This is a common sense solution. We are not asking for more money. We are asking to be compensated appropriately so there is value to both employer and employee. Please vote in favor of this protection.”</p>	
<p>“I believe that everyone should be paid their fair share of the work they have done.”</p>	
<p>“This is extremely important. We should not permit wage theft in this way. Legal robbery is still robbery!”</p>	
<p>“The corporations have had the upper hand for too long. The time is now to reverse wage inequities, and make corporations pay their workers a living wage!”</p>	
<p>“This doesn't impact me in any way; I'm above the proposed new threshold. But fair is fair, and the current threshold is far too low. People in the low to middle income range need to be paid for their work, and that includes overtime.”</p>	
<p>“My thoughts and reaction to the new overtime rules &amp; regulations I feel will benefit a lot of underpaid workers whom tirelessly work their behinds off and at the end of the day can at least fill semi relief that all the extra hours they have put in is legitimately being accounted for towards there OT benefits.”</p>	

<p>“Just think if Labor laws can change for the better then people will actually start to see low &amp; medium class shift In a direction no one has ever seen.”</p>	
<p>“Without the extra money I make from overtime, it would be difficult to keep up with all my bills. It's not fair that some people are making that sacrifice that I make, losing time with their family, coming home exhausted every day without being paid for it.”</p>	
<p>“As the cost of housing, goods and services has increased in our society, our wages and overtime thresholds have not kept up.”</p>	
<p>“There needs to be a price for people who are working an excessive amount of hours.”</p>	
<p>“People should not have to be overworked to make ends meet.”</p>	
<p>“Let's modernize labor laws to ensure that people are paid for the work they're already doing.”</p>	
<p>“Every worker should be fairly compensated for the work they do. No exceptions. Lack of overtime regulations burdens workers, especially women and people of color and immigrants who feel the least empowered to make waves.”</p>	
<p>“EVERYONE deserves the chance to work for a LIVING wage AND have a true work/life balance.”</p>	
<p>“It's unbelievable that the standard 40 hr. work week is being destroyed AND workers &amp; managers are not being paid for those hours away from family &amp; other duties.”</p>	
<p>“When you work hard, that should be recognized, especially with increasing cost of living in the Northwest.”</p>	
<p>“Workers time deserve respect, they should be paid for every hour worked or allowed to spend their time the way they want.”</p>	
<p>“Improving overtime protections give workers money they may badly need as well as more time with their family.”</p>	
<p>“I support this effort because everyone deserves to be paid for all the hours they work.”</p>	
<p>“This is simple - pay your workers for the time they work. Any business that can't afford to do so is not a sustainable business. It's operating at</p>	

<p>a loss and getting by with a subsidy from its employees. If it can't pay employees for their time, the business should fold.”</p>	
<p>“If you change the law to require a minimum wage for exempt employees, then it should have to be a truly livable wage, which currently is about \$29/hour.”</p>	
<p>“Restoring protections for salaried workers will improve quality of life by encouraging employers to limit time asked for work to 40 hours or to pay people fairly for the productivity that benefits the employer.”</p>	
<p>“It's hard enough to get paid what our time is worth as a starting salary. When we don't get paid for additional hours, it's literally financially and mentally devaluing. Workers deserve compensation for all hours spent assisting the company rather than living their own life.”</p>	
<p>“While I believe this is a great improvement, it does not make workers whole. Workers should be paid for the time that they work. I believe that 40 hours is enough and companies should be encouraged to hire additional workers rather than force workers to work unreasonable hours.”</p>	
<p>“I stand in support of those I see working long hours on salary. They go above and beyond and should be compensated for their time.”</p>	
<p>“While inflation and housing costs have risen dramatically in Washington state since 2004, the level of overtime exemption has remained locked in the past. It's time to update that threshold, and deliver the hard earned wages of working people into their pockets where they belong, and spurn a boom in consumer demand in our local economies.”</p>	
<p>“A 40-hour workweek is a nice fantasy, but the reality is that many people work 50-60 hours just to do the basic requirements of their job because workloads always balloon to the maximum salaried employees can tolerate. These folks deserve to be fairly compensated, rather than having the extra work constantly diluting the value of their time, and employers shouldn't be able to shoulder extra work onto their already-fully-employed salaried employees for free.”</p>	

<p>“Workers should be fairly compensated for the hours they work, and that includes being paid overtime if they work more than 40 hours a week.”</p>	
<p>“The bulk of research shows that living wages and paid sick leave promote worker and family health, reduce costly turnover, and help communities and businesses thrive.”</p>	
<p>“The draft rule will restore the salary threshold to close to a living wage in many parts of the state.”</p>	
<p>“I applaud the move to increase that cap at which workers are eligible to receive overtime pay. I think it is immoral to not pay workers for their labor, especially in an area like Seattle with an extremely high cost of living.”</p>	
<p>“Employees often can't turn down extra work or extra hours because they fear losing their jobs or promotion opportunities, and people should be paid for the time they actually work.”</p>	
<p>“Overtime works to prevent bosses from underhiring, and fairly compensates workers for their health.”</p>	
<p>“IF you work overtime you should be PAID overtime!”</p>	
<p>“Workers deserve to be fairly compensated for overtime work.”</p>	
<p>“All work is noble and should be fairly rewarded.”</p>	
<p>“Everyone deserves to be paid a good wage for the work they do. I think salaried jobs are just another way to exploit people.”</p>	
<p>“Despite increases in our nation's productivity, the workers who make that possible are not being fairly compensated. That's not right. Working such long hours without fair compensation not only adversely affects workers' pay and health, but also negatively impacts the workplace in terms of worker fatigue, safety and reduced productivity, and the workers' participation in the larger community.”</p>	
<p>“All workers should be fairly compensated for their work and not made to feel guilty or risk getting reprimanded for taking the time a task requires.”</p>	
<p>“Time and a half for hours over 40 a week.”</p>	
<p>“According to CBS, "CEO compensation rose 940% from 1978 to 2018, compared with a 12% rise in pay for the average American worker</p>	

<p>during the same period, according to the Economic Policy Institute. In 2018, average CEO pay at the 350 biggest U.S. companies was \$17.2 million." Sharing the wealth with the people who made the money for you is the least you can do!"</p>	
<p>"Those employees are worth money. That value needs to be reflected in their pay, including paying overtime for more than 40 hours/week or 8 hours/day."</p>	
<p>"It is appropriate for this Washington to take the lead going forward to pay employees what they are worth, and in doing so improve the state's economy."</p>	
<p>"I am writing to take a firm stance on providing every human being a fair living wage and encourage both the federal government and individual states to implement laws that protect our rights and well-being."</p>	
<p>"Companies should pay for the work they benefit from."</p>	
<p>"Please give hard workers the right of overtime for work they do."</p>	
<p>"Everyone should be adequately compensated for the work they do, especially if they are getting paid less than 2.5 times the minimum wage."</p>	
<p>"Workers are human beings with families, communities, and lives outside of work — our time counts, too."</p>	
<p>"I worked at jobs which did not pay anything for extra time, not even base rate. I think this is robbery."</p>	
<p>"In consulting, employees are often expected to work for free in order to make up for budget shortfalls on projects."</p>	
<p>"Unpaid work only lowers employee salaries."</p>	
<p>"Overtime with no additional penalty is theft."</p>	
<p>"I have been an employer and understand how hard it is to pay people competitive wages, but also know that we need to hold ourselves accountable and not force people to work for free."</p>	
<p>"In the technical field we are burdened with the belief that since we have good compensation due to the high demand for our skills, that it is reasonable to then expect us to work a number of hours per week limited only by 'the needs of the project' or 'whatever it takes'."</p>	



<p>“Time is all we have and we can't renew it or get it back. Time is precious and if we spend it doing overtime the pay must be worth it.”</p>	
<p>“If employees don't get overtime and are working for free they can't keep up with the cost of living.”</p>	
<p>“If employees need 40 hours in a week to do their job, but then also have to come in for after-hours events, they should be paid for those additional hours.”</p>	
<p>“Mandatory overtime, not getting paid for the hours worked is absolutely wrong.”</p>	
<p>“Non-paid overtime hours effect productivity and culture within the organization in a negative way.”</p>	
<p>“Not paying overtime is wage theft.”</p>	
<p>“But earlier in my career I worked at jobs which did not pay anything for extra time, not even base rate. I think this is robbery.”</p>	
<p>“Nobody should be expected to work for free... We love this state and want our State Government to have our backs.”</p>	
<p>“Nobody should be expected to work for free. I can't believe that this is even a battle in the marketplace of ideas. I think the bazaar has been leading the conversation for too long.”</p>	
<p>“The vast majority of workers in this country have not inherited a fortune, do not come from "Old Money" The working man or woman has only his/her time and labor. Nobody should be forced to give their time and work away for free!!”</p>	
<p>“Nobody should be expected to work for free. Happy and loyal workers are productive workers and productive workers reduce crime and make a better, safer, state to live in.”</p>	
<p>“Workers are human beings with families, communities, and lives outside of work — our time counts, too. Nobody should be expected or force to work for free.”</p>	
<p>“Nobody should be expected to work for free. Workers deserve a living wage and a better work/life balance and employers should not expect anyone to work for free. When a worker signs on for an exempt position the understanding is that their salary is for 40 hours a week. Expecting more hours that that without extra pay is bad policy.”</p>	

<p>“Nobody should be expected to work for free. Raising income will benefit the employers, community, lower homelessness and crime as an end result.”</p>	
<p>“Nobody should be expected to work for free. A persons wage is lowered for every extra hour that they have to work. Employers take advantage of their salaried workers.”</p>	
<p>Nobody should be expected to work for free. It is unjust with all the subsists and tax breaks low wage employers already receive to also get free labor. Support workers and show them their time has value or let them spend their time how they want.”</p>	
<p>“Nobody should be expected to work for free. Workers in WA state deserve basic respect &amp; pay for their work.”</p>	
<p>“Nobody should be expected to work for free. I'm glad L&amp;I wants to act responsibly and ethically. Require bosses to pay workers fairly.”</p>	
<p>“Workers who choose to work overtime should be compensated accordingly. It is reasonable to require employers to pay a higher rate. No one should be required to work overtime.”</p>	
<p>“Nobody should be expected to work for free. We have a moral obligation to fight income disparity even if the federal government won't do so.”</p>	
<p>“Nobody should be expected to work for free. Beware the aggrieved middle class!”</p>	
<p>“Nobody should be expected to work for free. That's known as indentured servitude and that's un-American.”</p>	
<p>“Support paying people who make less than a certain threshold for their overtime -- especially when it is mandatory. People should not have to work for free.”</p>	
<p>“We can't keep expecting women to work for free. Restoring overtime rights is a way of valuing women's work.”</p>	
<p>“It doesn't matter if you're a firefighter, a nurse, a programmer, a restaurant manager; no one should have to work for free. Everyone should have their work and their time valued.”</p>	
<p>“Only volunteers should work for free.”</p>	

<p>“Without compensation, overtime is not just unfair, it also creates an additional financial burden, whether it’s from ordering costly takeout to eat while working to paying for additional childcare time.”</p>	
<p>“As a moral issue, it’s pretty obvious: don’t make people work for free.”</p>	
<p>“If an employer demands you to staff a position, then they should be required to pay for the hours worked.”</p>	
<p>“Workers must not be expected to work extra hours without being receiving extra income for it, unless they agree to do so.”</p>	
<p>“People deserve to be paid for ALL of their labor.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Nobody should be forced to work overtime without being paid for it.”</p>	
<p>“Working a lot of overtime hours, but not getting paid for them, is unfair, and lower income employees should be paid for every hour they work.”</p>	
<p>“I firmly believe that it is morally wrong that workers be asked to work free hours so that company owners can increase their profits. Workers are not asking for anything unreasonable, only that they be fairly compensated for their labor, that they be paid a living wage and paid fairly for any overtime work that they may be asked to do.”</p>	
<p>“Please start paying overtime for all caregivers. This is a labor of love, but we all still have to make a living and expecting us to work for free is wrong.”</p>	
<p>“Nobody should be expected to work for free.”</p>	

<b>2.g Impacts on employees: Positive impacts of the rules and working less</b>	<b>Response</b>
<p>“Please support this! Work-life balance needs to be restored in Washington State!”</p>	<p>As described above, the department considered the many potential benefits of the adopted rules when it considered whether to update the EAP rules. Such benefits include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced</p>
<p>“This bill will increase the quality of life for many workers in the state. It will incentivize a 40hour work week to give workers more time to enjoy their lives and be engaged members of their community.”</p>	

<p>“My experience has been that my 401k match is based on my salary, not my actual earning. This would fix that problem, as I’m mid-career adding a boost to retirement savings would be much appreciated.”</p>	<p>reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted EAP rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for employees’ families.</p>
<p>“Employers would be more apt to consider forgiveness of quota while on medical leave, I’ve had two children while working outside sales jobs, and was held accountable for performing at a lesser level for quarters where I was physically not at work or expected to work. Both times I kept my job, but the emotional toll is real.”</p>	
<p>“My STD was based on my salary, not my actual earning. Another factor when working outside sales that would be helped by this change.”</p>	
<p>“Employers who do choose to pay the salary over hourly would be more apt to keep employees through periods of change, often times if employees start exceeding a quota by too much, the company will change the pay structure to get the employees pay to match more closely what they had budgeted. This change would allow for a less extensive sales compensation plan if salaried and I believe that would help turnover.”</p>	
<p>“If I had that time I'd do self care and exercise.”</p>	
<p>“Perhaps employers will recognize their demands are too steep when work cannot be completed satisfactorily in a 40 hour work week. Should that recognition occur, they will find they have healthier employees, less abuse of sick leave, and a healthier workplace.”</p>	
<p>“Family life and downtime are needed to avoid burnout.”</p>	
<p>“Salaried employees shouldn’t have to work during important life events such as weddings and vacations.”</p>	
<p>“If employees were able to work less they could spend more time with family.”</p>	
<p>“If employees were able to work less they could volunteer in their community.”</p>	
<p>“If employees were able to work less they would have time for doctor appointments and medical care.”</p>	
<p>“If employees were able to work less they would have time for running errands.”</p>	

<p>“Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“Protecting our workers protects our families and helps with Physical and mental health for young families.”</p>	
<p>“If you adopt this rule employees could afford to only work one job.”</p>	
<p>“If employees had more time they could be more politically active.”</p>	
<p>“If employees had more time they could travel more.”</p>	
<p>“If employees spent less time at work they would be less stressed.”</p>	
<p>“Expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	
<p>“Happy and loyal workers are productive workers and productive workers reduce crime and make a better, safer, state to live in.”</p>	
<p>“Raising income will benefit the employers, community, lower homelessness and crime as an end result.”</p>	
<p>“Currently most outside sales people will answer their phone/email 24/7. The boost in salary would make that easier for family members to understand, or the hourly wage would give the employees better reason to not answer during family time.”</p>	
<p>“Employers would be more apt to consider forgiveness of quota while on medical leave.”</p>	
<p>“Employers who do choose to pay the salary over hourly would be more apt to keep employees through periods of change.”</p>	
<p>“When workers are asked to work long hours, they will be more fairly compensated, helping to lift workers and their families out of poverty.”</p>	
<p>“Being paid premium time allowed me to have help at home which made my life much easier as I didn't have to worry.”</p>	
<p>“If employees had more time they could spend time outdoors and recreate more.”</p>	
<p>“For children and families increasing the base would support them better. It would increase their personal income and reduce their dependence on services like childcare subsidy.”</p>	

<p>“If Labor laws can change for the better then people will actually start to see low &amp; medium class shift In a direction no one has ever seen. World Peace.”</p>	
<p>“This bill will increase the quality of life for many workers in the state. It will incentivize a 40-hour work week to give workers more time to enjoy their lives and be engaged members of their community.”</p>	
<p>“I worked Between 42-47 hours per week hours a week. If I had that time I'd do self care and exercise. In 7 hours I could work out 7 hours per week, get counseling, prepare meals. Dislike having to be constantly on call checking emails all day when not in the office.”</p>	
<p>“When I work 50-60 hours it is challenging to schedule things like dr appointments or running errands let alone self care. If I was able to work less I would spend more time with my family and volunteer in my local community.”</p>	
<p>“If this passes, it would greatly impact my life. I could just work 1 job, we could have a 3rd child. Also just knowing that salaries will increase every year with the minimum wage gives me comfort to know that my family will be okay and we won't get left behind.”</p>	
<p>“If I had more time I'd use it to be more politically active!”</p>	
<p>“I work 40~ hours a week. Because I spend so many hours at work, I miss out on time with my family. If I was able to work less, I'd go enjoy my free time with them.”</p>	
<p>“If I had more time for myself I'd spend it with Kids and on travel.”</p>	
<p>“If I had less time at work I would feel less stressed.”</p>	
<p>“If I worked less I would have had time to be there for my son's graduation from middle school to high school.”</p>	
<p>“If I had more time I'd do outdoor stuff and recreate more.”</p>	
<p>“I missed out on spending time with my daughter and other family. If I worked a 40 hour work week, I would have had more time and energy to participate in my family's life.”</p>	
<p>“The community, families, single person will have the balanced life.”</p>	
<p>“By putting a price on additional hours over 40 in a week, companies tend not to take those additional hours. Instead, workers get back the</p>	

time they need to care for their families, participate in their communities or just live their lives and enjoy some leisure time.”	
“I support this proposed rule because it would give scientific researchers more time, more money, a little bit of both, which would help us both in being creative and contributing more effectively as scientists.”	
“It also puts a price on these excessive hours of work, perhaps even health benefits by reducing stress at work.”	
“Allowing workers to have enough sleep, eat well, exercise, emotionally recharge is good for public health.”	
“When workers are paid for the hours they work, their families have more money to spend on basic necessities and recreational activities that fuel the economy.”	
“If I was able to work less, I'd certainly have a better family, exercise more, help others more, and have a much better quality of life.”	
“We would be able to afford to contribute to the economy and maybe even go back to school, find a better job, or advocate for ourselves and our futures.”	
“Working less mandatory overtime would let me know in confidence that I have guaranteed time off to actually plan time and family events so I don't feel like a forced drone or I'll get fired.”	
“If I was able to work less, I'd spend more time with friends, and investing in myself.”	
“It makes it difficult to enjoy the good weather myself with friends and family as I'm working so much. I'd rather be out hiking, motorcycling, or boating.”	
“If I had less time at work I'd have more time for Life and not feel like I'm close to death.”	
“If I had more time for myself I'd use it for good health.”	
“The law to have anyone earning less than \$80,000 should get overtime would make people healthier and not working so many hours as the 1% wouldn't want to pay it.”	
“Because my employer expects me to work until the work is done and spend so many hours at work, I miss out on things like sleep, exercise	

and family events. If I was able to work less, I'd be healthier both mentally and physically."	
"If I had less time at work I'd use that time to write stories."	
"Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. Everybody will benefit. Bring back the customer rule, too! Not having it, is damaging to most industries."	
"Overtime would help me hire farm labor and 40 hours would give me more time to work on the farm."	
"I'd spend time doing things that de-stress me (and therefore make me more productive at work."	
"Employees need time to care for their sick or dying family members."	
"Workers shouldn't have to miss family events."	
"The proposed rule will also result in better confidence for workers about their work hours, making it easier for workers to schedule other activities including time with family and education."	
"For workers who end up working fewer hours, the proposed rule should result in improved work-life balance for family and other activities."	
"As the CBA points out, the proposed rule should result in less stress, fatigue, and other issues related to working long hours, which increases the risk of injuries or illnesses in the workplace."	
"Extending paid sick and safe leave to more workers will benefit the health and well-being of state residents."	
"If I worked less I'd have more time for family outings Be less stressed and more enjoyable for my family."	
"Quality of life goes up when work is less stressful and consumes less time. And a higher quality of life leads to better parenting, better health, and greater community involvement -- all of which save the state money and create a better environment for everyone."	
"Our communities need more people who have free time to volunteer, to care for themselves, and to have decent pay."	
"Expanding overtime protections could result in increased worker earnings, which could boost the economy or workers not being	



<p>pressured or required to work more than 40 hours per week, resulting in healthier, happier employees.”</p>	
<p>“Over time leads to a better work/life balance, and presents upper management from exploiting workers.”</p>	
<p>“Updating overtime protections allows workers more time with their families or more money in their paychecks for overtime work—or a little of both. This helps working families and our economy. Numerous studies also show that reducing work hours boosts productivity, improves safety, and lessens turnover.”</p>	
<p>“Expanding overtime rights will at the very least lessen my anxiety and financial burden.”</p>	
<p>“My Kids are growing up, if I had less time at work i’d spend more time with them teaching, playing, and having fun with them.”</p>	
<p>“If I worked less I’d be spending time with family &amp; friends have a lot less stress.”</p>	
<p>“Americans already work more hours per week and more days per year than other Western nations. The overwork is not productive and it's not helping our economy grow. We all deserve work-life balance.”</p>	
<p>“For affected workers, these changes will lead to clear improvements in their well-being. A worker who was previously required to work long hours without overtime pay will now receive higher pay (either as a result of overtime premium pay or a salary increase up to the new threshold), more free time away from work, or both.”</p>	
<p>“This change will also benefit the broader Washington economy. First, it will boost productivity and improve workplace safety: Research shows that employees who have adequate time to rest and recuperate each week, or between shifts, are more productive and less prone to at-work accidents and injuries than overworked employees are.”</p>	
<p>“Reducing overwork has public health benefits, since excessive work hours are linked to a variety of worse health outcomes, including increased risk of stroke and heart disease.”</p>	
<p>“Giving workers more time away from work gives them invaluable time to spend with their families, to help their children with homework, to</p>	

spend time outdoors, to engage in volunteer or civic activities, or to care for themselves or loved ones.”	
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3.a.1 Salary Level – Other Suggestions for the Multiplier: Alternative salary thresholds	Response
“WAC 296-128-545 (Salary Thresholds) We do not support tying the salary threshold to Washington’s minimum wage let alone the proposal to make the multiplier 1.25 times min wage and above.”	<p>The adopted rules update outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds and prevents the thresholds from eroding over time. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p> <p>These comments highlight several common misconceptions about the salary thresholds. Employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the MWA (see potential compliance options outlined in response 1.a.1).</p> <p>Further, as described in more detail in response 1.f.4, the department’s authority to introduce an approach to setting salary thresholds that is dependent on an employer’s nonprofit versus for-profit status is uncertain. The department is also aware of no data that indicates that workers in the nonprofit sector would benefit less from the adopted rules than their counterparts in for-profit businesses.</p>
“If the Department insists on setting the salary amount based on a multiplier of the state minimum wage, encourage the department to set the multiplier as low as possible and certainly well below the current proposal of 1.25 and above. Even at a rate of 1.25 times the state minimum wage, the salary level in 2020 would be \$650.00 per week, which is significantly higher than the current federal salary threshold of \$455.00 per week. Any multiplier that even approaches this amount would drastically increase labor costs for employers well beyond what their budgets, prices, and industry competition can bear.”	
“Please lower the salary threshold for salaried workers to no more than 1 ½ times minimum wage. This addresses your concerns for abuse and gives workers the flexibility in scheduling that they desperately need!”	
“The salary threshold to be set at 1.5 – 1.75 times the state minimum wage (\$42,120 - \$49,140).”	
“Set the salary threshold at 1.5 – 1.75 times the state minimum wage (\$42,120 - \$49,140) for a 40-hour workweek (\$945).”	
“Adopting a salary threshold tied to a multiplier higher than 2x the minimum wage will deeply impact our salaried managers, and ultimately drive our most talented employees to other industries where they can obtain a salaried position with more predictable earnings. It will also impact all lower levels of management due to the reduction in salaried positions in our company.”	
“Imposing a threshold of 1.5 to 2 times the Washington State minimum wage allows for part-time executives and professionals, as well as small businesses and non-profit leadership to enjoy all of the benefits and	

opportunities of corporate leadership thereby encouraging their career plans and positions of leadership within our communities. I encourage you to revise the thresholds in this proposed rule to establish the thresholds at no greater than 2 times the Washington State minimum wage.”	
“Recommend a smaller multiplier between 1.75-2.0 times the minimum wage.”	
“My comment is that the wage multiplier for all exempt positions, including IT personnel, be no greater than 2x minimum wage. With that multiplier the phase in over the same 5.5 years does make sense.”	
“2x is more reasonable and more closely approximate what the federal government was attempting to do in 2016. That previous effort appropriately strove to broadly use national wages as a baseline, rather than only wages in the areas of the country where salaries are highest.”	
“Incrementally increasing to a maximum of 2x the minimum wage (not 2.5x) seems more rational and fair to both employees and employers, while still greatly exceeding the newly proposed federal threshold.”	
“Lower the multiplier used in the rule’s calculations.”	
“I recommend setting the minimum weekly salary at 2 times the minimum wage for lower cost of living areas, and/or reducing the hourly minimum wage and retaining the 2.5 multiple that is proposed for 1/1/2025 for those lower cost of living areas.”	
“Set the initial salary threshold to 1.5 – 1.75 times the state minimum wage.”	
“We recommend utilizing 1.5 times the minimum wage as the final salary threshold in 2026.”	
“The salary threshold to be set at 1.5 -1.75 times the state minimum wage (\$42,120-\$49,140).”	
“We urge you to not move salaried thresholds to the near \$80K level.”	
“Maintain one minimum wage multiple – say 1.75x – and then have minimum wage increases be the escalator rather than an increasing multiple. This will provide much more predictability.”	
“The proposed minimum salary threshold of 2.5 times the minimum wage results in a value, unreasonably high.”	

<p>“We would encourage you to consider a modified adoption to two times the current threshold over three years beginning with whatever the Federal implementation is, even if that is July for whatever reason. At one and a half times, that’s still higher than the Federal threshold to propose. And then a 1.75 and then a 2. This still impacts more than half of the employees that are projected to be impacted by 2026.”</p>	
<p>“My concern is that the multiplier is too high, especially with the increased minimum wage. We are a public agency, and our revenue increases are limited by state law.”</p>	
<p>“Change should be 2% above the minimum wages. Why, because some employee will have the workers work less to be under the threshold for salary workers.”</p>	
<p>“The \$49,100 is a good starting point but the \$70K plus in a few years is not realistic.”</p>	
<p>“Adopt only the first phase of the proposed plan, bringing the state threshold to \$49,400 by July 1, 2020. This will exceed the level of \$47,400 proposed by the U.S. Department of Labor in 2016 and will strike a workable compromise between high and low wage areas of Washington State.”</p>	
<p>“While we agree the threshold for exempt status should be updated to \$49,140, the proposal to increase this level in 2020 for large employers is too soon and the annual increases are daunting, not evenly implemented and would negatively impact the arts and culture services and programs we provide to our community.”</p>	
<p>“Implement a new salary threshold at \$49,140 but start in 2021 to allow time to budget and plan accordingly.”</p>	
<p>“We support the proposed salary threshold increase to \$675 per week for exempt employees. We do NOT support the proposed salary threshold increase to \$945 per week for exempt employees for businesses with 51 or more employees.”</p>	
<p>“From my experience, a salary of \$40,000 would be a reasonable level. If there is no overtime, that’s \$19.23/hour (\$769/week). With overtime of 8 hrs a week for 50 weeks per year (more than any of my clients ever have), that would still work out to \$14.93/hour (still \$769/week). This is</p>	

well over the minimum wage, minimizes the harm to small businesses, and avoids the wage reductions or layoffs that would occur for many businesses if the minimum was raised to double that amount.”	
“Suggest moving the threshold to 40k per year and then stop.”	
“Suggest that the exempt employee wage base increase gradually to the \$35K level. Since it is below the federal, propose that January 1, 2020 it adjusts to 10% over the federal base or \$26,400 and a 10% increase each year until it reaches \$35K by January 1 of 2023.”	
“Please lower the O/T threshold in the proposal to less than 1/1/2 times the minimum wage. My suggestion would be \$35,000.”	
“Double the current minimum federal salary threshold to \$47,320 effective 2021.”	
“We suggest a phase-in of implementation of the recommended \$47,476 threshold over a 3-year period and further increases every few years. This would better enable our organizations, who significantly rely upon contributed revenue, to work towards accommodating the additional expenses.”	
“Consider lowering the final limit. I think somewhere in the ballpark of \$50K in 2019 dollars with updates for inflation is reasonable.”	
“We feel a much more realistic level in the \$40K plus range would respond to the need to update the threshold, but not unduly impinge on the growth of business, or limit employee opportunities for advancement into entry level management careers in Eastern Washington. That range would be much more reflective of the needs for our organization.”	
“Implement the threshold change as a fixed number, not increasing every year by inflation.”	
“If the Department sets a new salary threshold, we suggest it be a fixed amount and not be tied to the state minimum wage.”	
“We would recommend that LNI adopt only the first phase of the proposed plan, bringing the state threshold for employers with 51 or more employees to \$49,400 by July 1, 2020 and implementing the threshold as a fixed number not tied to the state minimum wage and	

<p>not indexed to inflation. This would avoid the multiple years of compounding costs from 2021 onward.”</p>	
<p>“Set a fair minimum standard for the exempt threshold that is fair for employees throughout the state, and then let the marketplace decide in Seattle, in Everett, in Walla Walla, in Yakima what is appropriate beyond the minimum threshold.”</p>	
<p>“Urge you to set the minimum threshold that’s fair to everyone in the state not just King County. To be fair, I would look at 1.5 percent. That’s \$47,000. It’s very close to the Obama Administration’s recommendations several years ago. It’s 60 percent of your proposal of \$80,000. And I think it’s a fair compromise when you compare wages outside of Seattle to those inside Seattle.”</p>	
<p>“If you do want to implement a single number across the state, maybe if you look at the least common denominator and maybe looking at that 95 percent of the cost of labor.”</p>	
<p>“One related item the Department does not appear to be considering is giving employers sufficient time to assess changes for subsequent years after the Department’s rules are finalized. If the Department chooses to move forward with a multiplier based on the state’s minimum wage, it needs to consider the fact that employers will only have from September to December of the prior year to address the new salary threshold, because the Department does not announce minimum wage amounts until September. This provides precious little time for employers to adjust their practices and budgets. It is important to remember exempt status is not just related to salary, it also normally impacts paid leave benefits, health benefits, responsibilities, and other conditions of employment. Giving employers time to communicate these kinds of changes is not just in the best interest of employers, it is in the best interest of employees who could experience significant changes beyond how and what they are paid. To address this, Vigilant recommends a flat salary amount, or if the Department refuses to do that, at least six months for employers to implement the new salary amount for years after these rules are changed.”</p>	

<p><b>“Set a different minimum wage multiplier for small non-profits and social service providers with under 75 employees (based on whether the business’ revenue is primarily from governmental and non-profit sources, including collective providers of home care, disability and health care). After step 1 (which I have not heard complaints about moving to 1.25 x minimum wage [\$27,000/year]), small non-profits and social service providers under 75 employees should have a <b>two year window to move up to 1.5 x minimum wage (to January 1, 2022).</b>”</b></p>	
<p><b>3.a.2 Salary Level – Other Suggestions for the Multiplier: Use the CPI-W to set the salary rate instead of based on the minimum wage</b></p>	<p><b>Response</b></p>
<p>“Suggest initially doubling it, getting closer to \$50k then increase much more gradually with CPI indexes annually like many other larger cities.”</p>	<p>The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds and prevents the thresholds from eroding over time. The state minimum wage is updated annually by L&amp;I using a formula tied to the rate of inflation (based on the CPI-W). Basing the salary thresholds on a multiplier of the state minimum wage allows for a predictable calculation, based on transparent, public information that the department already provides. A multiplier also provides a simple, clear standard for employers to understand and comply with.</p> <p>Using a multiplier of the state minimum wage is also consistent with the historical, long-standing understanding that bona fide exempt executive, administrative and professional employees generally would make substantially more than minimum wage.</p> <p>The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p>
<p>“This entire process could be made simpler and more equitable if the state just doubled the current exempt salary of \$23,660 to \$47,320 effective January 1, 2021 vs 2020, to brace for the financial impact. This rate could then be increased annually based on the CPI, an economic indicator that all employers could anticipate, versus future thresholds determined by a political decision-making process tied to the minimum wage, and devoid of any consideration for the additional significant costs associated with FMLA, long-term care and other regulatory changes.”</p>	
<p>“After that, it could increase at an inflationary rate using a benchmark such as minimum wage increase as currently proposed.”</p>	
<p>“Tie this salary threshold to the CPI for subsequent years. In most years this will lead to an increase. In years with negative CPI, keep salary as is.”</p>	
<p>“Moving forward, the salary threshold and any ensuing increases be set relative to the Consumer Price Index, not on the minimum wage.”</p>	
<p>“Set ensuing increases relative to the Consumer Price Index rather than the minimum wage.”</p>	
<p>“Consider a reasonable multiplier that is based on the consumer price index and can help keep wages in check.”</p>	
<p>“Moving forward, the salary threshold and any ensuing increases be set relative to the Consumer Price Index, not the minimum wage.”</p>	

<p>“Moving forward, have the salary threshold and any ensuing increases be set relative to the Consumer Price Index, not on the minimum wage.”</p>	<p>If employers need additional time to evaluate employee exempt status prior to the announcement of the new minimum wage in September, they can look to historical trends to estimate the probable change for the next year. For example, according to data collected by the Bureau of Labor statistics, CPI-W has had an average annual 2.17% increase over the past 20 years.</p> <p>Irregular updates to the salary thresholds also increase the burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.</p>
<p>“This entire process could be made simpler and more equitable if the state just doubled the current exempt salary of \$23,660 to \$47,320 effective January 1, 2021 vs 2020, to brace for the financial impact. This rate could then be increased annually based on the CPI, an economic indicator that all employers could anticipate, versus future thresholds determined by a political decision-making process tied to the minimum wage, and devoid of any consideration for the additional significant costs associated with FMLA, long-term care and other regulatory changes.”</p>	
<p>“Moving forward, the salary threshold and any ensuing increases be set relative to the Consumer Price Index, not the minimum wage.”</p>	
<p>“This entire process could be made simpler and more equitable if the state just doubled the current exempt salary of \$23,660 to \$47,320 effective January 1, 2020...From that \$47,320 level, annual adjustments could be made based on the CPI. This would be more comparable to the pace of annual wage increases.”</p>	
<p>“Set the new salary minimums at no more than 1.75 % of minimum wage for a 40-hour workweek (\$945) and allow them to adjust annually based on the CPI-W from there.”</p>	
<p>“Set the new salary minimums at no more than 1.75 percent of minimum wage and allow them to adjust annually based on the CPI-W.”</p>	
<p><b>3.a.3 Salary Level – Other Suggestions for the Multiplier: Concerns with employer size calculations</b></p>	<p><b>Response</b></p>
<p>“While we appreciate the Department’s slower implementation for businesses with less than 50 headcount, as a staffing company, we’re stuck in a challenging position. We are a small business operating under the large business umbrella. We have sixteen employees that work directly for our organization, yet because we have more than 400 contingent workers placed at our client locations, we are lumped under the large employer umbrella. For the Department to assume that simply because a business is large, they should have the financial means</p>	<p>As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. When fully implemented, the updated salary thresholds will apply to all businesses regardless of size.</p>



<p>to absorb the proposed wage standard is an uninformed assumption about businesses in the state. As a small business being lumped into the large business category, it's simply not feasible for us to maintain the exempt status of our employees if the new wage standards are adopted into law."</p>	<p>However, the department recognizes that the Legislature has found that administrative rules can have disproportionate impact on small businesses and it has defined small businesses as business entities that have fifty or fewer employees. See RCW 19.85.011, .020. With these principles in mind, the department has taken several steps to mitigate the impact of the adopted rules on small businesses in compliance with the Regulatory Fairness Act. The inclusion of a delayed implementation and phase-in for small businesses is one of the department's mitigation steps. The classification of small businesses as those with 50 or fewer employees is based on the requirements of the Regulatory Fairness Act and because it is consistent with the Paid Family and Medical Leave (PFML) regulations.</p> <p>After considering comments from stakeholders, the department adjusted its rule language to provide an additional alternative method to calculate employer size. This methodology allows employers to use the rounded average size determination provided by the Washington State Employment Security Department (ESD) for PFML purposes. This approach looks back over four previous quarters and has the added advantage of reducing administrative burdens for employers since they will be able to use ESD's calculation to comply with both MWA requirements and administration of PFML by ESD. Employers may choose either of the employer size calculation methods in the adopted rules and may choose the option that is most consistent with their business practices.</p> <p>Both employer size calculation methods in WAC 296-128-545 are based on the number of Washington-based employees an employer has, regardless of whether individual employees work full-time or part-time. These standards also apply to all employers regardless of industry or for-profit versus nonprofit status. The employer size</p>
<p>"This DOL proposal sets up a discriminatory tier based on the number of employees (under or over 50 employees) which may have very little to do with revenues or resources available to an organization. In the nonprofit sector many jobs are part-time...and those total part-time numbers impact full time equivalent (FTE) versus a true reflection of full-time staff numbers...If the scale were based on annual payroll or revenue levels that would not only make more sense but would also be fairer."</p>	
<p>"Having over 50 employees is not a reliable predictor of an organization's ability to comply with 30 percent higher salary thresholds and accelerated salary threshold growth."</p>	
<p>"I do hope you consider on the average of what "head count" is. The way it's set up now is I could have 50 employees, I hire five, I get rid of ten, and all of a sudden on my records it shows me having 55 employees which I have to account for for sick pay. So I think you're better off using an average type thing during the period of time to determine number of employees."</p>	
<p>"I think it's important that immediate clarifications provided in how the FTE count will be realized. There's a lot of organizations on the bubble, whether it's by head count or whether it's by FTE hours worked."</p>	
<p>"Since we collect data on businesses below 20 employees, and they have special difficulties in meeting the steep steps in the rule after January 1, 2020, L&amp;I <b>should have a third tier for employers under 20 employees</b>. About 20% of employees in Washington work for business with under 20 employees. Each step, including the 1.5 times multiplier, should be in two years, with only three steps to 1.75 times minimum wage."</p>	
<p>"Specify how an employee working for a Washington based company but working in another state is to be considered both for short term</p>	

<p>assignments (less than 180 days) and long term assignments (greater than 180 days). Are they covered by the rules and regulations of Washington State or the state in which they are working.”</p>	<p>calculation methods also do not differ based on the form of the corporation, limited liability company, or other business.</p>
<p>“I appreciate the Department’s willingness to consider a phase in, but the suggested approach perpetuates the challenges created by such a drastic increase in the salary threshold. I request the Department not pick winners and losers based on size of business.”</p>	<p>The department is also developing an administrative policy on joint employment to provide additional clarity around which employers have the responsibility of complying with the requirements of the MWA.</p>
<p>“Eliminate the 50 employee rule.”</p>	
<p>“As an employer registered in the state of Idaho, with a satellite office in Washington (about 15 employees), how does the newly proposed changes to the overtime exemption affect our Washington employees? Does it matter that we are registered in Idaho?”</p>	
<p>“Will the new rules on 50+ employee count apply to companies with separate EIN's that are commonly owned, or will this apply to the group as a whole. Does it apply differently if the companies are LLC's, S Corps, and/or C Corps?”</p>	
<p>“We ask that the Department provides clarity in its determination of the size of the employer, and we ask that an FTE count method is utilized for such calculations.”</p>	
<p>“Will the new rules on 50+ employee count apply to companies with separate EIN’s that are commonly owned, or will this apply to the group as a whole. Does it apply differently if the companies are LLC’s, S Corps, and/or C Corps?”</p>	
<p>“Consider using FTE rather than total head count when defining ‘small’ business. Have large pool of employees who only work a handful of weekends per year so treating us as a large business fundamentally misrepresents the size of our footprint and resources.”</p>	
<p>“If the Department proceeds with its proposal to establish alternative hourly wage rates for computer professionals based on employer size, we agree that 50 employees is a reasonable breaking point. It might make more sense to define the categories as “fewer than 50” and “at least 50” however, since reaching the 50 employee threshold is significant in establishing coverage under other laws such as the federal</p>	

<p>Family and Medical Leave Act (FMLA) and the Affordable Care Act (ACA).”</p>	
<p>“This DOL proposal sets up a discriminatory tier based on the number of employees (under or over 50 employees) which may have very little to do with revenues or resources available to an organization. In the nonprofit sector many jobs are part-time, and at the Y that includes lifeguards, youth sports officials, camp workers, after school program staff, etc.), and those total part-time numbers impact full time equivalent (FTE) versus a true reflection of full-time staff numbers. Many of these people work in programs that either do not produce revenue or require some level of subsidy. A non-profit with 51 FTE’s is by nature far different than a legal, tech or accounting firm with 49 FTE’s, though in year one alone, the nonprofit would pay \$14,000 more per employee over a for-profit firm. If the scale were based on annual payroll or revenue levels that would not only make more sense but would also be fairer.”</p>	
<p>“Summer camps have lots of seasonal employees, and so they will often end up in the large employer group, when in fact they operate as a much smaller business.”</p>	
<p><b>3.a.4 Salary Level: Employees should get overtime for working over 40 hours per workweek</b></p>	<p><b>Response</b></p>
<p>“Overtime should be paid once you surpass the 40 hours in a workweek as well as past 8 hours in a day.”</p>	<p>RCW 49.46.130(1) requires overtime for employees working in excess of 40 hours in a workweek. The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The adopted EAP rules do not change the standards for what constitutes overtime under the MWA.</p>
<p>“Also wish to comment on the practice of juggling extra hours in pay period, ie sending folks home an hour early here and there to offset extra hours worked beyond 8 in a day thus avoiding overtime pay.”</p>	
<p>“Overtime is difficult after an 8 hour day.”</p>	
<p>“I hope that the day comes overtime pay becomes a real penalty for the employer, that by law it is increased from time and a half to double time after 8 hours.”</p>	
<p>“Abolish all mandatory unpaid overtime. This will put better opportunities for advancement for career minded employees. Many who will not put themselves in the slave market. Ending all unpaid overtime is a no brainer. Many who would accept the rigors of</p>	

management will not do so if they won't get paid for their work. It's just plain common sense."	
"Salaried workers are often the victims of no overtime pay! There should be guidance about how much overtime can happen if you are a salaried individual."	
"Paid salary employees should have a certain reasonable amount of hours a week that can't be exceeded, or be able to take the overtime hours off at some point. They will feel much more appreciated and have better incentive to accomplish more at work."	
"All workers subject to overtime should be paid for the time in excess of their normal work week."	
"Labor and industries need to make a rule that employers will pay 1 1/2 times the wage for hours more than 40 a week. For salary employees, not over 45 hours a week unless the overtime is important enough for the job at hand, then time off to make up the hours overtime 45 hours."	
"If employees are working over 40 hours a week or weekends or holidays they need to get paid at least time and a half."	
"I know some unions have -- overtime is considered in the day. Anything more than eight hours a day is considered overtime. That would be cool to have that in this new proposal."	
"time and one-half for all work after 8 hours and/or 40 hrs/wk. Double time for holidays and weekends."	
"Regular time up to 32 hours...overtime between 33 and 40 hours...double time between 41 and 50 hours...triple time over 50 hours."	
"We all deserve to get paid for each and every hour we put to work, especially those hours beyond the normal 8 working hours each working day. Not the normal payrate but Overtime hourly paid when we put Overtime working hours, this is a just and fair request, no different than hourly rate employees."	
"Employees should received overtime for work in the evening, work at night, and work on the weekend."	

<p>“Pay level should have no effect on whether one is eligible for overtime pay.”</p>	
<p><b>3.a.5 Salary Level: Everyone should receive overtime</b></p>	<p><b>Response</b></p>
<p>“We should completely remove the income limit for overtime pay. Most of the arguments for increasing the limit also apply for removing that limit altogether.”</p>	<p>RCW 49.46.010(3)(c) exempts bona fide executive, administrative, and professional workers and outside salespersons from the MWA definition of employee. RCW 49.46.010(3)(c) authorizes the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” or as an outside salesperson under the MWA, which the department initially did in 1976. The Legislature chose to provide such exemptions, and the department’s authority is limited to defining and delimiting the exemptions, consistent with the Legislature’s directive.</p>
<p>“Without the compulsion of overtime pay, there is no reason any software company should limit their workers to a reasonable 40 hour week. We should remove the income limit for overtime pay.”</p>	
<p>“Overtime pay should be a right for all workers.”</p>	
<p>“Give overtime rights to all.”</p>	
<p>“It feels like the state believes that skilled workers with lots of experience should have to put up with this exploitation of their need for a job, while others who earn less are mysteriously more entitled to free time.”</p>	
<p>“Restore overtime pay for salaried and hourly employees.”</p>	
<p>“It is utter madness to think that we should somehow allow low-level white collar employees be taken advantage of just because they work in an office building...We allow this to happen because we can and have been for long. Why? Why continue? Please give overtime rights to all.”</p>	
<p>“A salaried job should average 40 hours a week—if the tasks aren't completable in that amount of time, it should either be split into multiple jobs or earn overtime pay.”</p>	
<p>“Overtime is a tax on the employer for over working employees. Nobody should be exempt.”</p>	
<p>“Either an overtime premium should be factored in or the salary structure should be amended to reward all employees (including salaried personnel) for extra time invested in the job, regardless of what that job is.”</p>	
<p>“We need to make this a more just and equitable world. Overtime pay should be a right for all workers.”</p>	
<p>“Please amend this bill to include ALL workers, including those paid hourly.”</p>	

<p>“Everyone should get overtime past 40 hours, no exceptions. Overtime is a tax on the employer for over working employees. Nobody should be exempt.”</p>	
<p>“I would like to be able to earn overtime when worked over 8 hours / day and over 40 hours/ week No issues Okay.”</p>	
<p>“If you work more than 40 hrs a week, in a non management, non operational job you should be eligible for overtime. Your salary shouldn't be part of the equation.”</p>	
<p>“EVERY salaried worker should be paid for required work in excess of 40 hours per week, REGARDLESS of the amount of their salary. It is not fair to ANY worker that they should work unpaid for their employer. That's making them a slave for that overtime worked.”</p>	
<p>“I am writing because in my opinion anyone that works more than 40 hours in a week should be paid overtime wages for ALL time over 40 hours.”</p>	
<p>“In order to preserve the concept of a 40 hr. work week, REMOVE any threshold. Pay all employees for overtime. Straight time, time &amp; a half - All could be negotiated. (Use Mediation / Arbitration or preserve Unionization so the negotiating is balanced; Not just employer and employee?)”</p>	
<p>“No exemptions for hired employees. Any work past 40 hours is time and a half.”</p>	
<p>“Hourly employees deserve time and a half for hours worked above 40 a week. Anything short of that policy means hourly workers are being exploited, and usually it is the minimum wage worker who is the victim of that exploitation.”</p>	
<p>“There should be no exemption, period.”</p>	
<p>“I agree with the draft rule and believe it is a good starting point, but would encourage the department to revisit this proposal in the future to extend this right to all salaried employees, regardless of their base salary. It is the right of all workers to expect a workweek of a reasonable length, and overtime protections are one of the best ways to do so.”</p>	

<p>“I would like for the state to revisit the rule and require any salaried employee to be paid overtime regardless of their income.”</p>	
<p>“I would encourage the state to revisit the draft rule and establish a standard that covers all non-management salaried workers.”</p>	
<p>“These rules don't go far enough. There should be NO exempt hours for a salaried employee. If the salary is based on 40 hrs, 40 hrs is all I should have to work.”</p>	
<p>“I am writing to advocate for overtime pay for all workers regardless of salary level. Any mandatory expectation of uncompensated work for hours over 40 hrs per week is exploitation of the worker.”</p>	
<p>“I support bringing overtime pay to anyone who works overtime. Employers should not be able to dodge paying folks by giving them a meaningless job title or calling them an independent contractor.”</p>	
<p>“If you are forced to work overtime you should get 1.5x pay, bottom line. Workers are the backbone of the American economy, and of American life itself, and they should be respected for the work they do.”</p>	
<p>“If you work more than 40 hours in a week, you should be paid overtime, even if you work in Security.”</p>	
<p>“Mandatory overtime pay is a must. Allow us to have that right back please.”</p>	
<p>“Suggest any income limit for overtime pay should be completely removed. Most of the arguments for increasing the limit also apply for removing that limit altogether. Without the compulsion of overtime pay, there is no reason any software company should limit their workers to a reasonable 40 hour week.”</p>	

<p><b>3.b.1 Salary Level – Untie From Minimum Wage: Use the federal standard for the salary level</b></p>	<p><b>Response</b></p>
<p>“Please follow the federal standard and do not increase it every year, as businesses simply cannot keep up with mandatory annual increases.”</p>	<p>The U.S. Department of Labor announced its final federal EAP rules during the state’s rulemaking process. The department had the opportunity to review and consider the updated federal rules.</p>
<p>“We can support increasing the salary threshold as proposed by the US Department of Labor at \$35,308.”</p>	

<p>“Proposal is inconsistent with state and federal salary thresholds. According to L&amp;I’s Q&amp;As, the rulemaking process is intended to align WA rules “with federal rules regarding many parts of job duties.” Yet not withstanding that federal rule amendments have not yet been promulgated, the proposed WA 2016 salary threshold is nearly three times the current state threshold and twice the federal threshold. It is unlikely that in the ensuing six year we shall experience inflation that would justify such disparity in threshold levels.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including salary thresholds higher than the federal thresholds. The adopted EAP rules are within the department’s statutory authority and both state and federal law allow Washington to adopt labor standards that are more favorable to employees than equivalent federal regulations (see RCW 49.46.120). But as discussed above, the adopted rules are consistent with the FLSA exemptions where appropriate.</p> <p>As discussed in more detail above in response 1.a.3, the department also chose to diverge from the federal salary threshold based on factors such as:</p> <ul style="list-style-type: none"> <li>• The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.</li> <li>• The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.</li> <li>• The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salary workers in the West Census Region.</li> <li>• The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.</li> </ul>
<p>“Our recommendation is updating the salary minimum to \$455 a week, raising the minimum salary in our state 82 percent to match the current Federal minimum, and visit the question after the current Federal rulemaking is completed. This would be consistent with the approach of the Department and past state legislatures.”</p>	
<p>“WAC 296-128-535 (Computer Professionals) Vigilant welcomes the Department’s work to align state and federal law in this section. However, we continue to urge the Department to bring any increase to the weekly salary threshold and the hourly alternative in line with federal law as opposed to the proposed language in (1)I that uses the state minimum wage as a starting point. Under federal law, the hourly alternative is \$27.63 per hour, and we appreciate that is the level proposed for employers with 50 or fewer employees from July 1 through December 31, 2020. However, we would like to see that amount applied to all employers, and established on an ongoing basis.”</p>	
<p>“L&amp;I should align any proposed changes to these exemptions with the federal rules. While the phase-in does align with the federal government, this proposal soon outpaces the federal rules and goes way beyond what the federal government has outlined.”</p>	
<p>“Align any proposed changes to these exemptions with federal rules. As a business operator, we need alignment at the local, state and federal levels of government to help reduce confusion.”</p>	
<p>“Ask the Department to reconcile its salary threshold with the threshold expected to be adopted by DOL (\$35,308).”</p>	



<p>“I am asking L&amp;I to align their rules with the federal government’s updates to the federal salary threshold. We need alignment at the local, state and federal levels of government.”</p>	<ul style="list-style-type: none"> <li>• The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.</li> </ul> <p>Finally, as discussed in more detail in response 1.a.3, the adopted rules also include a minimum hourly threshold for computer professionals paid on an hourly basis. The department arrived at the updated hourly threshold of 3.5 times the state minimum wage, with a phased-in implementation period, with consideration of the data summarized in response 1.a.3.</p>
<p>“Align Washington state rule changes with federal rules. Consistency between state and federal law greatly assists employers in understanding their obligations and enhances interstate uniformity and the State’s economic competitiveness for economic development.”</p>	
<p>“Ask that Washington State align itself with the federal rules. Consistency between state and federal law greatly assists employers in understanding their obligations and enhances interstate uniformity and the State’s economic competitiveness for economic development.”</p>	
<p>“Support keeping the salary as a fixed dollar figure and changing the amount to the minimum salary under federal law.”</p>	
<p>“Recommend the Department of Labor and Industries updating the proposed rule to follow the federal exempt limits.”</p>	
<p>“Consistency between state and federal EAP exemptions will benefit both employers and employees. This consistency will help employers in understanding their obligations and ensure our state farms and businesses remain economically competitive with other states.”</p>	
<p>“The proposal should be revised to more closely sync up with expected federal overtime requirements, even if that means adoption is delayed. To do less than that will irrevocably damage Washington’s dairy industry and the competitiveness of Darigold’s processing operations.”</p>	
<p>“Federal rules seem reasonable to me – as long as they are strictly followed.”</p>	
<p>“We further advocate for full alignment through a uniform federal salary threshold.”</p>	
<p>“The state should implement its new salary threshold at \$47,476 (the 2016 proposed federal salary threshold.)”</p>	
<p>“At the Spokane public hearing the Department inferred that businesses in WA are following the state guidelines rather than the federal guidelines, which is simply not true. The Department should be required to review the standard that organizations are required to</p>	

follow that best benefits the employee – in this case that is the federal exempt standards.”	
“Postpone implementation and bring the proposed amendments in line with current state and federal thresholds.”	
“We encourage state leaders to nudge the federal government in adopting a consistent federal standard.”	
“Ask that you wait for the federal rule revision to be published so as to be consistent with the national standard.”	
“Either delay overtime rule adoption until the federal government adopts its new rule, or adopt a rule that fairly estimates the likely outcome of the federal rulemaking process in order to mirror as closely as possible prevailing overtime regulations across the country.”	
“It would be preferable for Washington to wait for and align to those standards in regard to both salary threshold and duties tests.”	
“Suggests revisiting the proposal after current federal rulemaking is completed. To move forward with an approach that differs from federal rules would not only bring us all back to rulemaking next year, it would unnecessarily put businesses under two sets of standards and administrative mandates... aligning with federal rules would eliminate confusion, simplify enforcement and eliminate duplication for both business and the Department of Labor and Industries.”	
“We oppose the proposed increase to the salary threshold of 2.5 times the state minimum wage, and we encourage the department to adopt state rules that mirror the federal rules, rates, tests, and thresholds. Doing so would provide uniformity and consistency with federal rules, would simplify the rules that employers and employees must follow, and would place our businesses on a level playing field nationally.”	
“L&I should adopt rules that mirror the current and, when adopted, future federal rules in all aspects so that a consistent standard exists across federal and state laws for employers, employees, and the department.”	
“Pause rulemaking until the new federal standard is adopted, and then align our rules with the federal requirements.”	

<p>“The best approach is to follow the language and thresholds of the Fair Labor Standards Act (FLSA) at the federal level and to have a fixed salary basis level.”</p>	
<p>“The U.S. Department of Labor (DOL) has proposed increasing the salary basis threshold up to the annualized equivalent of \$35,308. This threshold would follow the precedent of the approach the state took in 1976 in aligning the WA Minimum Wage Act (WMA) with FLSA changes of 1974. If the state follows this approach, a phase-in would not be necessary.”</p>	
<p>“We wish to reinforce our preference that the Washington Department of Labor &amp; Industries wait until the federal government addresses the salary thresholds under the Fair Labor Standards Act so guidance and requirements across levels of government are uniform. Alignment between the state and federal job duties tests would be more clear and efficient.”</p>	
<p>“The Department is recommending that the state and federal job duties tests, which are used to determine if an employee who is salaried is exempt from overtime, be aligned. Alignment for the salary levels also would be clearer and more efficient.”</p>	
<p>“We still believe the best approach is to follow the language and thresholds of the Fair Labor Standards Act (FLSA) at the federal level and to have a fixed salary basis level.”</p>	
<p>“Keep rule changes in line with Federal rules.”</p>	
<p>“We propose the following: The State should implement its new salary threshold at \$47,476, which is the 2016 proposed Federal salary threshold. We further propose that this level be prorated for part-time employees. We also urge a phase-in of implementation of the recommended \$47,476 threshold over a three-year period to enable our organizations to accommodate the additional expense.”</p>	
<p>“When your studies ruled out your regional solution for this, the proposal went with the highest common denominator instead of keeping with the national average or simply doing a one-sentence rule to follow the Federal guidelines.”</p>	

3.b.2.i Salary Level – Untie From Minimum Wage: Do not increase the threshold with the minimum wage	Response
<p>“Proposal to make the salary amount a multiplier of state minimum wage would create automatic increases which, among other negative impacts, would (1) disadvantage Washington businesses as they compete with businesses outside of the state with lower salary thresholds that are not subject to annual changes, (2) require Washington employers to constantly adjust their salary levels, (3) further exacerbate the wage compression that is taking place as the minimum wage rises, and (4) increase costs to consumers for the products and services provided by these business.”</p>	<p>The adopted rules update the outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p>
<p>“We do NOT support the proposed strategy to raise the threshold continually as the minimum wage is adjusted for inflation. Wage increases directly affect Housing Costs. Many of our programs include housing services, and we have been very successful in delivering excellent outcomes in transitioning homeless individuals off the streets and into permanent housing. Today, we are very concerned with the rapidly shrinking availability of Affordable Housing, which we are observing first-hand. If wages continue to rise rapidly, so will the cost of housing. This could force unprecedented number of individuals into homelessness and create crisis situations in our communities.”</p>	<p>The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds and prevents the thresholds from eroding over time. The department recognizes that when the thresholds become outdated the protections intended by the MWA erode, and workers whom the Legislature intended to protect do not receive the protections of the MWA or the higher salaries, above-average benefits, and greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption from the MWA’s protections. Additionally, employers do not have an efficient and reliable means of identifying which workers are or are not entitled to these protections. The automatic update provided by using a minimum wage multiplier serves these important needs.</p>
<p>“Would not the better law be to have 2 calculations.  1. An employer must have a salaried worker at a base rate equal to the federal rate (or a rate more reasonable the 2.5 times).  2. Any employee’s weekly pay must also meet the minimum wage requirement based on the hours worked plus applicable overtime laws already in effect.  a. Due to having to already track hours worked accurately for L&amp;I in Washington state this would be easy to do.  Washington state has one of the highest hourly wages currently so this would make sure no one is affected negatively, nor paid less under overtime and weed out employers trying to scam the system. This would also allow me to continue to provide the flexibility my team members have become accustom to.”</p>	<p>A multiplier also provides a simple, clear standard for employers to understand and comply with. The state minimum wage increases are updated annually by L&amp;I using a formula tied to the rate of inflation (based on the CPI-W). Basing the salary thresholds on a multiplier of the state minimum wage allows for a predictable calculation, based on transparent, public information that the department already provides.</p>

<p>“The Legislature did not mandate that L&amp;I utilize a multiplier of the minimum wage for overtime rules. There are other economic benchmarks such as basing the appropriate overtime rule on the cost of affordable housing in each region in the state.”</p>	<p>As discussed above, if employers need additional time to evaluate employee exempt status prior to the announcement of the new minimum wage in September, they can look to historical trends to estimate the probable change for the next year. For example, according to data collected by the Bureau of Labor statistics, the CPI-W has had an average annual 2.17% increase over the past 20 years and usually falls in the range of 1-3%, so the annual change is relatively predictable.</p> <p>Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.</p>
<p>“I do not feel this equation is fair to employers statewide. Not only does the minimum wage go up but the multiplication factor in this section goes up incrementally. This is a hidden increase that I believe should be clearly laid out and should not be based on another increase that is already set in motion. This proposed increase creates a salary threshold that is not seen in executives and professionals across the state. I believe it would be more clear and easier to set salary levels perhaps based on a set number multiplied by a geographical relative modifier or just clearly state a certain amount of income per week as the previous rule stated, that is based upon an average wage that is to be expected in 80% of Washington counties.”</p>	
<p>“Tying wage mandates to a single factor (namely, the Consumer Price Index) is unreliable and irresponsible. In other words, it’s lazy. Again, the CPI is a blanket average that does not consider individual and local conditions that I referenced in my first point. Additionally, one factor will influence the other, creating a never-ending cycle. Higher wages will necessarily lead to an increase in the CPI. And an increase in the CPI, under these rules, will absolutely lead to an increase in the salary threshold.”</p>	
<p>“Having the multiplier based on minimum wage creates a growing wage gap and eventually will end the exempt wage status as businesses will not be able to keep up with exponentially growing wage to be exempt.”</p>	
<p>“Please consider detaching from the minimum wage. With the minimum wage acting as a proposed multiplier for the minimum exempt rate, every increase in minimum wage creates a dual impact on employee expenses.”</p>	

3.b.2.ii Salary Level – Untie From Minimum Wage: Other concerns with salary threshold	Response
<p>“Already, our marketplace has organically driven up salaries and to take a broad swath approach would be short sighted. Let’s anticipate market corrections, and stop banking on existing revenue streams as being automatic.”</p>	<p>The adopted rules update the outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds and prevents the thresholds from eroding over time.</p>
<p>“This proposed increase is drastic and alarming. It is too much, too far, too fast, and too steep. It is more than three times the current threshold and more than twice the amount (\$35,308) that the United States Department of Labor has recently proposed as a new federal standard.”</p>	
<p>“We would like to register our very deep concerns with the proposal affecting the white-collar exemption status, specifically the unreasonable levels to which it would increase the threshold.”</p>	
<p>“This proposal goes too far, and could end up hurting both workers and employers.”</p>	
<p>“Washington state is trying to legislate beyond what the market will bear when it should be providing a floor. The proposed levels exceed those of larger states with naturally higher costs of living.”</p>	
<p>“Even assuming that a business could simply pass the increased labor cost along to its customers and stay in business, you will have only succeeded in raising the cost of living for many of Washington’s residents.”</p>	
<p>“I can’t think of a single methodology that the state could use to determine the actual value of an employee to a business, and from my perspective this is the only rational basis for setting a salary for folks that are in these labor categories.”</p>	
<p>“For the sake of clarity, why is the calculated number not put into Section 296–128-545?”</p>	

	<p>outdated and obsolete since the last time they were updated in 1976 and the automatic updating mechanism in the adopted rules prevents that from happening again.</p>
<p>“How high are we expecting the salary threshold to go?”</p>	<p>After the adopted rules are fully implemented, the salary thresholds will remain at 2.5 times the state minimum wage. While the specific dollar amount will change dependent on changes in the minimum wage, the multiplier will remain consistent. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary threshold to prevent the threshold from eroding over time.</p>
<p><b>3.b.2.iii Salary Level – Untie From Minimum Wage: Salaries should be an agreement between employee and employer</b></p>	<p><b>Response</b></p>
<p>“Market competition for employees in a tight labor environment drives up the salaries naturally: business need managers at whatever they have to pay to compete.”</p>	<p>The Legislature and the people of the state of Washington “have repeatedly amended [the Minimum Wage Act (MWA)] to establish and enforce modern fair labor standards, including periodically updating the minimum wage and establishing the forty-hour workweek and the right to overtime pay.” (RCW 49.46.005(2)). Recently, the people of the state of Washington chose to add additional protections to the MWA, including paid sick leave. The Legislature has provided specific exemptions and directed the department to define and delimit who qualifies as a “bona fide executive, administrative or professional [EAP]” worker under the exemption in RCW 49.46.010(3)(c).</p> <p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt.</p> <p>As discussed above, employers have many potential options to comply with the adopted rules, and are not required to adjust</p>
<p>“As an at-will employment state, the state should allow employees to manage their compensation through the labor market, not by government regulations. Individuals that are in exempt positions should have the ability to enter the free labor market and seek a high wage by changing employers.”</p>	
<p>“If you don't like how you are treated in your job you find another one that pays better or has a better work environment.”</p>	
<p>“The Proposal to update the rules for executives, administrators and professionals (EAP) goes far beyond a reasonable update and instead engages in a massive feat of social engineering.”</p>	
<p>“An employee must be allowed to negotiate the terms of their employment with the company. It is the employees Right to determine a mutually acceptable employment relationship between themselves and their employer.”</p>	
<p>“Wages or salaries should be an agreement between an employer and the employees, without third party interference. Those employee-employer agreements would naturally take into consideration that</p>	

<p>particular industry, the needs of the employee and any local economic factors. The proposed rules do not consider any of these elements.”</p>	<p>salary levels to comply with the MWA (see potential compliance options outlined in response 1.a.1).</p>
<p>“If people don’t like the fact that they are not currently getting overtime, then they can look for another job, move to a less costly state etc.”</p>	<p>An approach that fails to set a salary threshold, allows employers and employees to contract around the threshold, or allows employees to opt in or out of a salary threshold increases the risk of</p>
<p>“Government and related bodies shouldn’t tell employers what to pay.”</p>	<p>worker exploitation. Under-informed workers may not fully understand the rights they are asked to give up, or may feel economic or other pressure that prevents them from making an unbiased, fully informed choice. Such an approach also creates a disincentive for employers to appropriately classify and</p>
<p>“Please back off business owners and let us run our businesses in the way we see fit. It is our money, our time, and our lives.”</p>	<p>compensate employees. Finally, an agreement-based approach could lead to coercion and abuse by employers who could pressure vulnerable employees to opt in.</p>
<p><b>3.b.2.iv Salary Level – Untie From Minimum Wage: Threshold should take into account housing/benefits/bonuses/commissions</b></p>	<p><b>Response</b></p>
<p>“Consider, and credit, the ample benefits that many non-profit organizations provide to their employees.”</p>	<p>The adopted rules maintain the longstanding requirement under state rules that an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities.</p>
<p>“Please look at employers that provide employees with free housing, and consider lower limits for such employees.”</p>	<p>Commissions, bonuses, and incentive compensation are not salaries, and therefore have not been permitted to satisfy requirements to pay on a salary basis or meet salary thresholds.</p>
<p>“Our concern is for the exempt supervisors who by their job duties test meet the criteria established for EAP teammates. However, because their weekly compensation includes a bonus component that is variable based on our production schedule it is not included in the weekly compensation test, therefore allowing them to be subject to overtime pay if the new rules as proposed are adopted.”</p>	<p>The adopted rules do not change these longstanding standards.</p>
<p>“Encourage you to contemplate an appropriate increase that takes into account the unique circumstances faced by nonprofit organizations, in addition to the total compensation packages offered to their employees.”</p>	<p>Finally, this rulemaking does not encompass RCW 49.46.010(7), which defines “wage.” Because other, non-cash benefits, such as housing, currently do not fall within the definition of “wage” in the MWA, it is questionable whether the department would have the authority to treat those benefits as compensation in the current rulemaking.</p>
<p>“The new proposals do not appear to take into account overall compensation. They don’t include what we do for vacation when we try to leave compared to our peers. They don’t consider holiday pay, 100 percent medical, dental, vision, retirement benefits or work flexibility.”</p>	



3.b.3 Salary Level – Untie From Minimum Wage: Raise the salary threshold above 2.5x minimum wage multiplier	Response
<p>“Overtime has as far as I am concerned, is time and a half. Holidays are double time and Christmas is double time and a half. Do this. Less stress, more productivity.”</p>	<p>The department considered a rate of three times the minimum wage, as well as other options, in setting the salary thresholds. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data including:</p> <ul style="list-style-type: none"> <li>• The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.</li> <li>• The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.</li> <li>• The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.</li> <li>• The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.</li> <li>• The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.</li> </ul>
<p>“I would almost want the threshold to be \$80,000. Living in King County, WA is one of the most expensive places to live.”</p>	
<p>“The salary floor should be at least 5 times the minimum wage, which it was in the 1940’s.”</p>	
<p>“I believe a responsible overtime threshold for Washington would be set at an even higher rate than the one you’ve proposed – high enough to cover approximately the same 62 percent of salaried Washington workers who were covered back when the American middle class was at its strongest.”</p>	
<p>“While this proposal falls short of historic protections – covering an estimated 40-45 percent of Washington’s salaried workers – it’s still a critical step to restore labor standards first introduced by President Franklin D. Roosevelt.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards.”</p>	
<p>“Raise to 3x because expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	
<p>“Raise to 3x because raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“Raise to 3x because raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. One additional bonus will be to increase the demand for more jobs as employers choose to take on new hires instead of paying overtime.”</p>	

<p>“Raise to 3x because most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“Raise to 3x because overtime doesn't end just because capital says that it is so. You know.”</p>	
<p>“I ask the department to go further than the current proposal and establish a threshold of 3x the minimum wage, which is well within historic standards.”</p>	
<p>“Raise to 3x because restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks too it will go right back into the local economy.”</p>	
<p>“Subverting human rights to impose "Work without Pay" is Slavery and should be punishable under the law. Furthermore the threshold should be tied to the cost of living and the obscene and extravagant compensation packages lavished upon the upper echelons. A threshold of 3X the minimum wage should be a starting point.”</p>	
<p>“I'm writing to you today to express my unequivocal support for bringing back overtime pay for workers who earn less than 3x minimum wage. We've seen erosion of OT wages over the past 50+ years - to the point that just 7% of workers in retail and service get time-and-a-half for any hours over 40/week. Let's restore purchasing power to the tier of our workforce that puts in the greatest effort at the most thankless jobs in our society. Let's let THEIR prosperity feed back into the economy at large!”</p>	
<p>“I think that the changes proposed go a long way toward restoring a reasonably structured pay ladder - but I would support increasing the exempt/salaried threshold to as much as 3.5x minimum wage. Addressing this issue will restore equity to hundreds or thousands of our lower-wage peers. With those wages they'll be able to participate more fully in everything that's good about our society. A functioning democracy depends on informed voters - and feeling good about one's</p>	

<p>employment is a great aid to becoming - and staying - informed! We owe our workers who're increasingly unprotected by Union representation the same working environment that their grandparents lived in. We've led the way with survivable minimum wage and working toward secure scheduling. Let's restore OT pay for our hardworking fellow Washingtonians."</p>	
<p>"Raise to 3x because for God's sake. It is time for the government to protect low income workers. Isn't thirty years enough time to wait? We have already skipped a generation."</p>	
<p>"Raise to 3x because it was established in the 1930's that working more than 8 hours per day or 40 hours per week is detrimental to health and family. My ancient railroad IBEW union contract often refers to "overtime" as "PUNITIVE OVERTIME" acknowledging the damaging effects of over working employees and punishing management for these practices. Straight time wages must provide a living wage. Employees can't rely on OT to make their wage a livable wage."</p>	
<p>"Raise to 3x because raising the overtime exemption threshold will support employee well-being and increase productivity by ensuring that employee time is not wasted. Less wasted time is good for workers, employees, and Washington State."</p>	
<p>"Raise to 3x because workers' rights should be expanded, not reduced. We want to work, but we want to be fairly compensated, not hung out to dry!"</p>	
<p>"I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both."</p>	
<p>"I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance."</p>	

<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. One additional bonus will be to increase the demand for more jobs as employers choose to take on new hires instead of paying overtime.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Overtime doesn't end just because capital says that it is so. You know.”</p>	
<p>“I ask the department to go further than the current proposal and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will boost productivity and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“I ask the department to go further than the current proposal and establish a threshold of 3x the minimum wage, which is well within historic standards. Restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks too it will go right back into the local economy.”</p>	
<p>“I ask the department to go further than the current proposal and establish a threshold of 3x the minimum wage, which is well within historic standards. Expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	

<p>“I ask the department to go further than the current proposal and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will support employee well-being and increase productivity by ensuring that employee time is not wasted. Less wasted time is good for workers, employees, and Washington State.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Workers' rights should be expanded, not reduced. We want to work, but we want to be fairly compensated, not hung out to dry!”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Most workers will end up having more time because their employers will make them work less; any additional money in workers' paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington. Employers will need to hire enough workers to get the job done rather than depending on fake staffing numbers.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. Over the years, I have heard of salary workers working over time, but due to them being salary workers they are only paid the salary whether or not the salary was less than what they would have earned as an hourly employee. This just is not right and should be fixed immediately.”</p>	
<p>“I would encourage the department to revisit its draft rule and establish a threshold of 3x the minimum wage, which is well within historic standards. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance. As a combat veteran removing explosive hazards from the battlefield I never once put my life at risk to improve profit margins for corporations. I put my life on the line and</p>	

<p>risked everything so that Americans could have better lives and politicians are helping corporations steal the energy of the country and “trickle down” the benefit while the “leaders” are drenched in a shower of productivity.”</p>	
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<b>3.c Salary Level: Agree with salary threshold</b>	<b>Response</b>
<p>“I strongly agree with the draft rule issued by the Department of Labor &amp; Industries, which would increase the salary threshold for overtime exemption over the next several years to a level of 2.5x the minimum wage. Perhaps employers will recognize their demands are too steep when work cannot be completed satisfactorily in a 40 hour work week. Should that recognition occur, they will find they have healthier employees, less abuse of sick leave, and a healthier workplace.” Agree with salary threshold category</p>	<p>As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p>
<p>“By creating a nexus to the minimum wage at two and a half times the minimum wage, it's easy for people to understand what the salary threshold is and the values that it projects. This design also will help the protection to keep up with wage grown over time so that we don't experience an additional four decades of loss protection for workers.”</p>	

<b>4.a Duties Test: The duties tests should align with the federal requirements</b>	<b>Response</b>
<p>“We agree with the language proposed by the state to better align the States’ duties tests in as many ways as possible with the Federal duties test. The proliferation of tests and criteria by multiple regulatory agencies and court holdings have created huge administrative and risk burdens for employers.”</p>	<p>The adopted rules significantly increase consistency with the equivalent federal rules. The state currently uses two duties tests and the rules update combines the two duties tests into a single test that aligns more closely with the duties test used at the federal level. The updated state duties tests and federal duties tests are also similar in their descriptions of the job duties that the employees must perform and their focus on the duties actually performed, rather than on the job title or on the duties that an employer provides in a written position description. As noted by a</p>
<p>“Attention paid to aligning the state and federal job duties test.”</p>	
<p>“Overall, the proposed changes to the duties test are good. The aligning of the duties test with the federal overtime rules makes them more clear and concise for both employees and employers.”</p>	

<p>“Appreciate the Department’s efforts to harmonize duties tests with federal DOL. This provides clarity and consistency for our contractor members.”</p>	<p>number of comments, these changes will make the evaluation of employees’ duties simpler for employers, and increase the likelihood that workers are correctly classified.</p>
<p>“Support the Department’s intention to consolidate the short and long duties tests into a single duties test, consistent with federal law.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>
<p>“WAC 296-128-505 (Definitions)Vigilant supports bringing the definition of primary duty directly in line with federal regulations which will, among other positive benefits, help employers by requiring compliance with one standard as opposed to two.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>
<p>“WAC 296-128-510 (Executive) Support the changes to the Executive exemption which help to bring the definition in line with federal law. We welcome the continued presence of the “particular weight” criteria, because including this language helps to ensure there is not a subtle and confusing difference with the federal regulations. The removal of the cap on the percentage of time spent performing nonexempt duties eliminates the arbitrary percentage in the current regulations and brings the Executive exemption definition in line with federal law. Also, the consolidation of the short and long duties tests into a single duties test is consistent with federal law.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>
<p>“WAC 296-128-520 (Administrative) Vigilant continues to support the proposed language in this section and the removal of the percentage language in existing paragraph (4), which brings the definition in line with the federal regulations. As previously indicated, we also support consolidating the short and long duties tests into a single duties test for Administrative employees, consistent with federal law, and welcome the sentences in proposed (3)(b) that discuss evaluating “discretion and independent judgment” in light of all the facts in each situation, and stating that simply having decisions reviewed at a higher level does not negate the employee’s exercise of discretion and independent judgment.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>
<p>“WAC 296-128-530 (Professional) support the removal of current (1)(b) and (c), so the state duties test is consistent with federal law.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>
<p>“We appreciate and support the Department’s goal to align the duties test with the federal duties test.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, but the department will provide additional guidance through policy updates to help employers and employees understand these modest differences.</p>

<p>“We also support the job duties tests in the proposed rules which will better align the state and federal rules.”</p>	
<p>“We support the Department’s efforts to align the state’s “primary duty” tests with federal requirements. Operating in the exceedingly complex health care industry makes us acutely aware of the risks of confusing, if not potentially conflicting, obligations. We appreciate and support Washington EAP rules that encourage administrative efficiency and compliance, and which avoid creating confusion between the two sets of rules.”</p>	
<p>“We appreciate efforts made to standardize the duties test with that of the federal standard. This approach provides employees and businesses of all types a level of certainty and consistency across jurisdictions. It also limits confusion and eases the burden of compliance on both employees and employers. We encourage continued work to fully align the federal and state duties test.”</p>	
<p>“Attention paid to aligning the state and federal job duties test.”</p>	
<p>“The draft final rule adopts the FLSA definition of primary duty as well as essentially all of the FLSA duties test language; we think the state will be well served by this approach.”</p>	
<p>“The proposal to provide better alignment between the Washington duties tests and the federal tests is a welcome development for employers in Washington State.”</p>	
<p><b>4.b Duties Test: The duties tests should be the determining factor for these rules, not a salary threshold</b></p>	<p><b>Response</b></p>
<p>“Concerned that this proposal relies too much on a high salary threshold in determining which employees may be exempt, rather than emphasizing actual work responsibilities.”</p>	<p>The adopted rules include both updated salary thresholds and updated duties tests. Like the state of Washington, the U.S. Department of Labor (USDOL) “has always recognized that the salary level test works in tandem with the duties requirements to identify bona fide EAP employees” and protects the overtime rights of nonexempt white collar workers. <i>See</i> USDOL Final Rule publication in the Federal Register, 81 FR. 32,400. The USDOL began examining the use and purpose of the salary level test shortly after passage of the Fair Labor Standards Act (FLSA). <i>See, e.g.,</i> Stein Report. Since its very first analysis and</p>
<p>“Because the Legislature make no reference to salary in RCW 49.46/010(3)I we think that it intended for a workers’ duties to be central to the analysis of who falls under the EAP exemption. While the Department has authority to adopt rules that define or delimit the terms “executive,” “administrative,” and “professional,” we do not think it is empowered to adopt rules that would result in the workers’ duties essentially being ignored. The Department cannot categorically</p>	



<p>exclude workers who perform bona fide executive, administrative, or professional capacity duties based on salary alone.”</p>	<p>recommendations, the USDOL has reiterated that the salary level test is regarded as “the single best test” for distinguishing exempt EAP employees from workers covered by FLSA’s protections, by “drawing ... a line separating exempt from nonexempt employees.” (Stein Report at 19; 69 FR 22,165; <i>see also</i> 81 FR 32,413). The salary an employer pays an employee provides “a valuable and easily applied index to the ‘bona fide’ character of the employment for which exemption is claimed” (Stein Report at 19, 81 FR 32,400).</p> <p>Consistent with the historical practice of both the federal regulations and existing state rules, where applicable, both the salary threshold and duties test must be met in order for a worker to be classified as exempt from the MWA. The updated salary thresholds in the adopted rules allow employers to more easily identify the potentially affected employees and are a reliable proxy for determining which workers would likely meet the duties test requirements. As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3. The department chose to use a multiplier of the minimum wage to avoid the degradation of the salary threshold over time.</p> <p>The state’s current salary thresholds have become outdated and obsolete, and thus no longer serve as a reliable proxy for determining which workers are bona fide executive, administrative, and professional workers. The salary thresholds in the adopted rules correct this longstanding problem.</p> <p>The department is committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain</p>
<p>“You can’t pay someone the minimum exempt salary and call this person exempt unless that person meets the duties test. I believe this should be emphasized in your decision making process. Maybe have specific questions one needs to answer yes to before a correct identification can be made.”</p>	
<p>“We believe the salary threshold should be reduced so the duties test is relevant.”</p>	
<p>“To illustrate the significance of regional differences, please see BLS Occupational Employment Statistics as of May 2018 for Accountants and Auditors. These jobs frequently meet the duties exemption tests. For occupations that typically meet the duties tests, any threshold established should result in the same exemption decisions statewide.”</p>	
<p>“The department has provided no factual basis for a finding that employees paid a salary below 2.5 times the state minimum wage will not be performing bona fide exempt duties, particularly in the less affluent areas of the state. The minimum salary level must be based on a factual determination that employees paid less than some minimum salary are virtually certain not to be performing exempt duties, such that further review of that employee’s duties is unnecessary. A minimum salary can only be used as a proxy for a more detailed examination of an employee’s duties, not as a vehicle to exclude employees from the statutory exemptions when they are, in fact, performing exempt duties.”</p>	
<p>“The duties test is and should remain the primary determinant of what constitutes a professional, executive, administrative or computer professionals work. The intent of the salary threshold is to provide a minimum standard under which any person earning that would necessarily be hourly because at that rate they would not meet the duties test and therefore should be overtime eligible.”</p>	
<p>“The duties test is and should remain the primary determinant of exempt work. The intent of the salary threshold is to be a minimum bar.”</p>	

<p>“The salary has never been other than a proxy. And I think if you look at Table 4 of your own regulation you will see that any relationship between the salary and the minimum wage has never been a part of the statute.”</p>	<p>language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies.</p>
<p><b>4.c Duties Test: The duties tests need to be further clarified</b></p>	<p><b>Response</b></p>
<p>“Section 296-128-530 should be clarified more. “Medicine and any of its branches” – this is unclear. Perhaps it should be “any healthcare provider that has a specific area of training and has a National Provider Identification number and/or has a specified degree or who is licensed through the Department of Health.” What about dental hygienists, dental assistants, nurses, phlebotomists, X-ray technicians, ultrasound technicians, acupuncturists, massage therapists, chiropractors, Naturopaths – none of these types of providers were specified or clearly mentioned however some of the other disciplines were mentioned (general practitioners and specialists, osteopathic physicians, podiatrists, etc.). For a rule to be clear it must clearly articulate who is included and who is excluded from the ruling.”</p>	<p>The adopted rules language referring to “medicine and any of its branches” is intended to match that of the equivalent federal regulations and increase consistency with the federal exemption tests.</p> <p>The department considered the extensive stakeholder feedback that asked the department to align the duties tests with federal standards for ease of understanding and compliance and chose to follow that approach for WAC 296-128-530 in its update. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision. The department will update its existing policies to provide further guidance about the application of the updated rules.</p>
<p>“Rules make it unclear that salary threshold does not apply to teachers.”</p>	<p>The department added subsection (2)(b) to WAC 296-128-530 to provide further clarity that “the requirements of WAC 296-128-545 do not apply to the teaching professionals described in this subsection.” This provision makes it clear that the salary threshold requirements do not apply to teachers.</p>
<p>“It is our understanding that it is the Department's intent that because proposed 530(2)(b) does not reference the specific salary threshold in 545, the notion is that teachers if they are paid a salary at all do not need to meet the proposed threshold that is being articulated in the regulation. We think that needs to be on the record. Frankly, we think the language should be clarified.”</p>	
<p>“Paragraph (2) says the outside salesperson may be paid “on a guaranteed salary, commission or fee basis.” We recommend specifying that the salary thresholds in proposed WAC 296-128-545 do not apply</p>	<p>The adopted rules maintain the requirement that outside salespersons must be paid on a “guaranteed salary, commission, or fee basis” but the salary threshold does not apply to these</p>

<p>to outside salespersons. The federal regulations at 29 CFR §541.500I specify that the salary requirements under federal law do not apply to outside salespersons. It is very common for an outside salesperson to be paid a very modest salary (which would not meet the salary thresholds in the proposed rule) with the opportunity to earn a commission. It is also unclear what a “guaranteed” commission means. The whole point of a commission is that an employee’s earnings rise with increased sales or profits. If the employee does not make enough sales to earn the stated commission, does that mean that the commission isn’t “guaranteed”? We believe the answer is no, but it would be helpful to clarify this point.”</p>	<p>individuals. The department added subsection (4) to WAC 296-128-540 to provide further clarity that “the requirements of WAC 296-128-545 do not apply to the outside salespersons described in this subsection.” This provision makes it clear that the salary threshold requirements do not apply to outside salespeople.</p>
<p><b>4.d Duties Test: There should be exemptions to the duties tests</b></p>	<p><b>Response</b></p>
<p>“Company owners (greater than 5% ownership) and Executive management CEO/President and one management layer down (as identified by the company and agreed by the employee) should be exempt from overtime rules. Personnel who have a professional services contract negotiated with their employer should be exempt. All other members of the work force regardless of position or wage should be covered by overtime rules.”</p>	<p>The bona fide owner exemption (WAC 296-128-510(2)) is a separate basis for exemption under WAC 296-128-510, and the other requirements under 510(1) of the section do not apply to individuals who qualify for the owner exemption. The adopted rules maintain the 20% ownership threshold for the owner exemption because it has historically been a part of both state and federal regulations. Additionally, the department considered the extensive stakeholder feedback that asked the department to align the duties tests with federal standards for ease of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.</p>
<p>“In my opinion section WAC 296-128-510 under executive should not have a requirement that an executive have 20% equity of a business. They should qualify for the executive role if they have met the descriptors of the role that have been spelled out and it should not be dependent on ownership.”</p>	
<p>“Medical residents should not be exempt.”</p>	<p>Medical residents have long been included in the medical professional exemption under both the state and federal rules. The adopted rules do not change this preexisting standard. Removing the exemption for medical residents would be a significant change in current law, and would be inconsistent with the extensive stakeholder feedback requesting that the department more closely</p>
<p>“I urge you to remove medical residents from the list of exempted employees from the proposed rule changes to Overtime pay. Residents are not students. We are licensed physicians engaged in an apprenticeship. At the University of Washington, we take care of most of the patients in the hospital, the outpatient clinics, and the Veterans</p>	

<p>Administration. As part of our training, we are required to work up to 80 hours a week and up to 28-35 hour shifts with little to no sleep. We are required to track our work hours so we do not exceed these limits. In a recent Seattle Times editorial, Senator Keiser and Representative Sells abhorred that workers were required to put in 80 hour shifts during the holiday season. Residents have to do this every day, year-round. First year residents are paid \$58,000 which averages to less than minimum wage when accounting for their long hours. To make matters worse, residents are saddled with unbearably high student loan debt, equating to over \$200,000 for the average resident. I applaud Washington State for implementing this rulemaking for the benefit of workers across the state, but we ask that you remove residents from the exemption of overtime pay. Thank you for your time and consideration.”</p>	<p>align the state duties tests with federal standards for ease of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.</p>
<p>“From: Draft – WAC 296-128-530 Professional  Work requiring advanced knowledge means work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level. There are layers upon layers of disparaging, insulting statements in the above. Yes, in fact advanced knowledge CAN be attained ‘at the high school level’, it takes years and years to learn how to farm, often knowledge on a particular farm is built on years or generations of experience. It is not funny how demeaning these rules are towards what we call ‘work’, just because manual labor is involved does not mean brain function stops. Just because a farm manager is in a tractor does not mean oversight stops, coaching ceases and the cell phone or a CB radio is no longer connected to the rest of the farm workers.”</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The adopted rules do not change which forms of professional work requiring advanced knowledge qualify for the professional exemption. While knowledge can be attained through a variety of sources and experiences, the department considered the extensive stakeholder feedback that asked the department to align the duties tests with federal standards for ease of understanding and compliance. The language in the adopted EAP rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department recognizes that some of the language of the proposed rules may appear antiquated and in some cases may be perceived as derogatory. But the department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.</p>

	<p>Finally, employees performing management duties as described by the commenter may meet the “executive” exemption in WAC 296-128-510 if they meet the duties test and salary threshold requirements of that section. Based on stakeholder feedback and in order to increase consistency with federal regulations, the department eliminated the cap on non-exempt work performed by exempt executives. The definition of “primary duty” in the adopted rules provides guidelines to help employers determine if their employees meet the duties test requirements for the executive exemption.</p>
<p>“It seems an effort at parsing and delineation of shades of grey (I don’t know what delimiting means) for what are ‘employee’ duties versus ‘manager’ or ‘Executive’ duties! A day as a farm manager runs the gamut from hiring, directing, advising, leading, assisting employees as well as working actual dirt, marketing and sales of farm products and services, building, fixing, planting, harvesting, tending crops, caring and feeding livestock, selecting seeds and crops, choosing fertilizers and on and on. The above can all be in one day.”</p>	<p>The definition of “primary duty” provides guidelines to help employers determine if their employees meet the duties test requirements in the rules. Employment Standards Administrative Policies ES.A.9.3, ES.A.9.4, and ES.A.9.5 provide additional guidance on assessing “primary duty” for EAP workers. The department will update this guidance following the promulgation of the updated EAP rules.</p>
<p><b>4.e Duties Test: Differences between state and federal duties tests need further explanation</b></p>	<p><b>Response</b></p>
<p>“L&amp;I does not explain the deviations between proposed state job duties test amendments and federal rules. According to L&amp;I, state and federal job duties would be similar but not the same. Yet L&amp;I does not explain the specific differences. Ultimately the duties test is being changed without a clear indication of why the change is needed.”</p>	<p>The adopted rules greatly increase consistency with the equivalent federal rules. The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State. For instance, removing some longstanding requirements in state regulation that offer more protections to employees could be inconsistent with the intent of the exemptions and the adopted rules, as it could create standards less favorable to workers in Washington State or reduce protections for workers currently entitled to them.</p> <p>The department created a comparison chart to help highlight the similarities and differences between the adopted rules and federal duties tests. The “Overtime Exemptions—Federal/State Duties Test</p>
<p>“Why are there still differences between the state and federal duties tests?”</p>	

	<p>Comparison Chart” is included in Appendix A. The department will also update the relevant administrative policies to provide additional guidance about the modest differences the department chose to retain between the federal and state rules.</p> <p>Finally, the department is also committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, and offering outreach presentations.</p>
<p><b>4.f Duties Test: Questions/concerns with duties tests</b></p>	<p><b>Response</b></p>
<p>“I would hope that these laws, when in their completed state, would be clear and concise. This would be a service to both the employers and workers in the state of Washington.”</p>	<p>Where possible, the adopted rules use common wording that is both clear and concise, but the department considered the extensive stakeholder feedback that asked the department to align the duties tests with federal standards for ease of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision. The department will update its existing administrative policies and seek to provide clear and concise guidance in those policies.</p> <p>The department is also committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies.</p>
<p>“The current duties based test that exempts "professionals" and "administrators" (and anyone else that can be shoehorned into these categories) is also actively harming the working poor.”</p>	

<p>“WAC 296-128-540 (Outside Salesman) The title of the proposed rule and its first sentence still use the gender-specific title of “salesman,” but RCW 49.46.010 uses the gender-neutral term of “salesperson.” The title of the WAC should be modernized and made consistent with the RCW. We note that this terminology change is already incorporated in proposed section (2) of this WAC. Vigilant continues to support the language in proposed (1)(a) and (b) which help to align state and federal law.”</p>	<p>The department updated the title of subsection WAC 296-128-540 from “outside salesman” to “outside salesperson” to make the rule language gender neutral and to match the current wording of RCW 49.46.010(3)(c).</p>
<p>“Section 296-128-510 – Section 1., Sub section b. – What if an employer only has two employees&gt; For example, a ‘manager’ and a ‘non-managerial employee’? Or a manager and one full time and one less than full time employee? ...it appears that it is not possible for a small business manager to be exempt! Section 2., Sub section a. – Concern number 1.) It is not clear if this subsection creates a default exclusion such that if an ‘employee’ DOES NOT OWN AT LEAST 20% they are automatically not considered an ‘executive’. Concern number 2.) it is clear that this rule change will create a problem for family members on farms that are employees and that do not own at least 20% of the farm. In agriculture, often as the parents get older, wish to ‘retire’ or have health issues and the kids take over the operation, the children may not own substantial equity in the operation but are managing to varying degrees, running the operation and/or taking over the farm or ranch in a family partnership, LLC, Corporation or sole proprietorship. For farms, the next generation is the future, most farms are family businesses. Seven generations of my family have farmed in Washington and over 9 generations in the US. The 20% requirement along with the other terms and conditions do not work for farming families. Concern number 3.) A farm manager, be it a family member or not, entails work that is diverse by the day, hour or minute. The rule language, over and over seems to envision a manager or ‘executive’ as someone that sits around managing employees all day long, and should</p>	<p>The department listened to extensive stakeholder feedback to align the duties tests with federal standards for ease of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.</p> <p>The adopted rules maintain the requirement for the executive exemption that exempt executives “customarily and regularly direct the work of two or more other employees.” See WAC 296-128-510. This requirement has historically been a part of both state and federal regulations. The adopted rules do not change this preexisting standard.</p> <p>The bona fide owner exemption (WAC 296-128-510(2)) is a separate basis for exemption under WAC 296-128-510, and the other requirements under the executive exemption do not apply to the individuals who qualify for the owner exemption. The adopted rules maintain the 20% ownership threshold for the owner exemption that has historically been a part of both state and federal regulations. The adopted rules do not change this preexisting standard. This section applies only to exempt owners,</p>

<p>not and by the definition outlined in these rules, cannot lift a finger to do manual labor.”</p>	<p>and does not change how the requirements for the executive exemption to apply for non-owners.</p> <p>Based on stakeholder feedback and in order to increase consistency with federal regulations, the department eliminated the cap on non-exempt work performed by exempt executives. The definition of “primary duty” in the adopted rules provides guidelines to help employers determine if their employees meet the duties test requirements for the executive exemption.</p>
<p>“WAC 296-128-500 (Purpose)The inclusion of WAC 296-128-520(1), 296-128-530(1)(b), and 296-128-530(2)(b) in the parentheses that deal with exceptions to the salary basis test is puzzling. One possible explanation could be that those sections offer the option of a fee basis, but if that is the case Vigilant recommends more clearly communicating that reasoning as opposed to simply listing WACs that also deal with the salary basis.”</p>	<p>These sections apply differing standards for permissible forms of pay to exempt employees apart from the specific “salary basis” requirement. The corresponding subsections within the rules provide additional information and guidance, but the department will also update its existing administrative policies and seek to provide clear and concise guidance about the application of the administrative and professional exemptions.</p>
<p>“The only language in this section that seems out of place and confusing are the two portions that deal with burdens of proof at the end of paragraphs (4) and (4)(b). This language is not found in the federal regulations at 29 CFR §541.701 (Customarily and regularly) or 29 CFR §541.700 (Primary duty). While it is certainly the case that an employer must be able to show its employee is exempt if the employee is designated as such, this additional language is unnecessary given the existing burdens of proof under the law and may create more, not less, confusion.”</p>	<p>The department added a definition section to make the rules more accessible for the employees and employers who need to apply the rules. The adopted rules retain language regarding burden of proof to make clear that the burden of demonstrating that employees meet the primary duty requirement is placed on employers, not employees. The department included this language in the definition section for clarity.</p>
<p>“Under this proposal, districts would have to pay teachers overtime, unless exempted by reason of their being bonafide professionals due to certification (but what about those without certification).”</p>	<p>Certification is not one of the requirements for teachers under WAC 296-128-530(2).</p>
<p>“Paraeducators, who districts restrict from serving students at IEP meetings due to concern over overtime already, will be subject to overtime, further limiting their ability to serve students.”</p>	<p>Paraeducators have historically not met the requirements to be classified as an exempt professional. The adopted rules do not change this preexisting standard. Additionally, the department considered the extensive stakeholder feedback that asked the department to align the duties tests with federal standards for ease</p>
<p>“Work requiring a specialized degree, e.g., teaching certification, is exempt from the overtime rule. However, hourly employees who do</p>	



<p>not have specialized training, which might include paraeducators, would be subject to the rule. Public employers are not automatically exempt.”</p>	<p>of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.</p>
<p>“FLSA § 541.709 Motion picture producing industry states: The requirement that the employee be paid ‘on a salary basis’ does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least \$695 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C or D of this part, and who is employed at a base rate of at least \$695 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least \$695 if 6 days were worked; or (b) The employee is in a job category having a weekly base rate of at least \$695 and the daily base rate is at least one-sixth of such weekly base rate.”</p>	<p>The exemption from the “on a salary basis” requirement for employees in the motion picture producing industry is not included in the adopted rules and has historically never been included in state regulations. The adopted rules do not change this preexisting standard. Including such an exemption in the adopted rules would be inconsistent with the intent of the adopted rules by creating standards less favorable to workers in Washington State. Furthermore, the Legislature created a separate overtime exemption for individuals employed as a motion picture projectionist (RCW 49.46.130(2)(e)), who are a subgroup of motion picture producing employees, which arguably implies that the Legislature intended to provide overtime protections to the rest of the employees in that industry. However, some employees in the motion picture producing industry may meet the requirements of other EAP exemptions such as the learned professional exemption.</p>
<p>“One of the Federal exemptions that exist in FLSA is a learned professional exemption. We would ask that serious consideration be made to incorporate that same exemption into the Washington rule.”</p>	<p>In the adopted rules, both learned and creative professionals are included in the same section for greater ease of reference. There is no intended difference in application compared to the federal regulations, which separate the professional exemption requirements into separate learned and creative subdivisions. The language in the combined, adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language</p>

	consistent where a revision might change the meaning or interpretation of the provision.
“Please consider adding protections for legislative staff. I work for a legislative agency and legislative staff are automatically exempt from the overtime rules. This has resulted in management using this as an excuse to take advantage of legislative employees.”	Changes to the MWA exemption for employees who meet the definition in RCW 49.46.010(3)(l) is outside the scope of this rulemaking. The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt.
<b>4.g Duties Test: Create additional exemptions</b>	<b>Response</b>
“If these changes go through, there needs to be exemptions for certain trades.”	The purpose of the adopted EAP rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt, regardless of trade. Additionally, the statutory definition of “employee” under RCW 49.46 does not differentiate between employees in different trades, nor does it establish different standards or rights for employees based on such trade-specific variation.
“Recommend that the department incorporate the highly compensated employee exemption that was added to the Fair Labor Standards Act (FLSA) in 2004. Highly compensated employees (HCE) are in less need of protection of the overtime laws, as the federal HCE properly recognizes. By adding this test into L&I’s proposed rule changes, no employee that the proposed rule changes are aimed to protect would be harmed.”	The department considered adding a highly compensated employee (HCE) exemption similar to the federal regulations but chose not to include it for several reasons. First, there was a lack of significant stakeholder interest and no consensus to support including the exemption in its rules update. Second, this exemption has historically not been included in state regulations and it contradicts the intent of the adopted rules by creating standards less favorable to workers in Washington State. And third, adding an HCE exemption would also result in denying currently protected workers the rights to sick leave, protection from retaliation, tips and service charges, and other protections created by I-1433, which would contradict the apparent will of the voters.
“Concerned that the Department has not considered adding other exemptions that exist under federal law, especially in light of the dramatic proposed increase to the salary thresholds. Additional exempt statuses could include the highly compensated employee exemption	The adjustments to overtime requirements specific to bus and truck drivers is outside of the scope of this rulemaking. In addition, the MWA already exempts certain drivers subject to the Federal Motor Carrier Act from the MWA’s overtime provisions, via RCW

<p>(see 29 CFR 541.601) and the FLSA exemption for drivers of commercial motor vehicles who are subject to the U.S. Department of Transportation’s regulations (see 29 U.S.C. 213(b)(1) and the U.S. Dept. of Labor Fact Sheet #19: The Motor Carrier Exemption under the Fair Labor Standards Act (FLSA)). The more Washington’s exemptions can be aligned with federal law, the easier it will be for employers and workers to understand and apply the exemptions in any given situation.”</p>	<p>49.46.130(2)(f). But the legislature chose not to establish an exemption for commercial drivers for all provisions of the MWA in RCW 49.46.010 and it did not provide the department authority to provide such an exemption.</p>
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<b>5.a Phase-in Schedule: The effective date for the rules should be pushed back</b>	<b>Response</b>
<p>“Have an effective date of January 1, 2021. This will allow us to absorb the significant minimum wage increase and the ensuing wage compression issues that were created by previous legislation prior to addressing EAP impacts.”</p>	<p>Based on stakeholder feedback and to further mitigate impacts on small businesses, the department has updated and extended the salary threshold phase-in schedule. The initial threshold on the implementation date of July 1, 2020 is equivalent to the federal rule threshold expected to already be in effect as of January 1, 2020. With the finalization of the new federal rules, it is expected that employers will need limited additional initial adjustment for the July 1, 2020 salary threshold implementation. The next implementation step does not take effect until January 1, 2021, almost a full year after the adoption of the final rules. This gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. In comparison, the recent federal rulemaking provided less than four months between publication and implementation, and the prior federal rulemaking provided only six months.</p>
<p>“We ask the Department to reconsider its proposed implementation date of July 1, 2020.”</p>	
<p>“The main hardships include: The timing. January 2020, we already will see a 12% increase in minimum wage which is providing its own challenges. The cost.”</p>	
<p>“Delay the implementation of the rule in order to fully account for the financial impact on social service and non-profit agencies with funding tied to county, state and federal funding.”</p>	
<p>“Allow businesses a little longer to prepare – an effective date of January 1, 2022.”</p>	
<p>“Delay implementation of the new rule until January 2021 allowing business and nonprofits to first absorb the significant minimum wage increase and the ensuing wage compression issues that were created by previous legislation prior to addressing EAP impacts.”</p>	
<p>“July 1, 2020, is far too early an effective date for Washington employers of any size. Employers need a significant amount of time to budget for these added costs, analyze their workforces to determine whether exempt statuses should be changed, and communicate with affected employees. At a minimum, we recommend giving employers</p>	

<p>one year from the date the rules are finalized, or sometime in 2021, whichever is later, for the first phase of any increase.”</p>	
<p>“Additionally, avoiding an implementation date in 2020 is vitally important because employers will be under immense pressure to understand and comply with Washington Paid Family and Medical Leave (WPFML), which goes into effect January 1, 2020. To expect them to also address an increase in the salary threshold is not only punitive, it completely ignores the very real burden these changes will bring.”</p>	
<p>“The timing of instituting this in 2020 is problematic. This is the year we will see a 12% increase in minimum wage which will undoubtedly lead to the need for greater efficiencies in our operations...or more simply put, some reduction in workforce. This will all but preclude our ability to take some staff to proposed minimums.”</p>	
<p>“Have an effective date of January 1, 2021, which will allow us to absorb the significant minimum wage increase and the ensuing wage compression issues that will be created.”</p>	
<p>“Delay implementation while further considering the impact on Washington’s employers and economy before basing its threshold and implementation schedule on broad statistics and vague references to business input.”</p>	
<p>“Allow startups 3 years from Washington State incorporation to come into compliance.”</p>	
<p>“Have the effective date be January 1, 2021.”</p>	
<p>“We recommend the new rules start on January 1, 2021.”</p>	
<p>“The updated rule to have an effective date of January 1, 2021, which will allow us to absorb the significant minimum wage increase and the ensuing wage compression issues that will be created.”</p>	
<p>“The adoption date in December is really too late to be considered for 2020. My budget will already be adopted for 2020.”</p>	
<p>“Delay implementation until, at least, July 2021. Our industry and many others, including non-profit service providers, will already be dealing with a 12% payroll increase due to the last minimum wage adjustment from \$12.00 to \$13.50 on January 1, 2020.”</p>	

<p>“The other concern we have on the timeline is the fact that you propose to adopt these on December 3<sup>rd</sup> of this year when legislative session starts January 13<sup>th</sup> of 2020.”</p>	
<p>“Respectfully request that there’s a delay in implementation. And lower the cap from two and a half times to 1.75 or two times the minimum wage. If it were over a long period of time, that would be much easier for my organization to be able to look at options for raising those funds.”</p>	
<p>“Delay implementation until at least July 2021.”</p>	
<p>“One of the things that we would propose is pushing the date that it begins off till January of 2021 so we can better engage the logistics of what’s going to happen with the 12 percent wage increase.”</p>	
<p><b>5.b Phase-in Schedule: The roll out period for the salary threshold increases should be longer</b></p>	<p><b>Response</b></p>
<p>“I do think that limits should come up, but going to more than double the current federal limit in 15 months, and 3.4x the federal limit in a little over 6 years is too much, too fast for our type of business.”</p>	<p>Based on stakeholder feedback, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. For EAP workers subject to salary threshold requirements, the adopted EAP rules include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.</p> <p>As discussed in more detail in response 1.a.3, the adopted rules also include a minimum hourly threshold for computer professionals paid on an hourly basis. The department arrived at the updated hourly threshold of 3.5 times the state minimum wage, with a phased-in implementation period, with consideration of the data summarized in response 1.a.3.</p>
<p>“Indeed, there is no explanation for why L&amp;I would impose a jump all the way from 1.25 times minimum wage to 1.75 times.”</p>	
<p>“We think possibly non-profits need more time to adjust to the change.”</p>	
<p>“Your schedule syncing the salary increase with the state’s biennium budget does not meet the needs of nonprofits.”</p>	
<p>“We do ask the Department to consider the size and speed of implementation, so that small businesses and non-profits alike could adequately plan for impacts.”</p>	
<p>“L&amp;I’s response that there is a phase in for businesses under 50 employees is nonresponsive and fails to consider that a one year delay in each 25% of minimum wage increase in steps is totally inadequate for non-profits to be able to respond.”</p>	
<p>“We have serious concerns about the proposed salary thresholds over the period from July 1, 2020 to January 1, 2026 because, despite the lengthened timeline, the threshold increases by both inflation and successively higher multiples of the state minimum wage, and this will</p>	

<p>increase costs to our member institutions which receive funding from the state.”</p>	
<p>“A gradual increase would allow more time to look at ways to increase revenues or lower costs.”</p>	
<p>“We also urge a phase-in of implementation of the recommended \$47,476 threshold over a 3 year period to enable our organizations to accommodate the additional expenses.”</p>	
<p>“Phase in the new threshold over time to allow an adjustment period. This will also give non-profits time to work with philanthropical organizations to secure necessary operational funding, if possible.”</p>	
<p>“Slow down the acceleration by extending implementation phase-in over 10-12 years, rather than six years.”</p>	
<p>“Consider... a longer implementation period to allow small business more time to prepare for these changes.”</p>	
<p>“A phase-in approach that would allow the top threshold to be reached over a five-year period, 2021-2025.”</p>	
<p>“Slow down the acceleration by extending implementation phase-in over 10-12 years, rather than six years.”</p>	
<p>“The process of raising the threshold should be slower, with a lower starting increase, so that the industry can absorb the change and plan for future business operations. We believe this is a practical solution to this issue of great importance, which would protect franchise small business owners while working towards increasing the salary threshold to be exempt from overtime.”</p>	
<p>“If the Department proceeds with its proposal to phase in an increase in the hourly minimum wage for computer professionals until everyone is paying at least 3.5 times the state minimum wage, then we recommend doing so on a more gradual schedule. The current proposal allows only two years for small employers to get to that point, and only one year for larger employers. This is a very aggressive schedule for a significant minimum wage increase.”</p>	
<p>“Proposal is too aggressive and urge a more reasonable approach and implementation schedule.”</p>	

<p>“The proposal is way too high in quick amount of time. There is no thought is given to economy factor in the current proposal. In good time, it may be sustainable but it is definitely not sustainable in distress economy.”</p>	
<p>“For small businesses (for-profit), the rule should include an interim step of 1.5 times the minimum wage for the second year. This step should remain in place for two years prior to moving up to the 1.75 times minimum wage level, an annual wage over \$50,000 per year. In 2015, over 131,000 Washingtonians worked in small businesses under 20 employees.”</p>	
<p>“It is burdensome to have a salary threshold grow each year, and we recommend a rate that could be in place for three to five years before again increasing.”</p>	
<p>“There should be a <b>two year period between steps</b>, with a <b>new step of 1.5x minimum wage for these small non-profits and service providers</b>. This would be a salary level of over \$50,000 per year prior to being exempt.”</p>	
<p>“Since we collect data on businesses below 20 employees, and they have special difficulties in meeting the steep steps in the rule after January 1, 2020, L&amp;I should have a third tier for employers under 20 employees. About 20% of employees in Washington work for business with under 20 employees. Each step, including the 1.5 times multiplier, should be in two years, with only three steps to 1.75 times minimum wage.”</p>	
<p>“If instead the state decides to proceed with this ill-considered course of action, it should be phased in over a substantial number of years.”</p>	
<p>“We urge that you reconsider the proposed regulations and implementation timeline.”</p>	
<p>“We do urge the department to consider a careful and phased-in approach for EAP overtime pay eligibility implementation.”</p>	
<p>“A phased-in approach that would allow the top threshold to be reached over a five-year period, 2021-2025.”</p>	
<p>“We have serious concerns about our ability to absorb the cost of the proposed salary threshold increases over the period from July 1, 2020</p>	

to January 1, 2026 without compromising our public service and research mission.”	
“I ask you please to consider a slower ramp-up and/or a different schedule for non-profits, but a slower ramp-up overall would be better.”	
“While it is said it’s a six-year implementation period, 83 percent of the affected employees would be brought into it within the first two years. So it is a very rapid escalation of the costs and the impact to employees.”	
“You cannot sometimes be rushed. There needs to be some flexibility in there to make sure that we can make sure the work is being done safely.”	
“Urge you to reconsider the time frame as six years is very quick. A 10- to 12-year time frame is probably more realistic.”	
“We urge you to consider a smaller increase or to implement over a period of two or three years.”	
“It doesn’t seem to be responsible to try and correct over 40 years of inflation to the rule in only six years.”	
<b>5.c Phase-in Schedule: Salary threshold phase-in schedule is too long</b>	<b>Response</b>
“We need overtime for salary based positions now, not in 2026.”	Based on extensive stakeholder feedback, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules, which gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.  As discussed in more detail in response 1.a.3, the adopted rules also include a minimum hourly threshold for computer professionals paid on an hourly basis. The department arrived at the updated hourly threshold of 3.5 times the state minimum wage, with a phased-in implementation period, with consideration of the data summarized in response 1.a.3.
“I want the state to do better than just trying to match inflation and historic data and hit the core of the problem with swift, decisive equity: this needs to be an immediate change. No phasing in, no delay for small business. Pay your workers fairly, hire more, or you can't do business here! Restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks it will go right back into the local economy.”	
<b>5.d Phase-in Schedule: We should wait until the federal rules take effect before making any rules updates</b>	<b>Response</b>



<p>“Request waiting for the conclusion of DOL’s rulemaking before adopting state rules.”</p>	<p>The U.S. Department of Labor announced the final updated federal rules during the state’s rulemaking process and the department had the opportunity to review and consider the updated federal rules prior to adopting the state rules.</p>
<p>“Recommend the Department delay its setting of salary threshold criteria until the United States Department of Labor finalizes its rule addressing the minimum compensation levels required for the white-collar exemptions.”</p>	<p>The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including salary thresholds higher than the federal thresholds. The MWA is more protective in a number of aspects compared to the FLSA, so requiring a more stringent standard is consistent with Washington State’s more protective MWA. This is also consistent with the Legislature’s authorization to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA in tandem with its direction to enforce labor standards that are more favorable to employees than equivalent federal regulations. <i>See</i> RCW 49.46.120. It also reflects the reality that by most metrics, Washington is in the upper quartile compared to other states for both income and the cost of living.</p>
<p><b>5.e Phase-in Schedule: Support phase-in schedule</b></p>	<p><b>Response</b></p>
<p>“Keep the phased in approach.”</p>	<p>Based on extensive stakeholder feedback, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. For those executive, EAP workers subject to salary threshold requirements, the adopted EAP rules include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.</p>
<p>“I support the phased-timeline aspect, as well as considerations made for small businesses.”</p>	
<p>“The proposed implementation schedule will be complete by 2025 for the large employers and 2026 for small ones, which provides an adequate amount of time for employers to assess their ability to comply with the rule.”</p>	
<p>“We understand that it may take some employers time to adjust to the new rules. Therefore, we support the proposed phase-in through 2026. Since the Department has adopted a proposal that increases the threshold to 2.5 times the minimum wage, robustly protecting workers’ time and wages, we also support the slower phase-in for smaller,</p>	

potentially less flexible employers.”	As discussed in more detail in response 1.a.3, the adopted rules also include a minimum hourly threshold for computer professionals paid on an hourly basis. The department arrived at the updated hourly threshold of 3.5 times the state minimum wage, with a phased-in implementation period, with consideration of the data summarized in response 1.a.3.
“We understand that it may take some employers time to adjust to the new rules, so we support the proposed phase-in through 2026. And we also support the slower phase-in for smaller, potentially less flexible employers.”	
“The phase-in schedule provides ample time for employers to adjust. Phasing in the increase to 2026, with a somewhat slower schedule for smaller employers, strikes a good balance between the needs of workers and families to gain more income and control over their time, and the needs of employers to plan and adjust.”	
“Please enact this rule change at the proposed levels, without watering down the income cut offs or slowing down the timeline by which they take effect.”	
“This bill is fair. It's phased in over multiple years and makes exceptions for small businesses to phase in more slowly.”	

<b>6.a Legal Concerns: These rules are in violation of existing law</b>	<b>Response</b>
“Proposed salary threshold is too high and if adopted would effectively supplant the duties tests. Many executive, administrative, and professional workers would be removed from consideration irrespective of their job duties which we think is contrary to the Washington Minimum Wage Act, RCW Chapter 49.46.005-.920.”	RCW 49.46.010(3)(c) authorizes the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional [EAP] capacity” under the MWA, which the department initially did in 1976. Historically, both state and federal overtime exemption rules have generally required that EAP employees meet the following three-part test to be exempt: <ul style="list-style-type: none"> <li>• The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”).</li> </ul>
“I’m simply going to address why it is unlawful. Two bases for that. The first is the text of the statute. The text of the statute prescribes that bona fide executive, administrative and professional employees are exempt. The language is bona fide, not highly compensated. And converting it to salary from its intended function as a proxy so as to distinguish employees who are not, in fact, bona fide executive, administrative and professional employees does violence to the language of the statute.”	
“WAC 296-128-545- This is just insane! Take Washington’s already high minimum wage and multiply it by 2.5 and by 2026 it is safe to assume a farm manager must make \$78,000 a year in 2026 or more or else	

<p>overtime pay in addition to this salary is due for hours worked beyond 40 hours. First of all, what is the basis of your assumption that this reach beyond the federal rules is necessary? Secondly, presuming you have something more than the weak rationalizations in the economic impact statement...to justify your departure from federal rules - How is a farm supposed to compete with any other farms across the border with Washington, anywhere else in the US? Let alone the world?"</p>	<ul style="list-style-type: none"> <li>• The amount of salary paid must meet a minimum specified amount (the "salary level test").</li> <li>• The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the "duties test").</li> </ul>
<p>"What right do you have to do this in the first place?"</p>	<p>The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department's authority and are within the scope of historic norms.</p>
<p>"I am not a lawyer, but much of this rule fits the term arbitrary and capricious. It is legislation by agency rule process, with no such authority to do so. You all should be ashamed of yourselves, there is no place in a democracy for fiat and edict by rule alone. It is destructive when decisions are made with such little knowledge of and almost total disregard for the outcomes and impacts."</p>	<p>The rule changes are not arbitrary and capricious. The department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05. The department prepared a small business economic impact statement (SBEIS) and a final cost-benefit analysis (CBA), and took steps to mitigate the impact on small businesses.</p>
<p>"The proposal to change the salary threshold for overtime pay from its current rate to a multiplier of 2.5 times the state minimum wage is unsupported by any federal directives or state legislative directives. This proposal is an arbitrary determination that has no verified relationship to determining whether a worker is indeed working in a bona fide executive, administrative, or professional capacity."</p>	<p>As discussed in more detail in response 1.a.3, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized in response 1.a.3.</p>
<p>"In addition, we wish to support by reference the comments submitted by the Association of Washington Business in opposition to the overtime rule that comprehensively challenges the legality of the rule and this exercise of agency authority, given the parameters of existing state law."</p>	<p>The Legislature authorized the director of the department to adopt rules defining and delimiting what workers are employed in a "bona fide executive, administrative or professional capacity" under the MWA, and neither adopted nor chose to incorporate the federal regulations. Both the duties tests and salary thresholds of the rules have diverged significantly from the FLSA rules since the department promulgated its rules in 1976, so the Washington rules have rarely mirrored the FLSA exemptions. In fact, Washington's current rules differ from the federal equivalents. The adopted rules</p>
<p>"The rule proposal offers poor to no financial impact information. Several of the Rule terms and conditions go well beyond the current proposed federal standards with absolutely no reasoning on why. I find no legislative basis for the logic especially behind the call to raise the pay threshold to 2.5 times the already high Washington Minimum wage."</p>	

	<p>are within the department’s statutory authority and both state and federal law allow Washington to adopt labor standards that are more favorable to employees than equivalent federal regulations.</p> <p>These comments also highlight misconceptions about both the updates to Washington’s rules and the long-standing role of the salary threshold. As mentioned above, federal and state EAP rules have historically always included a salary threshold alongside a duties test. When the salary threshold is not updated as wages increase over time, it falls behind real earnings of nonexempt and exempt employees, making it more difficult to identify the bona fide exempt employees. The department began this rulemaking to ensure the regulations effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt.</p> <p>The department recognizes that when the thresholds become outdated the protections intended by the MWA erode, and workers whom the Legislature intended to protect do not receive the protections of the MWA or the higher salaries, above-average benefits, and greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption from the MWA’s protections.</p> <p>Additionally, employers do not have an efficient and reliable means of identifying which workers are or are not entitled to these protections. Outdated salary thresholds mean that it is more difficult for employers to assess whether workers who make more than the low, outdated threshold amounts are actually the type of bona fide, exempt workers the Legislature intended to exempt from the MWA’s protections. The inclusion of a meaningful, updated salary threshold in the adopted rules is consistent with historic norms and, according to the U.S. Department of Labor (USDOL), provides “a valuable and easily applied index to the ‘bona</p>
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	<p>vide' character of the employment for which exemption is claimed." See Stein, H. (1940) "Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition," Wage and Hour Division, U.S. Department of Labor ("Stein Report") at 19. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as "the single best test" for distinguishing exempt EAP employees from workers covered by the FLSA's protections, by "drawing ... a line separating exempt from nonexempt employees." (Stein Report at 19; 69 FR 22,165; <i>see also</i> 81 FR 32,413). The salary threshold cannot perform these important functions if it is so low as to capture only the most obviously and unquestionably nonexempt workers.</p> <p>Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.</p>
<p>"RCW 49.46.130 (3) appears to set the law at 1.5 x minimum wage for retail and services"</p>	<p>This comment highlights a misconception about the scope of this rulemaking. The current rulemaking effort revises the standards for which workers may be exempt from the MWA under the EAP and Outside Salesperson exemptions. Other exemptions from overtime are not impacted by this rulemaking effort. For example, RCW 49.46.130(3) refers to a wholly separate exemption from overtime, often referred to as the retail or service establishment exemption.</p>

	The retail or service establishment exemption will not change as a result of this rulemaking.
<b>6.b Legal Concerns: This decision should be up to the legislature</b>	<b>Response</b>
“If the Department wants to accomplish what you’re seeking here, do what they did in California, which is to change the statute.”	As described in more detail in response 6.a, RCW 49.46.010(3)(c) authorizes the director of the department (department) to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA.
“Wonder why this is being done through a rule change. And it seems that the legislative process would be better for this due to the complexity of what is proposed, the complex effects and the need to balance many different interests and considerations.”	
“We also wonder if these kinds of changes and rules might be best accomplished in a legislative session.”	
“I was wondering how Governor Inslee can unilaterally direct a state agency to revise rules that could drastically affect (both good and bad) its citizenship. I was under the impression that the legislators we elect are the ones we should approach if we think something needs to be changed.”	
<b>6.c Legal Concerns: Proposal brings protections back in line with historic norms</b>	<b>Response</b>
“Raising the salary threshold to 2.5 times state minimum wage for a 40 hour workweek will bring the level closer to – but still short of – historic norms.”	As described in more detail in response 1.a.3, one of the reasons the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, is because the adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past. At the federal level, USDOL has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times,
“The current low threshold is an invitation for abuse, and it is robbing workers of extra pay or extra time for themselves or their families. It's only fair to raise that threshold and restore where it had been historically, adjusted for inflation.”	
“In 1976 the overtime threshold was set at \$250 per week, which worked out to approximately 2.7 times the state minimum wage at the time. But it is important to note that this was a historical low point, not the high water mark for the relationship between the minimum wage and the overtime threshold. Between 1938 and 1975 every single time the overtime threshold was updated, it was updated to the equivalent of between three and almost five times the minimum wage.”	

<p>“Raising the threshold helps fight income inequality and restores it to previous levels. It is not a radical change, but it is a fair one.”</p>	<p>with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.</p>
<p>“We support this movement by the Department to set the overtime threshold more in line with their historical levels and to have a long phase-in period that helps smaller businesses make a transition.”</p>	
<p>“We recommend that Washington restore the protections against excessive work hours originally established in the Fair Labor Standards Act of 1938 by gradually (by 2026) raising the state’s salary threshold for overtime eligibility—originally intended to exempt only well-paid executive, professional, and administrative workers—to 2.5 times the earnings of a full-time worker who earns the state minimum wage. This would return the threshold to a level consistent with the salaries of bona fide executives, administrators, and skilled professionals, and would provide new or strengthened protections against excessive work hours for an estimated 419,000 workers in Washington.”</p>	
<p>“Setting the Washington EAP salary threshold at 2.5 times the minimum wage would restore it to a level closer to what it was nationwide for the first 40 years after it was written into the FLSA, when the threshold averaged 3.1 times the minimum wage.”</p>	
<p>“Further, a Washington threshold at 2.5 times the minimum wage is largely consistent with the 2016 Obama administration’s aim to set the federal overtime threshold at the 40th percentile of the earnings of full-time salaried workers. Because the 2016 federal rule would have applied nationwide, DOL based it on the 40th percentile of weekly earnings for salaried workers in the South Census Region, the lowest-wage region of the country. However, salaries in the West Census Region where Washington is located are significantly higher, and salaries in Washington are higher than in every other state in the region other than California. According to data from the Quarterly Census of Employment and Wages (QCEW), the average weekly wage of private-sector workers in Washington is 8.5% higher than the employment-weighted average for the West Census region. The 40th percentile salary in the West Census Region is projected to be \$1,173 in 2020—the equivalent of \$61,013 annually. If salaries grow slightly faster than</p>	

inflation over the next five years, the 40th percentile for Washington will equal roughly 2.5 times the Washington minimum wage in 2026.”	
“Raising the Washington salary threshold for EAP exemption from overtime would restore one of the core labor standards that helped build and grow the middle class throughout the 20th century—the right to be compensated fairly when asked to work excessive hours. To do this, the Washington State Department of Labor and Industries must set a threshold that reflects genuine executive and professional-level salaries; otherwise the regulation will not provide adequate incentive for employers to balance the additional hours they require of staff with the cost of overtime pay or raising salaries up to the new threshold.”	
“Setting the threshold at 2.5 times the state minimum wage would be a reasonable and appropriate salary level—one that is consistent with pre-1980s precedent and with the 2016 U.S. Department of Labor’s rulemaking. By linking the threshold to Washington’s state minimum wage, it would also automate future updates, providing clarity for employers and employees alike.”	
“We support the proposed salary threshold of 2.5 times the minimum wage. This is not quite consistent with historical norms, which have regularly set the threshold at 3 times the minimum wage, but it is a good start. When the Fair Labor Standards Act established overtime pay in 1938, the minimum wage was 25 cents per hour and the overtime threshold was \$30 per week, 3 times what a full-time minimum wage worker would be paid. When the state last updated the rules in 1976, the threshold was set at 2.7 times the minimum wage. Likewise, the Obama Administration proposed updating the federal standard to \$47,000 per year, more than 3 times the federal minimum wage. Raising Washington’s threshold to 2.5 times the minimum wage will help to ensure that workers’ rights never fall far behind the economy.”	

<b>7.a Economic Analysis: Additional analysis is needed</b>	<b>Response</b>
“The Department also needs to go back and look at your research used for economic impacts. The statement that the negative impacts are	The department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions



<p>minimal and the benefits offset the downside may be true for Boeing in Seattle, but it does not currently reflect the real world and certainly does not reflect reality in the independent grocery and convenience store industry and rural communities we serve.”</p>	<p>of the Administrative Procedures Act, RCW 34.05. The department prepared a final CBA, and the analysis is based on industry and occupation type. The final CBA analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA are included in response 1.a.2.</p>
<p>“I am concerned that the impact of this change has not been properly researched and “there is no data indicating the magnitude of the cost” of this change. I believe a thorough analysis needs to be done on this.”</p>	<p>Acknowledging the challenge of projecting the impact of these rules over such a long period of time, the department has tried its best to base its estimate on the best available data and the methodology that it believes is reliable. The total impact is derived from the number of affected workers at each sector and occupation level and is aggregated from the average impact of each of these cohorts. The department is not required to analyze the specific economic impact that each individual business or a certain business group would incur, nor is it feasible to do so.</p>
<p>“Please stop the rules, go out and actually do the hard work of learning the impacts of these policy edicts!!!”</p>	<p>The numbers of affected workers in each sector and occupation, as well as the estimated total cost and benefit of these rules, are updated in the final CBA report to reflect the phase-in schedule as adopted. While there always exists a certain degree of uncertainty in making these projections, the department believes the results indicated in the final report represent the best estimates of the actual impact of the final rules.</p>
<p>“How many salaried workers in Washington are being forced to work 60 hour weeks at less than 1.75 times salary over minimum wage (or \$50,000 per year).”</p>	<p>Additionally, the final rules have an updated, extended salary threshold phase-in schedule that starts with 1.25 times the state minimum wage and will gradually increase to 2.5 times the minimum wage level by 2028 for all affected businesses. The department does not know how many salaried workers are currently working 60 hours or more at less than this specific salary level (\$50,000 per year). For the whole population of affected</p>
<p>“Attached is an average wage chart for our independent grocery stores. It became obvious to us that industries like ours and general retailing and restaurants will be harmed to the greatest extent of this proposal. Your economic analysis does not consider these factors and the impact on people who want and need on-the-job training at an entry-level position.”</p>	
<p>“It is appalling to see the financial impact statement that your agency released. Your agency admits it does not even know what it doesn’t know about the financial hit, especially to small businesses like mine.”</p>	
<p>“The broad statistical basis for L&amp;I’s proposed threshold does not enable the public to make a meaningful determination of the reasonableness of L&amp;I’s proposal, while giving L&amp;I ostensible “cover” for its proposed amendments.”</p>	
<p>“L&amp;I’s broad statistical support as the basis for its proposed salary threshold is not dispositive. It is unclear that L&amp;I has considered the correct universe of data and Washington’s current business climate, in establishing the proposed ratio and timeline for implementation. By failing to provide other considerations that have gone into its calculations and timeline L&amp;I is not being transparent. This lack of transparency enables L&amp;I to propose a threshold that the public is challenged to question without reliance on expert economist or labor professionals.”</p>	

<p>“While the Department has tried to quantify the benefit to employees of additional overtime payment in the cost-benefit analysis, we received no feedback from members to suggest exempt employees were being denied any benefits. Additionally, we do not believe the Department has adequately studied the potential loss in benefits to employees (including non-financial benefits such as flexibility and lifestyle) as a result of necessary reclassifications that would occur under the proposed rule.”</p>	<p>workers, the department estimates about 6% of them work 60 hours or more in a typical week.</p>
<p>“This SBEIS is one of the shoddiest, grossly inadequate impact statements we have ever seen. It is sloppy, incomplete, and crosses the line into advocacy in several places. Agencies are supposed to engage in rulemaking using facts from fact-finding. This SBEIS was done poorly at best. These factors have made it impossible for L&amp;I to prepare a valid cost-benefit analysis to support the proposed regulation, as required by RCW 34.05.328. Before any rule is adopted, we urge L&amp;I to review these figures and do appropriate and thorough research so that any decisions made will be based on facts and not scant knowledge, assumptions, and conjecture.”</p>	
<p>“The department has not performed or provided sufficient economic analysis to justify these proposed rules.”</p>	
<p>“The economic impact analysis also does not consider that rural Washington is often served by a single independent grocer, where wages are lower, and this proposed salary threshold is completely out of the question.”</p>	
<p>“Your economic impact statement is not realistic and does not include industries like ours and retail and restaurants who provide many employment opportunities in this state.”</p>	
<p>“The Department needs to go back and you need to look at your economic analysis, and you need to consider all industries, not just the IT industries and Boeing because you will harm our employees, our communities and our ability to deliver fresh and healthy wholesome food.”</p>	
<p>“We think there needs to be a lot better review of economic impacts by region, by industry and by size of business. This is huge. And we need to</p>	

<p>model these impacts, not just on today’s economy, but the economy of five years ago as well and the economy potential if we go into another recession.”</p>	
<p><b>7.b Economic Analysis: The economic analysis that has been done is incorrect</b></p>	<p><b>Response</b></p>
<p>“You are required under the Regulatory Reform Act to engage in a true cost benefit analysis...look at the costs and benefits that you do claim. The sole benefit is from the expansion of paid sick life.”</p>	<p>The department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05. The department prepared a final CBA and the analysis is based on industry and occupation type. The final CBA analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. A summary of the estimated costs and benefits from the final CBA are included in response 1.a.2.</p> <p>The department acknowledges the challenge of projecting the impact of these rules over such a long period of time, but the department has based its estimates on the best available data and methodology, and believes those estimates are reliable. The total impact is derived from the number of affected workers at each sector and occupation level and is aggregated from the average impact of each of these cohorts. The department is not required to analyze the specific economic impact that each individual business or a certain business group would incur and such an approach would be impractical.</p> <p>The department acknowledges the lack of reliable data to analyze the difference in compliance costs between large and small businesses. In the absence of this data, the department identified cost mitigation measures to comply with the requirement set forth under RCW 19.85.030.</p> <p>One commenter notes the small number of affected workers in agriculture, forestry, and fishing. This number is small because most</p>
<p>“Many business owners and managers have grave concerns about the proposed rule changes and salary levels and believe that L&amp;I’s methodology is flawed because current technology, work environments, workforce education and economy are vastly different from 60 or 70 years ago.”</p>	
<p>“When we look to the citation for which you give reference – it’s footnote 129 of your preliminary cost benefit analysis – it cites to Table 32 in this document...And when you look in that document for Table 32, you won’t find it because there isn’t any such table. The tables run through Table 5. There is no such table. I presume that’s just a typo. But even if it is meant to be a typo, it does not distinguish between your salaried employees and non-salaried employees. The figure is frankly not useful basis. And if you have underestimated the portion of paid sick leave that will be garnered in by this expansion, you have overestimated your benefits, and this cost benefit analysis will not stand the light of scrutiny when it’s taken to court.”</p>	
<p>“The footnotes offered are incomplete or inaccurate, forcing those of us trying to substantiate the logic of the department’s staff to wander aimlessly around the internet trying to find the referenced federal footnote or to engage in torturing the referenced RCW to mean what your staff says it means. An example of tortuous statements of logic is found in footnote 4 on page 1 of the SBEIS. That footnote attempts to use 84 Fed. Reg. at 10,916 and RCW 49.46.005 to substantiate this statement: “The overtime protections under the MWA and FLSA serve two purposes: to reduce overwork and its detrimental effect on the health and well-being of workers, and to spread employment by</p>	

<p>incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.”</p>	<p>agricultural workers are exempt from overtime under state law (49.46.130(2)(g)). These include workers working on a farm in connection with soil cultivation, raising a crop, handling livestock, or the operation, management, conservation, improvement, or maintenance of such farm and its tools and equipment. They are not subject to the minimum salary threshold, and therefore are not part of the population of the workers affected by the proposed salary thresholds. The number of affected workers identified for this sector represents the small number of agricultural workers who are covered under the MWA and are currently salaried, performing EAP-related work duties, and are paid between the current weekly threshold of \$455 and the proposed salary threshold in the new rules.</p> <p>The department also does not agree that it overestimates the benefits of paid sick leave (PSL) that result from the adopted rules. The department derived its estimated number of the affected workers due PSL coverage in the final CBA based on multiple factors. To perform its calculation, the department first excluded all workers in Seattle and Tacoma from the calculation (16% of the state workforce), as salaried workers must receive PSL benefits under these cities’ ordinances. The department also excludes those salaried workers it estimates will remain exempt because their employers choose to increase their salaries above the new salary thresholds. The department then applied the estimated 13% to the remaining population based on the share of workers who currently do not have PSL benefits in the Western Region. The final number of affected workers due to PSL coverage represents much less than 13% of the total affected population.</p> <p>Finally, the link provided in the footnote to access Table 32 was incorrect in the preliminary CBA report and has been updated in the final CBA report. Please see footnote 130 in the final report.</p>
<p>“The SBEIS also makes unsubstantiated opinion statements, but it proffers them as fact. For example, the pontification on the impact uses only 2020 data, yet the full impact on business will not come to fruition until 2026. See Table 3 on page 4 of SBEIS.”</p>	
<p>“Where is the basis you used to determine 2.5 times minimum wages was an appropriate gauge to decide below that a manager is not exempt and above, they are? The answer is: you pulled this out of thin air. There is no instructive language from the legislature. Labor and Industries staff just decided this was what was best and then you did a pathetic job of rationalizing why. Then your team created an abysmal cost benefit and financial impact statement. As an example, your staff estimated that 165 “employees” in agriculture, forestry and fishing in all of Washington would be affected. Where and how did you determine that? Really? – There are only 165 exempt individuals in the whole state (that don’t own 20% or more of the business) that are managers/professionals employed on farms, in the woods and on fishing boats? This number is wrong. Period!”</p>	
<p>“The Department of Labor and Industries does not take into account the impact a high salary threshold will have on various businesses and their employees.”</p>	
<p>“Local and National studies document the negative effects of minimum wage increases: The state has put into place a phased in increase of the minimum wage that will reach Seattle’s \$15 wage within a few years. This level is inappropriate and unsustainable for employers across the state where wages and costs vary and many are lower. In 2017, the U of Washington published a study that documented the effects of an increase from \$11 in 2015 to \$13 in 2016 and found unintended and negative effects on employment, hours worked, and incomes at the higher level of \$13. The Congressional Budget Office studied the effects nationally of a \$15 minimum wage by 2025 and concluded it could cost up to 3.7 million jobs. While it would provide some workers increased earnings, others would lose their jobs. It would reduce business</p>	

<p>incomes and push prices higher. Overall, a median response would reduce family incomes by \$9 billion and reduce national output.”</p>	
<p>“In reviewing the West Census Region data the department provided in the Cost Benefit Analysis, the median salary for all non-hourly positions was used for calculation purposes, which takes into consideration all levels of experience, but does not reflect the fact that minimum wage often is set as an entry level wage. Suggest using the 3<sup>rd</sup> of 4<sup>th</sup> decile would be a better reflection of an entry level exempt rate. With either option, the salary threshold would be significantly higher than the proposed federal salary threshold, and would reflect the higher wages of WA state.”</p>	
<p>“You referenced the economic impact study. I was never contacted to determine what the economic impact would be to my specific organization. I don’t know how that was conducted, whether it was a sample set or what.”</p>	
<p>“The financial impact is going to be much more significant than you acknowledge in the cost benefit analysis.”</p>	
<p>“We would ask that the cost benefit analysis, you be careful with the data to make sure that the underlying assumptions associated with this cost benefit analysis actually bear out in the facts.”</p>	
<p>“The Department’s Least Burdensome Analysis of costs associated with the rule may be overstated. In particular, the costs of scheduling and monitoring employees’ work hours is work that most large employers already have staff assigned. It also seems unlikely that that the unit cost of scheduling would increase at the rate of 3.5 percent per year, especially for large employers using predictive scheduling software and other automated personnel management systems.”</p>	
<p>“L&amp;I admits in the SBEIS that the department does not even know the impact of the proposed rules on small business. The proposed rule language is at best arbitrary and capricious. The SBEIS obfuscates impacts by using poor data, no data, or misleading examples. For example, Appendix A contains an assumption that there are only 165 employees in all of agriculture, forestry, fishing, and hunting businesses</p>	<p>There is insufficient data to determine the size of the cost impact between large and small employers to calculate disproportionate impacts. As required by RCW 19.85.030, in the absence of this data, the department identified cost mitigation measures, where legal and feasible, as described below. To comply with the Regulatory Fairness Act, the department reviewed the list of methods for</p>

<p>in the state that will be affected. The figure of 165 employees seems unreasonably low to us and needs to be thoroughly reexamined.”</p>	<p>reducing the impact on small businesses under RCW 19.85.030, and is taking the following steps to reduce the costs of the rules on small businesses:</p>
<p>“This draft rule will create impacts to our farmers that are poorly explained, with shoddy data. Decisions in this rule appear to have materialized from thin air with little to no regard for small business owners such as our farmers. The department’s Small Business Economic Impact Statement (SBEIS) impact statement contains poor, inadequate, or no data to derive a quality economic evaluation of the consequences of these proposals.”</p>	<ul style="list-style-type: none"> <li> <p>• <b>Delayed implementation/phase-in of the salary thresholds.</b> For those EAP workers subject to salary threshold requirements, the adopted rules include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The phase-in schedule for salary thresholds in the adopted rules is based on employer size, with the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek. Businesses with more than 50 employees are subject to an initial change to 1.25 times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek on January 1, 2027. Businesses with between one and 50 employees are subject to an initial change to 1.25 times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek by January 1, 2028. For hourly computer professionals, the adopted rules phase in implementation over three years, with a more gradual phase-in for small businesses.</p> </li> <li> <p>• <b>Aligning with the federal duties test for all executive, administrative, and computer professional employees, and for most professional employees.</b> The department</p> </li> </ul>

	<p>determined that moving to a standard test that more closely aligns with the test employers are already required to comply with under federal law reduces regulatory requirements and compliance costs for employers.</p> <ul style="list-style-type: none"> <li>• <b>Developing and implementing a robust outreach and education program.</b> The department is committed to assisting small businesses to ensure they are informed about what they need to know to comply with the law.</li> <li>• <b>Considering other mitigation techniques.</b> The department has considered other mitigation techniques including those suggested by small businesses or small business advocates.</li> </ul> <p>The department has also considered other methods of reducing costs under RCW 19.85.030 and found them inapplicable or infeasible. For example, these rules do not directly impose any recordkeeping or reporting requirements. Indirectly, they may affect the number of employees for whom certain recordkeeping requirements apply under the existing statutes and rules, but the department cannot reduce the requirements set in the MWA through these rules. These rules also do not require inspections and present no opportunity to reduce the frequency of inspections. These rules also do not impose fine schedules for noncompliance and present no opportunity to reduce fine schedules.</p>
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<b>8.a Miscellaneous: Provide guidance</b>	<b>Response</b>
"Provide training and guidance regarding this new employment rule to the non-profit businesses this will affect."	The department is committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies. The department is also open to feedback from nonprofit stakeholders about the types of guidance that would be most helpful to their constituents.
"Provide one-on-one technical assistance to our industry [Supported Living agencies] (not just through your website or through webinars) to help us implement this change."	
<b>8.b Miscellaneous: Tracking hours</b>	<b>Response</b>
"Are there aspects of this change that allow for management & employees measuring monthly hours worked vs. weekly hours worked?"	The overtime statute requires payment of overtime when a non-exempt employee works more than 40 hours in a workweek. The statute does not allow for a consideration or calculation of overtime based on a monthly period. See RCW 49.46.130. As the statute explicitly refers to the workweek as the unit of analysis, the department must continue to examine overtime compliance on a week-by-week basis for overtime-eligible employees. Additionally, changes to the application of overtime for non-exempt employees is outside the scope of this rulemaking.
"We would also suggest for measuring monthly hours, which will better align with the ebb and work flow of our arts and cultural sector, measuring monthly rather than weekly."	
"Perhaps this playing field could be leveled by legally requiring every executive, administrative, and professional employee, regardless of income level, to take on this weekly chore of tracking and reporting work hours, so that those organizations in less affluent parts of the state are not at such a disadvantage to those in the Puget Sound area."	
<b>8.c Miscellaneous: Compliance</b>	<b>Response</b>
"For those who feel taken advantage of, raise the minimum wage and educate those individuals on their rights as workers and how to file complaints through your department."	The department is responsible both for setting appropriate workplace standards and ensuring that there is compliance with those standards. Necessary updates to workplace standards such as the adopted rules ensure that protections for employees are not eroded, while enforcement mechanisms permit employees to
"The abuses of overtime exempt salaried people that may have been prevalent in the past have become rare. If you are an exempt salaried	



<p>person that believes that you are being mistreated by your employer, I would urge you to talk to L&amp;I or to an attorney that specializes in labor and workplace issues. Remedies do exist.”</p>	<p>pursue and vindicate those rights. Policy, rulemaking, compliance, education, and enforcement are all parts of a holistic approach to protecting workplace rights.</p>
<p>“Ask that there be an eye towards compliance and enforcement and looking at those employers who already have people who are not classified correctly, they could be being paid overtime.”</p>	
<p><b>8.d Miscellaneous: Misc. comments</b></p>	<p><b>Response</b></p>
<p>“What is the reasoning for not making this an opt-in or opt-out program for employees?”</p>	<p>As described in more detail in response 1.f.5, the adopted rules do not include an opt in/out option because this approach increases the risk of worker exploitation.</p>
<p>“Urge the Department to revise the rule or not adopt the proposed rule.”</p>	<p>The adopted rules were revised in the ways outlined in “II. Changes to the Rules” section above.</p>
<p>“Urge actions to be as least disruptive as possible.”</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The department took a number of steps to minimize the disruption to employers. First, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. With the finalization of the new federal rules and the federal rule implementation date of January 1, 2020, the department expects that employers will not need to make significant additional adjustments for the July 1, 2020 salary threshold implementation. The adopted rules’ next step will not be until January 1, 2021, almost a full year after the adopted rules are published. Second, the department is committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies.</p>

<p>“Perhaps after year one the agency could engage focus groups of employees that were affected or impacted and had their classifications change, different sizes of employers.”</p>	<p>The department appreciates this feedback and will consider this suggestion going forward.</p>
<p>“Harvesting of fruit tree crops is time sensitive and it must be harvested timely to prevent aver ripe crop loss. The harvesters work long hours for a short period, then are out uf work until another harvest period. I suggest the harvest hours and the lay off hours should averaged to arrive at work hour day. The way harvest time are now are accepted by the harvesters and have been for innumerable years, why change?”</p>	<p>Changes to the overtime requirements for agricultural workers who meet the definition in RCW 49.46.130(2)(g) is outside the scope of this rulemaking. The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt.</p>
<p>“I find very unjust the way we are treated because we're Hispanic. We don't have the same benefits compared to other groups, race. We feel discriminated. We don't have the same benefits as overtime pay.”</p>	
<p>“I would like to see that the employees that work in agriculture could get paid for overtime.”</p>	
<p>“Overtime should be paid to agriculture workers.”</p>	
<p>“On agricultural workers, it would be cool if they were included in these protections.”</p>	
<p>“An employee would do well financially to work 10 hours one week and then 70 the following week thus maximizing overtime pay. And I would have zero legal tools to stop them from doing so. Under the current law, an employer has no say over a team member’s hours, only their performance With your proposed law you would create the need for an employer to control the number of hours worked (which is currently illegal).”</p>	<p>This comment highlights a misconception about overtime requirements. It is legally permissible for employers to ask employees to refrain from working overtime and employers can discipline employees if they violate such an internal policy. However, non-exempt employees must receive overtime pay for all hours worked over 40 in a workweek regardless of whether they had permission to work the hours or not.</p>
<p>“What L&amp;I should be contesting and approaching for the underpaid workers is PAID TIME OFF benefits regardless the reason of the nature. It seems to me though that WA state laws does not require employers to pay out any accrue benefits at the time of separation. I ultimately feel like there should be a law put in place and that no matter what the reason for separation is the worker should still be obligated to receive that payment. I mean all n all the employees are the ones working their behinds of to get those PTO hours.”</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. Creating Paid Time Off benefits is outside of the department’s authority and is outside the scope of this rulemaking.</p>
<p>“Please make things Right both for Salaried and hourly employees to be paid fairly and be compensated for the overtime hours they work, as</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature</p>

<p>well as lifting this ridiculous Cap on hours for HCA'S who want or are willing to work overtime in order to Care for our clients.”</p>	<p>intended to provide MWA protections and bona fide EAP employees who it intended to exempt. Lifting the cap on hours for home health care workers is not within the department’s authority and is outside the scope of this rulemaking.</p>
<p>“Employees should receive compensation for required on-call time.”</p>	<p>The law requires employees to receive compensation for hours worked. The law does not require employees to be paid for time not working, with few exceptions. When an employee is on-call and not performing work, the department cannot compel an employer to provide an additional payment for this non-working time. For a further discussion on “on-call” time and hours worked, please see Administrative Policy ES.C.2.</p>
<p>“I would ask that the legislature and the State look at a surcharge on overtime pay, not only pay throughout the system, not just lower-income workers, but all workers in the state and that possibly 15 to 20 percent of those overtime fees be used to start a fund to pay for behavioral health issues, to pay for rural hospitals, and to pay to help support our Medicaid expenses in this state.”</p>	<p>RCW 49.46.010(3)(c) authorizes the director of department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. The department does not have the authority to create a surcharge on overtime.</p>
<p>“Maybe after this fix is made, we can focus on allocating DSHS client hours in a way that allows caregivers to have reliable schedules.”</p>	<p>The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. Creating rules on caregiver scheduling is not within the department’s authority and is outside the scope of this rulemaking.</p>
<p>“Address overtime exemptions for hourly workers. Fair compensation for hourly workers.”</p>	<p>RCW 49.46.010(c) authorizes the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. Historically, both state and federal overtime exemption rules have generally required that EAP employees meet the following three-part test to be exempt:</p> <ul style="list-style-type: none"> <li>• The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed</li> </ul>

	<p>(the “salary basis test”).</p> <ul style="list-style-type: none"> <li>• The amount of salary paid must meet a minimum specified amount (the “salary level test”).</li> <li>• The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).</li> </ul> <p>The adopted rules maintain these longstanding requirements.</p>
“There should be guidance about how much overtime can happen for salaried individuals.”	There are no rules under the MWA governing how much overtime an exempt employee can work.
“I hope that you are asking all voters for their opinion as well. I'm grateful that you asked for mine. Why don't you send representatives around the state to inform and educate voters and residents?”	The public comment period allowed any interested parties the ability to comment on the rulemaking. Hearings were held in seven separate locations around the state to answer questions and receive public comment. The department is also committed to developing and implementing a robust outreach and education program to explain the new standards. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies.
“I want the state to lift the overtime rule hour cap for Parent Providers of care for their adult disabled children.”	The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. Lifting the cap on hours for Parent Providers is not within the department’s authority and is outside the scope of this rulemaking.
“There needs be language in the proposal that the employees’ hours can’t be reduced to avoid overtime pay.”	As discussed above (see potential compliance options outlined in response 1.a.1), employers have many potential options to comply with the adopted rules, and employers have the option to reduce hours to avoid overtime costs.
“The word timely means what? Within 30 days,180 days, 1 year, etc.? This should be more clearer.”	The word “timely” is not included in the adopted EAP rules.

8.e Miscellaneous: Miscellaneous support for the rules	Response
"Support the rule proposal."	As discussed above, the department considered a number of factors when deciding whether to update the EAP rules, and what changes were needed. The adopted EAP rules will restore important MWA protections so that workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will receive those protections. The update also ties the salary threshold to the state minimum wage, which is updated annually based on the CPI-W and so provides a mechanism to ensure that the tests for the exemptions remain up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.
"This proposed change in the overtime exemption would help me by either: a) my employer paying me overtime for the extra hours I work or b) increase my wage to \$49,000."	
"Overtime pay encourages employers to limit the number of hours a single employee is asked to work to a reasonable amount."	
"Adopt this rule immediately."	
"Let's end the free labor for employers and help the economy grow by putting more money or time in the people's hands."	
"Stand by our working class, they make the State of Washington the best place to live."	
"Please change this so everyone can benefit and just not the employers."	
"Support workers and show them their time has value or let them spend their time how they want."	
"If an employee is not paid overtime, one feels one's work is not really valued."	
"Health and time are the most valuable things people have."	
"Please count me as an employee and small business owner that favors the rule change."	
"Kudos for adjusting the overtime rule, 40 years overdue."	
"Please act so as represent voters, not capital--an economy in a free, democratically governed society must be regulated to harness its operations for the benefit of society, not for the benefit of only that part of society with capital to invest. The economy is not for enriching people; it is for enriching society, and thereby, people, with reasonable regard for rewarding hard work but also reasonable regard for balance, fairness, and our shared goal of freedom to live well and prosperously. People whose world views value only materiality should not be allowed to take over and run the show and force their lack of meaningfulness and inability to appreciate the fullness of life, on all of us."	
"Embrace progressive labor and tax policies."	

<p>“Enact sensible policy before the pitchforks get sharpened for actions that will be less precise and more jolting. This here is sane policy.”</p>	
<p>“If you have working internal organs and are not counting on capital to be your primary contribution and ultimate source of further economic gain in the future, then you know that this policy is long overture. I can't believe that this is even a battle in the marketplace of ideas. I think the bazaar has been leading the conversation for too long”</p>	
<p>“Adopting the rule is the right thing to do.”</p>	
<p>“We have failed to support salaried workers for far too long.”</p>	
<p>“The state should also create a law to keep the rent affordable.”</p>	
<p>“Some benefits such as 401k matching are based on salary, not actual earnings. This would fix that problem.”</p>	
<p>“It's time to change the way the citizens of this state view labor, workers, and each other.”</p>	
<p>“We need laws like this to start to see a return of the middle class.”</p>	
<p>“If the threshold for overtime pay had kept pace with inflation, it would be significantly higher than the outdated federal benchmark.”</p>	
<p>“Think of those who have less than you. Use your power to help them.”</p>	
<p>“Restoring overtime protection is one very small step toward addressing structural racism.”</p>	
<p>“8 hours for work, 8 hours for rest, 8 hours for home chores.”</p>	
<p>“Beware the aggrieved middle class.”</p>	
<p>“Large salaries compensate for hours worked beyond the 40-hour work week.”</p>	
<p>“This is a common sense solution.”</p>	
<p>“Overtime should be the exception not standard practice.”</p>	
<p>“I appreciate that Washington State is taking the lead in this issue. I think that by protecting workers, we build stronger communities locally and regionally.”</p>	
<p>“Income inequality in this country is shameful and this is a small but meaningful way to begin addressing it.”</p>	
<p>“Everyone should have the same opportunity for success employers and employees alike.”</p>	

<p>“These rules have the potential to improve the lives of hundreds of thousands of workers in Washington State who are currently exempt from overtime protections.”</p>	
<p>“People need work-life balance.”</p>	
<p>“The proposed rule would help employees either receive overtime pay or receive an increased exempt salary.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“Take care of implementing this policy immediately.”</p>	
<p>“All people who work for a living should be paid overtime for work over 40 hours. Exceptions are those who are paid enormous salaries over and way above the working class. Their overtime is included in their wages and bonuses. Please stand by our working class, they make the State of Washington the best place to live!”</p>	
<p>“Time is money — employers shouldn’t just get both.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. When workers around the country see how our state promotes and supports fairness for all workers, our economy as a whole benefits.”</p>	
<p>“I totally endorse the proposed plan to the reinstate overtime pay for salaried workers.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold</p>	

<p>for overtime exemption. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it's not because we're working less."</p>	
<p>"We've been chipping away at workers' rights for too long...We can do better and when we do, we will all be more prosperous and happy. We can afford to treat people better than this if we embrace progressive labor and tax policies. Excessive overtime also has a disproportionate effect on single parents with child care responsibilities. If employers can't afford to pay people properly and treat them with respect, their business plan is no good and they shouldn't be in business."</p>	
<p>"I live in Seattle and I work in retail. C'mon now. Enact sensible policy before the pitchforks get sharpened for actions that will be less precise and more jolting. This here is sane policy."</p>	
<p>"I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. Far too many workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work as many as 60 hours a week or longer to get the job done — without getting paid a dime for all that extra time. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free. If you have working internal organs and are not counting on capital to be your primary contribution and ultimate source of further economic gain in the future, then you know that this policy is long overdue."</p>	
<p>"Overtime is essential to both pay workers their due when they are working when they could be/should be resting, spending time with friend and family, reading, etc. Time is all we have and we can't renew it or get it back. Time is precious and if we spend it doing overtime the pay must be worth it. Eight hours work -- eight hours rest -- eight hours for what we will and for any more -- overtime!"</p>	
<p>"When I was working, I was also a single parent getting no child support, so overtime pay was very important to me., because if I wasn't</p>	



<p>home, I had to pay someone else to care for my children. Plus, overtime work is that much harder after the end of an 8 hour day.”</p>	
<p>“It’s only just and right to do this.”</p>	
<p>“Do the right thing!”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights by raising the salary threshold for overtime exemption. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it’s not because we’re working less. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“A salaried job should average 40 hours a week—if the tasks aren’t completable in that amount of time, it should either be split into multiple jobs or earn overtime pay!”</p>	
<p>“Time is money — employers shouldn’t just get both. We have failed to support salaried workers for far too long!”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. Employers cut costs by over-relying on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“The federal government has failed its responsibility to workers, so it’s time for the state to step up and restore overtime rights. Salaried workers are putting in more and more hours — but we’re not getting paid for it. Employers cut costs by over-relying on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“I am writing to urge you to restore overtime rights to salaried workers in our state. Hundreds of thousands of workers in food service, retail, offices, nonprofits, and other jobs are paid low salaries and expected to work 60 hours a week or longer — without any overtime pay.</p>	

<p>Employers cut costs by over-relying on a small group of employees because they are exempted from overtime and their time is free.”</p>	
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<p>“I am writing to urge you to restore overtime rights to salaried workers in our state. Salaried workers are putting in more and more hours — but we’re not getting paid for it. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to make time for what matters.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more</p>	

<p>than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. When your workweek never ends, your life becomes a constant scramble and it’s almost impossible to make time for what matters.”</p>	
<p>“I am writing to offer my strong support for bold action by Washington state to restore overtime rights. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. Long work hours negatively affect productivity, workplace safety, community involvement.”</p>	
<p>“I am super excited about salaried workers getting the overtime pay they deserve. We need bills like this to start to see a return of the middle class. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 7% do — and it’s not because we’re working less. Long work hours negatively affect productivity, workplace safety, community involvement.”</p>	
<p>“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. As recently as the 1970s, more than 60% of salaried workers got time-and-a-half when they worked more than 40 hours a week. Now less than 10% get overtime pay — and it’s not because we’re working less. Opportunities for advancement are restricted when an employer over-relies on a small group of employees because they are exempted from overtime and their time is free.”</p>	
<p>“I have seen worker’s pay eroded by the overtime exemption standard. It has affected the productivity and safety of the labor force. These Americans are not expendable. The federal government doesn’t care about them but Washington State can and should do better than the Trump Administration. We are defined by our actions.”</p>	
<p>“Overtime should be a wake-up call for employers that they need to hire additional workers, not just milk more labor from existing employees. If the threshold for overtime pay had kept pace with inflation, it would be significantly higher than the outdated federal</p>	

benchmark. So since the federal government won't keep up with the times, the state must act.”	
“I just wanna support ppl who have their overtime pay stolen because of inactive greedy bribed policy makers.”	
“Just emailing in support of the new law to add overtime protections for workers making less than \$70000 per year.”	
“I am writing to urge you to restore overtime rights to underpaid and overworked salaried workers in our state by raising the salary threshold for overtime exemption. Large (often excessive) salaries compensate for hours worked beyond the 40-hour work week.”	
“For children and families I think increasing the base would support them better. It would increase their personal income and dependence on services like childcare subsidy.”	
“We know that our members’ families, communities, and the economy overall will be stronger when all employees receive fair compensation for their work and have sufficient time for rest, family, health, and civic participation.”	
“While this change wouldn't affect me personally, I believe it's the right move for Washington State and its economy.”	
“If you work more than 40 hrs a week, in a non management, non operational job you should be eligible for overtime. Your salary shouldn't be part of the equation. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”	
“I want to maintain and do business in the state of Washington where workers' rights are honored.”	
“It's important for everyone to have time to sleep eight hours, work eight hours, and to have time with their families or something they like to do for eight hours.”	
“We should work hard but then go home and have time for the rest of our lives. That's the way it's supposed to be.”	
“People want their time back...And that's exactly what this policy does and why we're here to support it.”	

<p>“In the best case, this policy won't cost employers any money at all. They'll just let workers go home at the end of the day.”</p>	
<p>“Our overtime threshold has been allowed to erode so dramatically over the last 40 years that many workers including low- and moderate-income people can be made to work in excess of 40 hours per week without any additional compensation and without adequate time for rest, family and participation in community life.”</p>	
<p>“This is urgently needed as loopholes in overtime exacerbate inequality for workers who are impacted by employment hate discrimination and a long history of racist policy making.”</p>	
<p>“Washington is a national leader on minimum wage, sick leave, paid family leave, equal pay and many other important worker protections. The people of Washington expect nothing less for our overtime protections.”</p>	
<p>“The adoption of this rule is an important element in rebuilding Washington's middle class.”</p>	
<p>“This proposal rebalances the scales in a way that is easy to understand, that will keep up with our economy over time, and recognizes that time is money, and that employers shouldn't get both.”</p>	
<p>“The overall proposal would make us be more thoughtful about staff members' workloads to manage overtime costs and also pay staff for hours worked, which we fully support.”</p>	
<p>“Since minimum wage is currently rising in Washington, this proposed restoration will keep up with the cost of living and not erode over time.”</p>	
<p>“The increase also brings us closer to what it actually costs to support a family in most parts of the state.”</p>	
<p>“We appreciate this rule's alignment with the Federal guidelines and the multi-year projections that allow us to do better planning and also funders to do better planning.”</p>	
<p>“Updating these rules that are tied to the minimum wage will prevent erosion of our wages and will make our lives better by being compensated appropriately for our time spent at work.”</p>	

<p>"I support this move not only because it would benefit workers, but also because it would pressure companies to operate more ethically in general."</p>	
<p>"It's time to bring our statutes into the 21st century."</p>	
<p>"In general, as prices rise, so do wages (that's another issue), That means that a fixed threshold becomes more and more obsolete. It's time to realign current costs with the point at which a salaried person is no longer eligible for overtime."</p>	
<p>"The wealth inequality in America is outrageous. We need to help the middle class in any way we can."</p>	
<p>"Please help make respect for workers' time a reality!"</p>	
<p>"Raising the income of WA workers is one of the most important things we can do!"</p>	
<p>"These proposals will help reduce poverty in Washington State."</p>	
<p>"Overtime is the only thing workers can do to improve their life. Please don't take it away or make it mandatory. Employer should have to pay a lot to employees who sacrifice their lives to work more."</p>	
<p>"Paying overtime would be the only way to ensure some balance."</p>	
<p>"The United States was at its strongest and most successful financially when as many people as possible were paid a wage that could afford them a decent quality of life (And enough disposable income for luxuries)."</p>	
<p>"Things are hard for American workers. We need to start moving the wheel to support workers' rights desperately."</p>	
<p>"Raising the threshold and putting in place means to keep it relevant going forward is important for the health of workers, families and our economy."</p>	
<p>"It makes sense to ensure worker protections are all reflective of current times, preserving their intended purposes."</p>	
<p>"I am writing to offer my strong support for bold action by Washington state to restore overtime protections by raising the salary threshold for overtime exemption, as proposed by your agency in June."</p>	
<p>"I strongly agree with the draft rule proposed by the Department of Labor &amp; Industries to increase the salary threshold for overtime"</p>	

exemption to 2.5 times the state minimum wage, and I urge the department to finalize the rule as written.”	
“As a state employee I am asking my state to step up and support my hard work.”	
“This plan is just fair. Plain and simple.”	
“These proposed rules would help strengthen the middle class at a time when it is being eroded away.”	
“Bravo for having the courage to put these forward thinking changes on the table!”	
“This is absolutely a necessity and the cost of doing business.”	
“While some workers benefit from the marginally higher \$24,000 federal threshold, Washington state needs to do better.”	
“The normalization of the 40-hour work week, and its protection through the use of overtime wages, was one of the greatest achievements of the 20th century labor movement.”	
“The erosion of the overtime threshold since the 1970s has been accompanied by an erosion in real earnings for workers at and below the middle of the earnings spectrum, while incomes for the top 10% have escalated significantly.[1] Low salaries undermine the vibrancy of economic and community life across Washington state. By tying the salary threshold to 2.5 times minimum wage after 2026, the level will go up gradually each year with inflation, and we will not fall so far behind a living salary threshold again.”	
“Even middle-class and white collar workers are seeing a decades-long drop in their pay and benefits, using inflation-adjusted dollars. It is time for the cutoff for the overtime-pay exemption to be raised accordingly.”	
“Adding overtime pay back into this equation will really force employers to genuinely think about work/life balance for their employees. It’s overdue.”	
“While I know this bill won’t affect me at all if it passes I strongly support it as it is a major leap in the right direction to restore workers protections.”	
“Overtime for hours worked over 40 is a standard of any civilized, modern society.”	

<p>“I believe OT should be availability to mid level salary workers. Upper management already receive large bonuses and perks to make up for any OT they don’t receive.”</p>	
<p>“It is generally believed that a person who invests his money is right to expect an increase in his wealth because of his investment. It is not unreasonable to believe that a person who invests his labor should also expect an increase in his wealth proportionate to his investment.”</p>	
<p>“Basically, it’s not fair. Without people to perform the tasks that keep the company in business, the company would not exist. It’s a respect and trust issue.”</p>	
<p>“It harms all of us to have inequity in the workplace.”</p>	
<p>“All of us win when people are not worried about simply surviving.”</p>	
<p>“Before you consider overtime as just an expendable deduction on a spreadsheet, remember what that money provides: support for the families of understaffed police, fire, teachers, medical personnel, and other public jobs WHICH KEEP YOU AND YOUR FAMILIES SAFE AND ALIVE AND EDUCATED; support for the services industries which FEED, CLOTHE, AND SHELTER YOU; and finally, overtime is the least you can provide for those WHO ENSURE THAT THE PRODUCTS THAT FUEL AMERICA'S ECONOMY ARE PRODUCED.”</p>	
<p>“The best thing about overtime rights is that it will provide police, fire, and emergency workers the income they need to continue working to keep us safe.”</p>	
<p>“YOU MUST REGULATE LABOR PRACTICES!!!”</p>	
<p>“Washington step up and take care of the people who actually live here and support this state!”</p>	
<p>“Washington state has long been recognized as a pioneer for worker rights. We applaud the Department’s extensive efforts over the last year to engage the worker and employer communities on the proposed rules.”</p>	
<p>“Please take strong action for those of us who put our hearts into our work yet remain overworked and underpaid.”</p>	
<p>“Given my subsistence pay and uncompensated overtime, I left the position after eight months, Higher rates of turnover in such critical</p>	



<p>service positions are very costly financially and reduce community safety.”</p>	
<p>“There needs to be a balance of work and free time in order to maintain health. The health of workers is key to a sound economy and to the bottom line of our present health insurance situation.”</p>	
<p>“Do it! It’s about time—and a half.”</p>	
<p>“If the salary threshold were set at 2.5 times the state minimum wage, Washington State’s Department of Labor and Industries would not need to revisit this issue in the future, as the threshold would be automatically updated annually as the minimum wage is adjusted for inflation. This is smart policy, as it will ensure that the threshold does not again erode over time, and it avoids the costly and time-consuming process of rulemaking. Automatic indexing is advantageous for employers as well, as it allows them to know exactly what to expect each year rather than having to guess when the department or lawmakers may choose to enact changes to the regulation.”</p>	
<p>“The Economic Policy Institute estimates that raising the EAP salary threshold to 2.5 times the state minimum wage by 2026—the equivalent of \$70,200 annually in 2020 dollars—would make approximately 173,000 salaried employees in Washington newly eligible for overtime when they work more than 40 hours per week.”</p>	
<p>“Because most employers already have at least some nonexempt staff, every major payroll system can already process overtime pay, meaning that most employers will not need to adopt new payroll or compliance systems. The change would also not stop or impede employers from having flexible scheduling policies—employees could still arrange flexible schedules; they would simply start gaining additional pay when their schedules exceed 40 hours per week.”</p>	
<p>“Because at least some portion of affected workers are likely to receive higher pay, expanding overtime protections can strengthen consumer buyer power, particularly for middle-class households whose spending is the core driver of U.S. economic growth.”</p>	
<p>“In order to continue our long tradition of better-than-average economic strength powered by a robust middle class, Washington state</p>	

<p>must maintain labor standards that stand far above the federally mandated baseline.”</p>	
<p>“The Department’s proposal will help restore the social and legal contract that allowed Washington’s workforce, and therefore our entire economy, to thrive for most of the last century.”</p>	
<p>“Thank you for proposing this long-overdue update, and I implore you to finalize the rule as proposed in June.”</p>	
<p>“Agree with 2.5x because raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“Agree with 2.5x because most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“Agree with 2.5x because expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	
<p>“I vehemently believe that the salary overtime threshold should be at least 2.5x the minimum wage. Unless an executive, workers need to be compensated for the hours they work. Anyone looking for an executive making less than 80k yearly, would be hard pressed to find one. I was once told that Washington state was at the forefront of workers' rights. I hope this rings true and Washington state adopts this proposed rule as it is written. And if the just course of action is mired in uncertainty, then I ask that you read the preamble to our constitution. Thank you.”</p>	
<p>“Agree with 2.5x because given rising costs, particularly in the housing area, overtime is a necessity.”</p>	
<p>“I agree with the proposed rule of 80,000 as a threshold and if I work more than 40 I would be compensated for it.”</p>	
<p>“Agree with 2.5x because restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks it will go right back into the local economy.”</p>	

<p>“Strongly agree with the draft rule issued by the Department of Labor &amp; Industries, which would increase the salary threshold for overtime exemption over the next several years to a level of 2.5x the minimum wage. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“I strongly agree with the draft rule issued by the Department of Labor &amp; Industries, which would increase the salary threshold for overtime exemption over the next several years to a level of 2.5x the minimum wage. Most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“I appreciate the department’s willingness to carefully assess the historic data and make this bold recommendation to restore overtime rights by raising the salary threshold to 2.5x minimum wage. Most workers will end up having more time because their employers will make them work less; any additional money in workers’ paychecks from their additional work hours will go right back into the economy because it will be paid out to workers and spent here in Washington.”</p>	
<p>“I appreciate the department’s willingness to carefully assess the historic data and make this bold recommendation to restore overtime rights by raising the salary threshold to 2.5x minimum wage. Raising the overtime exemption threshold will boost productivity, expand opportunity, and help workers in our state bring work, life, and family back into balance.”</p>	
<p>“I appreciate the department’s willingness to carefully assess the historic data and make this bold recommendation to restore overtime rights by raising the salary threshold to 2.5x minimum wage. Expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	
<p>“I strongly agree with the draft rule issued by the Department of Labor &amp; Industries, which would increase the salary threshold for overtime</p>	

<p>exemption over the next several years to a level of 2.5x the minimum wage. Expanding overtime protections means salaried workers will get more money in our checks, more time for ourselves, or a little bit of both.”</p>	
<p>“I appreciate the department’s careful consideration of the historic data and the bold recommendation to raise the salary threshold to 2.5x minimum wage. Restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks it will go right back into the local economy.”</p>	
<p>“I strongly agree with the proposal to increase the salary threshold for overtime exemption to a level of 2.5x the minimum wage. Restoring overtime protections means workers will end up having more time because their employers will make them work less; and if they get more money in their paychecks it will go right back into the local economy.”</p>	
<p>“I would also stand behind changing the rules about who gets overtime to include more workers based on the job they do. Make 'EXEMPT' employees a rarity.”</p>	
<p>“Of course when you are exempt from overtime they save on payroll. But they also save on health insurance. The save on vacation time. And pensions. On workers comp. On sick time. On hiring. On training.”</p>	

<b>8.f Miscellaneous: Thank you</b>	<b>Response</b>
<p>“I appreciate what the Department of Labor and Industries is doing. Employers have been keeping wages down for far too long despite the exponential growth in productivity of those employees. Thank you for helping balance the scales.”</p>	<p>The department appreciates the feedback it has received throughout the comment period.</p>
<p>“We appreciate the transparent stakeholder process that the Department of Labor and Industries (L&amp;I) has used during the preparation and adoption of these rule proposals.”</p>	
<p>“Thank you for the opportunity to comment on the draft rules, as well as for the extension of comment deadline from September 6 to September 20.”</p>	

<p>“We appreciate the opportunity to provide comments on the Department’s draft rule on the EAP exemptions from state overtime, minimum wage, and paid sick and safe leave protections. Thank you for the thoughtful and inclusive approach your team has taken during this process.”</p>	
<p>“Thank you for taking on this issue.”</p>	
<p>“I applaud WA state for caring about its constituents and I'm so grateful to live in a forward thinking state.”</p>	
<p>“Thank you so much for taking this issue on.”</p>	
<p>“Thank you for offering me a chance to comment on bad labor practices and Bravo to all who are working to correct these abuses., at least in our great State of Washington.”</p>	
<p>“Workers are human beings with families, communities, and lives outside of work — our time counts, too. Thank you for taking action on this important issue.”</p>	
<p>“Thank you for your work to make sure workers' time is represented.”</p>	
<p>“Thank you for the depth of research you have done, the process you have taken, and your vision for a healthier state.”</p>	
<p>“Thank you for your work on this important step to restoring protections for hundreds of thousands of Washington’s salaried workers.”</p>	
<p>“Thank you for finally acting to fix this long-standing iniquity and injustice against hundreds of thousands of my fellow Washingtonian workers, and finally mitigate this awful exploitation of our workforce.”</p>	

## **Response to Comments by Association of Washington Business (AWB): Summary**

The department has separately analyzed and responded to the comments submitted by AWB. The response follows the sequence of the AWB comments.

### **1. *The scope of these regulations is limited by the statute.***

RCW 49.46.010(3)(c) authorizes the director of the Department of Labor and Industries (department) to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the Minimum Wage Act (MWA), which the department initially did in 1976. Historically, both state and federal overtime exemption rules have generally required that executive, administrative or professional (EAP) employees meet the following three-part test to be exempt:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”).
- The amount of salary paid must meet a minimum specified amount (the “salary level test”).
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).

The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department’s authority and are within the scope of historic norms.

### **2. *The department has no authority to deviate from the Washington Legislature’s intent that the Washington EAP exemptions should mirror the FLSA EAP exemptions.***

The department does not agree with this characterization of the Legislature’s intent. The Legislature authorized the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA, and neither adopted nor chose to incorporate the federal regulations. *See* RCW 49.46.010(3)(c). Both the duties tests and salary thresholds of the rules have diverged significantly from the Fair Labor Standards Act (FLSA) rules since the department promulgated its rules in 1976, so the Washington rules have rarely mirrored the FLSA exemptions. In fact, Washington’s current rules differ from the federal equivalents. The adopted rules are within the department’s statutory authority and both state and federal law allow Washington to adopt labor standards that are more favorable to employees than equivalent federal regulations. But as

the department discusses below, it has attempted to make Washington’s EAP rules consistent with the FLSA exemptions where appropriate.

**3. *Consistency between state and federal law benefits both employers and employees.***

The adopted rules greatly increase consistency with the equivalent federal rules. The U.S. Department of Labor announced its final federal EAP rules during the state’s rulemaking process. The department had the opportunity to review and consider the updated federal rules.

The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including a salary threshold higher than the federal threshold. The final federal rules also do not adequately address the elimination of the more stringent duties test. The state currently uses two duties tests, and the adopted rules combine the two duties tests into a single test that aligns more closely with the less stringent duties test used in the federal rules. The adopted salary thresholds adequately compensate for the elimination of the more stringent long test. These changes to the duties and salary tests will make classification simpler for employers, and increase the likelihood that workers are correctly classified.

**4. *Regulations should be amended only to the extent there is a demonstrated need for change.***

The Legislature authorized the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. *See* RCW 49.46.010(3)(c). It placed no requirements on when or how those rules should be updated. There is, however, a demonstrated need for change here. The department began this rulemaking to ensure the regulations effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. As part of its process, it has detailed the general goals of the rules and specific objectives of the MWA—the statutes it implements—and determined that the rules were necessary to meet those goals and objectives, analyzed alternatives and consequences of not adopting the rules, and otherwise complied with the rulemaking requirements of the Washington Administrative Procedures Act and Regulatory Fairness Act. *See* RCW 34.05.328.

The department recognizes that when the thresholds become outdated the protections intended by the MWA erode, and workers whom the Legislature intended to protect do not receive the protections of the MWA or the higher salaries, above-average benefits, and greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption from the MWA’s protections. Additionally, employers do not have an efficient and reliable means of identifying which workers are or are not

entitled to these protections because of out-of-date duties test methodologies that are inconsistent with federal regulations, and outdated salary thresholds in the existing rules.

Some of the factors considered in determining whether to update the EAP rules, and what revisions were necessary, included the following:

- The rules governing these exemptions have not been updated since 1976. In addition, the increase in the state's minimum wage not only exceeds the state long-test salary level of \$250/week but also the federal \$455/week salary threshold set in 2004. As such, the state and federal rules were not just ineffective at distinguishing between exempt and nonexempt workers, but failed to provide for the health, safety, and general welfare of the workers envisioned by the Legislature when it adopted the MWA.
- The preliminary injunction and subsequent suspension of the 2016 federal rules by the Texas court heightened the need for state action. The 2016 federal rules outlined the compelling need to not only update the federal salary threshold, but also to address the flawed methodology used in 2004 of pairing the weakest parts of previous long and short tests. Given the compelling record outlined in the 2015 Notice of Proposed Rulemaking and the federal final rules discussed above, the lack of sufficient federal protection magnified the need for the state action.
- Eliminating the current long and short duties test structure and replacing it with a standard test that largely aligns with the federal rules will make it easier for employers to understand and comply with the rules and will provide greater consistency across jurisdictions for employers and workers alike.
- The 1976 standards for exemptions no longer accurately reflect the current expectations of exempt workers, given changes in the workforce over the last four decades.
- The outdated exemptions under the MWA affect what workers are eligible for the new employee rights under Initiative-1433 (I-1433), including paid sick leave and protection from retaliation. After I-1433, the MWA now provides protections for employees to receive their tips and service charges, accrue and use paid sick leave, and exercise all of their MWA rights free from retaliation or discrimination by their employer. The erosion of MWA protections thus affects access to more expansive rights than when the exemption was first created.

With the adopted rules, important MWA protections will be restored and workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will receive them. Further, a mechanism will be in place to ensure



that the test for exemption remains up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.

Finally, the inclusion of meaningful, updated salary thresholds in the adopted rules is consistent with historic norms and, according to the U.S. Department of Labor (USDOL), provides “a valuable and easily applied index to the ‘bona fide’ character of the employment for which exemption is claimed.” See Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”) at 19. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as “the single best test” for distinguishing exempt EAP employees from workers covered by the FLSA’s protections, by “drawing ... a line separating exempt from nonexempt employees.” See Stein Report at 19; 69 FR 22,165; *see also* 81 FR 32,413. The salary threshold cannot perform these important functions if it is so low as to capture only the most obviously and unquestionably nonexempt workers.

**5. *APA cost-benefit rules require evidentiary justification for deviations from federal law.***

The department has met its obligations under the APA with regard to the final cost-benefit analysis (CBA). RCW 49.46.010(3)(c) authorizes the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. As required by the APA, the department has “[d]etermine[d] if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and . . . determine[d] that the difference is justified by the following: (i) A state statute that explicitly allows the agency to differ from federal standards.” See RCW 34.05.328(i). Nonetheless, the differences are also necessary to achieve the general goals and specific objectives outlined by the department. The department’s rulemaking objectives include restoring protections so that employees who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will do so; and implementing a mechanism to ensure that the test for exemption remains up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.

**6. *The department should not promulgate proposed amendments prior to the soon-to-be-issued final rule by the U.S. Department of Labor.***

As discussed above, the U.S. Department of Labor announced the final updated federal rules during the state’s rulemaking process, and the department had the opportunity to review and consider the updated federal rules prior to adopting the state rules. While the department has strived for consistency with the federal rules in many areas, the department determined based on stakeholder feedback and cost-benefit analysis that some differences from the federal standards were necessary to uphold important protections for employees in Washington State. The MWA is more protective in a number of aspects compared to the FLSA, so requiring a more

stringent standard is consistent with Washington State's more protective MWA. This is also consistent with reading the Legislature's authorization to adopt rules defining and delimiting what workers are employed in a "bona fide executive, administrative or professional capacity" under the MWA in tandem with its direction to enforce labor standards that are more favorable to employees than equivalent federal regulations. See RCW 49.46.120. It also reflects the reality that by most metrics, Washington is in the upper quartile compared to other states for both income and the cost of living.

Taking into account the differences between state and federal standards, the final CBA produced by the department analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. Based on the estimated costs as detailed in the department's final CBA, the annualized total administrative cost of these rules is estimated to be \$13.65 million within the 10-year timeframe. The quantitative annualized benefits are estimated to be \$18.33 million to \$18.91 million over the same period. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

***7. The proposal to make the salary threshold a super minimum wage is unlawful, not supported by the rule-making record, has not been assessed through a valid cost-benefit analysis, and is poor public policy.***

The salary threshold requirement has historically always been part of both the state and federal EAP exemption tests and it does not operate as "super minimum wage." The adopted rules update outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds and prevents the thresholds from eroding over time. The data considered by the department in arriving at the 2.5 times the state minimum wage multiplier includes the following:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status -- a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The

salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein Report. In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent

with this level.

- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA’s protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington’s average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

The department believes that the final CBA thoroughly assesses and supports the updated salary thresholds.

Neither the historical nor current salary threshold tests create a “super minimum wage.” Employers have many potential options to comply with the adopted rules and are not required to adjust salary levels. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
- **Limiting 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 MWA
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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.

**8. Other variances from federal law should be rectified.**

- **WAC 296-128-\_\_\_ Highly compensated employees.**  
The department considered adding a highly compensated employee (HCE) exemption similar to the federal regulations but chose not to include it for several reasons. First, there was a lack of significant stakeholder interest and no consensus to support including the exemption in its rules update. Second, this exemption has historically not been included in state regulations and it contradicts the intent of the adopted rules by creating standards less favorable to workers in Washington State. And third, adding an HCE exemption would also result in denying currently protected workers the rights to sick leave, protection from retaliation, tips and service charges, and other protections created by I-1433, which would contradict the apparent will of the voters.
- **WAC 296-128-540 Outside salesperson.**  
The department chose to maintain the requirement that exempt outside salespersons be compensated on a guaranteed salary, commission, or fee basis, and the requirement that employers must advise exempt outside sales employees of their status as an outside salesperson. These requirements are part of the current rules, and the department chose to maintain these longstanding protections. Removing these requirements would similarly contradict the intent of the adopted rules by creating standards less favorable to workers in Washington State. Based on stakeholder feedback, the adopted rules clarify the language in WAC 296-128-540(4) to confirm that the salary threshold in WAC 296-128-545 does not apply to exempt outside salespersons.
- **WAC 296-128-530 Professional. Subpart 2(b), related to teachers, should be deleted in its entirety.**  
The adopted rules maintain the requirement that teachers be compensated on a salary or fee basis to be exempt from the protections of the MWA. Teachers paid hourly, such as some substitute teachers and paraeducators, have historically received MWA protections. Removing the long-standing requirement under Washington law for teachers to be compensated on a salary or fee basis would be inconsistent with the intent of the adopted rules by creating standards less favorable to workers in Washington State. Based on stakeholder feedback, the adopted rules include clarified language in WAC 296-128-530(2)(b) to

indicate that the salary threshold in WAC 296-128-545 does not apply to those exempt, teaching professionals. Federal regulations also do not require professional exempt teachers to meet a salary threshold, so state and federal standards are aligned in this regard.

## Response to Comments by Public Utility District No. 1 of Chelan County (Chelan PUD): Summary

The department has separately analyzed and responded to the comments submitted by Chelan PUD. The response follows the sequence of Chelan PUD's comments.

### 1. *Aligning the Washington duties test with the federal duties test*

As the commenter recognizes, the adopted rules significantly increase consistency with the equivalent federal rules in many areas. The state currently uses two duties tests, and the rules update combines the two duties tests into a single test that aligns more closely with the duties test used at the federal level. The updated state duties tests and federal duties tests are similar in their descriptions of the job duties that the employees must perform and their focus on the duties actually performed, rather than on the job title or on the duties that an employer provides in a written position description. These changes will make the evaluation of employees' duties simpler for employers, and increase the likelihood that workers are correctly classified.

While the state and federal regulations are aligned in many ways, it is also within the department's statutory authority to adopt labor standards that are more favorable to employees than equivalent federal regulations. *See* RCW 49.46.120. Where differences between state and federal regulations exist, the department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State.

### 2. *Salary basis minimum threshold*

As the commenter recognizes, the minimum thresholds in the existing rules do not currently operate as originally intended—to clearly demarcate whether an individual is a bona fide exempt employee—so an update is necessary. The adopted rules include statewide salary thresholds based on the department's consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) "Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and

Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” See RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short test salary level and the long test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent



with this level.

- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the Minimum Wage Act (MWA)'s protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

The commenter proposes using the 20<sup>th</sup> percentile of earnings for Washington State or Western Census Region salaried workers. The department does not agree that 20<sup>th</sup> percentile is a sufficient benchmark. This comment highlights a misunderstanding about the historical role of the salary threshold. As the commenter notes, its suggested threshold would only identify some workers who are the most "obviously nonexempt workers." See Chelan PUD Comment at 2. Such a threshold would not provide any meaningful guidance to employers and employees. The inclusion of a meaningful, updated salary threshold in the adopted rules is consistent with historic norms and, according to the U.S. Department of Labor (USDOL), provides "a valuable and easily applied index to the 'bona fide' character of the employment for which exemption is claimed." See Stein Report at 19. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as "the single best test" for distinguishing exempt EAP employees from workers covered by the Fair Labor Standards Act (FLSA) protections, by "drawing ... a line separating exempt from nonexempt employees." See Stein Report at 19; 69 FR 22,165; see also 81 FR 32,413. The salary threshold cannot perform these important functions if it is so low as to capture only the most obviously and unquestionably nonexempt workers.

The commenter's concerns also highlight another common misconception about what the rules require. The salary thresholds in the rules provide guidance about when an employee is a bona fide exempt employee and do not require employers to make salary adjustments. Rather, employers have many potential options to comply with the adopted rules. As discussed in other responses, some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
- **Limiting 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 MWA
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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.

### **3. *Regional differences***

The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered, and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

### **4. *Annual escalation of salary basis threshold***

The salary thresholds in the adopted rules are based on a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds to prevent the thresholds from eroding over time. The Legislature and people by

the initiative process have repeatedly confirmed their legislative choice to ensure that the MWA adjusts “to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation.” See RCW 49.46.020(2)(b). The adopted rules follow this same mandate. The current salary thresholds have become outdated and obsolete since the last time they were updated in 1976, and the automatic updating mechanism in the adopted rules prevents that from happening again.

The state minimum wage increases are updated by the department using a formula tied to the rate of inflation (based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)) on an annual basis. An annual update balances the administrative burdens of employers with the need for the calculation to provide accurate guidance to employers and employees about who is a bona fide exempt professional. RCW 49.46.020(4) does not provide a mechanism for reducing the minimum wage rate if the CPI-W declines, so the department uses an index-ratcheted calculation that holds the minimum wage rate calculation steady in times of decline. See AGO 2010 No. 7, <https://www.atg.wa.gov/ago-opinions/annual-adjustment-minimum-wage-following-decrease-cost-living>. Basing the salary thresholds on a multiplier of the state minimum wage allows for a predictable calculation that the department already provides, and it does not cause workers to “fall out of the exemption” simply because of a decline in the CPI-W.

Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

#### **5. *Market-based pay***

The adopted rules set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. As discussed above, employers have many options to comply with the provisions of the rules, and the rules would not require any employer to abandon a specific methodology for setting an annual salary, so long as the employer otherwise complies with the rules.

#### **6. *Treatment of exempt part-time workers***

As stated above, the adopted rules set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees whom it intended to exempt. Those standards include both duties tests and salary thresholds. If employees do not meet the duties tests and salary thresholds, they are entitled to receive the protections

of the MWA no matter the number of hours they work. Similarly, the FLSA does not treat part-time workers differently, and requires them to meet both the duties and salary tests for the exemptions.

To the extent this comment is referring to workweek averaging for part-time employees, which is an overtime calculation method available under FLSA, workweek averaging does not apply in Washington State for such employees. However, employers have many potential options to comply with the adopted rules, and one of the compliance options includes converting current exempt salaried employees to non-exempt salaried employees. In this scenario, employers would track the hours of non-exempt salaried employees, ensure that they make at least minimum wage for all hours worked, and pay overtime for hours worked over 40 per week. For salaried non-exempt employees with fluctuating hours, in order to apply a rate of one half of the hourly rate to compensate the employee for the overtime hours worked, the following three requirements must be met:

1. There must be a clear mutual understanding between the employer and the employee that the salary is straight pay for all hours worked in the week.
2. There must be a clear and mutual understanding between the employer and the employee that overtime will be compensated at one-half times the regular hourly rate.
3. The overtime must be paid contemporaneously with straight-time pay.

If the employer fails to establish a specified number of hours per week for which the salary is intended to compensate the worker, it will be assumed that the salary is based upon a 40-hour workweek, and thus, 1-1/2 times the worker's regular rate will be due for all hours worked in excess of 40 in each work week. *See Fiore v. PPG Industries, Inc.*, 169 Wn. App. 325, 279 P.3d 972 (2012). The department's administrative policies provide more guidance on overtime requirements for employees with fluctuating workweeks.

The adopted rules also do not take away an employer's ability to offer flexible or reduced work schedules or remote working options to exempt or nonexempt employees.

Under the Equal Pay and Opportunities Act (EPOA), differences in pay between genders may be acceptable if the difference is not based on gender, and is solely based on business necessity. *See RCW 49.58.020*. If an employer can demonstrate that pay differences between co-workers holding similar jobs are based on business necessity, not gender, there would likely not be a violation of the EPOA statutes.

- 7. *For greater transparency we would have appreciated having comments posted to a website open to public view and hope you will consider that for the future.***

The department appreciates this feedback and will consider this suggestion in future rulemaking efforts.

## Response to Comments by the Independent Business Association (IBA): Summary

The department has separately analyzed and responded to the comments submitted by IBA. The response follows the sequence of IBA comments.

### 1. *The proposed new EAP threshold is excessive*

The department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05, in considering how to establish the EAP salary threshold component. The department prepared a small business economic impact statement (SBEIS) and a final cost-benefit analysis (CBA), and took steps to mitigate the impact on small business. While the salary thresholds in the adopted rules differ from the federal standards and standards in other states, the department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including salary thresholds higher than the federal thresholds. The adopted rules set appropriate standards to effectively distinguish between workers who the Legislature intended to be protected by the MWA and bona fide EAP employees who it intended to exempt. The adopted rules include statewide salary thresholds that were arrived at with consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status -- a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) "Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition," Wage and Hour Division, U.S. Department of Labor ("Stein Report"). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are "bona fide executive, administrative, or professional" workers." *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.
- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has

historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state's 2.5 times the state minimum wage multiplier.

- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL's experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state's adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington's objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the Minimum Wage Act (MWA)'s protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%.

Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

Employers also have many potential options to comply with the adopted rules and are not required to adjust salary levels. Impacts to businesses may differ depending on how they choose to comply with the adopted rules. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
  
- **Limiting 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 MWA
  
- **Converting 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 MWA
  
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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.

The adopted rules modernize the outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds and prevents the thresholds from eroding over time.



The state minimum wage is updated annually by the department using a formula tied to the rate of inflation (based on the Consumer Price Index for Urban Wage Earners and Clerical Workers). Basing the salary thresholds on a multiplier of the state minimum wage allows for a predictable calculation, based on transparent, public information that the department already provides.

Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

## **2. *Unfair Impact On Small Businesses***

The department met the requirements of Chapter 19.85 RCW, the Regulatory Fairness Act, by considering steps to mitigate costs to small business. The proposed rules included a delayed phase-in schedule for small businesses, which is a form of mitigation authorized by the Regulatory Fairness Act. The department also requested suggestions from small businesses on further mitigation. Many small businesses asked for a slower phase-in schedule. The adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives all employers, but particularly small businesses, more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. Beginning in January 2020, the federal salary threshold will increase to \$684 per week, or \$35,568 per year. With the finalization of the new federal rules and the federal rules implementation date of January 1, 2020, the department anticipates employers will not need to make significant additional adjustments for the July 1, 2020 salary threshold implementation. The adopted rules' next step will not be until January 1, 2021, almost a full year after the adopted rules are published.

In addition to the implementation phase-in schedule with a more gradual phase-in for small business described above, the adopted rules update the duties tests to more closely align with federal regulations. Eliminating the current long and short duties test structure and replacing it with a standard test that largely aligns with the federal rules will make it easier for employers to understand and comply with the state rules and will provide greater consistency across jurisdictions for employers and workers alike.

The department has also considered other methods of reducing costs under RCW 19.85.030 and found them inapplicable or infeasible. For example, these rules do not directly impose any recordkeeping or reporting requirements. Indirectly, they may affect the number of employees for whom certain recordkeeping requirements are imposed under the statute or other rules, but the department cannot

reduce the requirements set in the MWA through these rules. These rules also do not require inspections and present no opportunity to reduce the frequency of inspections. These rules also do not impose fine schedules for noncompliance and present no opportunity to reduce fine schedules.

While RCW 19.85.030(2) requires the department to consider mitigation techniques, it does not require the department to adopt any specific requirements. The department also considered a number of other approaches including a suggested regional approach, the suggested inclusion of a highly compensated employee exemption, and the suggested full adoption of the federal rules. The department received thousands of public comments on the proposed rules and there was a lack of small business stakeholder consensus to support including the aforementioned suggestions in the adopted rules. As explained in the Concise Explanatory Statement, reasons these suggestions were not adopted include:

- The department considered a regionalized approach during the preproposal process but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.
- The department considered adding a highly compensated employee (HCE) exemption similar to the federal regulations, but chose not to include it for several reasons. First, there was a lack of significant stakeholder interest and no consensus to support including the exemption in its rules update. Second, this exemption has historically not been included in state regulations and it contradicts the intent of the adopted rules by creating standards less favorable to workers in Washington State. And third, adding this HCE exemption would also contradict the expressed will of the citizens who voted to provide the additional protections to the MWA when they passed I-1433.
- The department considered the suggestion of fully adopting the federal rules to lessen confusion or conflict between potentially different state and federal requirements, but ultimately did not choose to follow this approach in the adopted rules. The department increased consistency with the federal rules in many areas, including more closely aligning the duties tests with

federal regulations. The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State.

### **3. *Unfairness to rural parts of Washington State***

As noted above, the department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation. The department chose the statewide salary thresholds in the adopted rules for the reasons stated above.

### **4. *Inappropriate July 1st effective date***

As discussed above, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. With the finalization of the new federal rules and the federal rules implementation date of January 1, 2020, the department expects that employers will not need to make significant additional adjustments for the July 1, 2020 salary threshold implementation. The adopted rules' next step will not be until January 1, 2021, almost a full year after the adoption of the final rules.

The department complied with the Administrative Procedure Act by analyzing potential impacts to all affected businesses in the final CBA. The analysis in the final CBA was performed with consideration of the July 1, 2020 effective date as the starting date of the phase-in schedule. The department acknowledges the lack of reliable data to analyze the difference in compliance costs between large and small businesses. In the absence of this data, the department identified cost mitigation measures to comply with the requirement set forth under RCW 19.85.030.

## Response to Comments by Klickitat County: Summary

### Attachments:

- Appendix A: Impact study of increasing the formula used to determine exempt salary threshold from 1.5 to 2.5 by 2026.
- Appendix B: The net result is staggering for us and our comparable counties. We project 56 out of our 66 exempt positions, or 85%, would lose their exempt status in 2026.
- Appendix C: Proposed compromise. Use the well-established State of Washington Per Diem Sliding Scale for the formula.
- Appendix D: Per Diem Rates – As of October 1, 2018

The department has separately analyzed and responded to the comments submitted by Klickitat County. The response follows the sequence of the Klickitat County comments.

1. ***Appendix A: Impact study of increasing the formula used to determine exempt salary threshold from 1.5 to 2.5 by 2026 and Appendix B: The net result is staggering for us and our comparable counties. We project 56 out of our 66 exempt positions, or 85%, would lose their exempt status in 2026.***

The department has reviewed Appendix A and Appendix B. The department has fully complied with the Administrative Procedures Act, RCW 34.05, and has prepared a final cost-benefit analysis (CBA) for the adopted rules. The final CBA provides a sound analysis tailored to the unique statewide economic circumstances of Washington, but does not compare each county. The adopted rules set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP workers whom it intended to exempt. Those standards include both duties tests and salary thresholds.

The adopted rules include statewide salary thresholds based on the department's consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status -- a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) "Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition," Wage and Hour Division, U.S.

Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” See RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.

- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA's protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The adopted multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

Employers also have many potential options to comply with the adopted rules and are not required to adjust salary levels to comply with the MWA. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
- **Limiting 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 MWA
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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

**2. *Proposed compromise. Use the well-established State of Washington Per Diem Sliding Scale for the formula.***

The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

There are additional concerns about basing the salary threshold levels on per diem rates. Per diem rates only reflect the travel costs in certain regions. For example, lodging per diem rates are set based on average daily rate (ADR) data, which is a lodging-industry measure based upon a property's room rental revenue divided by the number of rooms rented at mid-range hotels in each market. Therefore, they are not necessarily a good indicator of the overall cost of living or the average earnings of workers in a region. Using the 2018 Quarterly Census of Employment and Wages as an example, Jefferson and Clallam Counties were among those with the lowest average weekly wages (ranked 29<sup>th</sup> and 26<sup>th</sup> respectively among all 39 counties), yet they were among the top three counties with the highest per diem rates. Klickitat, by contrast, had the 5<sup>th</sup> highest average wages in the state in 2018, but was in the group with the lowest per diem rates. In addition, there is no precedent or legal authority that suggests using average nightly room rental rates would be an appropriate form of analysis for the salary thresholds. The department's analysis, in keeping with historical methods of analysis for the EAP exemption rules at the federal level, relies on salary- and pay-related data. The final CBA provides a sound analysis tailored to the unique economic circumstances of Washington State.

Additionally, Washington's General Services Administration (GSA) has a "standard rate" that applies to approximately 85 percent of all counties in the continental United States, and federal agencies can request to have boundary lines for "non-standard areas" set by county, metropolitan area, or city. This standardized rate indicates that a per diem-based analysis would not be likely to accurately reflect economic conditions in specific Washington counties. Further, the variability in the boundary lines and the ability of GSA to alter those lines by agency request could make Klickitat County's suggestion to base salary threshold rates by county difficult to implement.

**3. *Appendix D: Per Diem Rates – As of October 1, 2018***

The department has reviewed Appendix D. Concerns about the applicability and use of this data are described above. The final CBA provides a sound analysis tailored to the unique economic circumstances of Washington State.



## Response to Comments by National Federation of Independent Business (NFIB): Summary

The department has separately analyzed and responded to the comments submitted by NFIB. The response follows the sequence of the NFIB comments.

**1. *The department failed to adequately consider the ability of small employers, particularly those outside of the Seattle metropolitan area, to pay one or more employees a salary at or above this high level.***

As discussed below, the department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05. The department prepared a small business economic impact statement (SBEIS) and a final cost-benefit analysis (CBA), and took steps to mitigate the impact on small businesses. But this comment by NFIB highlights a few common misconceptions about the EAP rules. First, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP employees who it intended to exempt. Second, employers, including small employers, have many potential options to comply with the adopted rules and are not required to adjust salary levels to comply with the MWA. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
  
- **Limiting 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 MWA
  
- **Converting 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 MWA
  
- **Maintaining exempt status**

- Meet salary threshold requirements in adopted 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.

To comply with the Regulatory Fairness Act, the department reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030, and is taking the following steps to reduce the costs of the rules on small businesses:

- **Delayed implementation/phase-in of the salary thresholds.** For those EAP workers subject to salary threshold requirements, the adopted rules include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The phase-in schedule for salary thresholds in the adopted rules is based on employer size, with the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek. Businesses with more than 50 employees are subject to an initial change to 1.25 times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek on January 1, 2027. Businesses with between one and 50 employees are subject to an initial change to 1.25 times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek by January 1, 2028. For hourly computer professionals, the adopted rules phase in implementation over three years, with a more gradual phase-in for small businesses.
- **Aligning with the federal duties test for all executive, administrative, and computer professional employees, and for most professional employees.** The department determined that moving to a standard test that more closely aligns with the test employers are already required to comply with under federal law reduces regulatory requirements and compliance costs for employers.
- **Developing and implementing a robust outreach and education program.** The department is committed to assisting small businesses to ensure they are informed about what they need to know to comply with the law.
- **Considering other mitigation techniques.** The department has considered other mitigation techniques, including those suggested by small businesses or small business advocates.

The adopted rules include statewide salary thresholds based on the department's consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein Report. In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are "bona fide executive, administrative, or professional" workers." *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.
- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state's multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL's experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state's adopted salary threshold at a level consistent with

the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington's objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,372 per week. A salary level of 2.5 minimum wage is consistent with this level.

- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,305 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA's protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

Finally, the department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

2. ***The proposed salary threshold would become the primary, if not exclusive, test for small employers seeking to determine overtime-exempt eligibility.***

The adopted rules include both updated salary thresholds and updated duties tests. Each must be met in order for a worker to be classified as exempt from the MWA. The updated salary thresholds in the adopted rules allow employers to more easily identify the potential affected employees and are a reliable proxy for determining which workers would likely meet the duties test requirements.

Consistent with the department's understanding, the U.S. Department of Labor (USDOL) "has always recognized that the salary level test works in tandem with the duties requirements to identify bona fide EAP employees" and protect the overtime rights of nonexempt white collar workers. See USDOL Final Rule publication in the Federal Register, 81 FR. 32,400. The USDOL began examining the use and purpose of the salary level test shortly after passage of the Fair Labor Standards Act (FLSA). See, e.g., Stein Report. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as "the single best test" for distinguishing exempt EAP employees from workers covered by FLSA's protections, by "drawing ... a line separating exempt from nonexempt employees." See Stein Report at 19; 69 FR 22,165; see also 81 FR 32,413. The salary an employer pays an employee provides "a valuable and easily applied index to the 'bona fide' character of the employment for which exemption is claimed" See Stein Report at 19, 81 FR 32,400.

Nonetheless, there are circumstances where the salary threshold is not a sufficient proxy, because a worker may not perform the necessary duties to qualify for any of the exemptions. Employers also must look at the duties test, even if the salary threshold is met.

The state's current salary thresholds have become outdated and obsolete, and thus no longer serve as a reliable proxy for determining which workers are bona fide executive, administrative, and professional workers. The salary thresholds in the adopted rules correct this longstanding problem.

### **3. *Worker and employer would effectively be subject to an even greater administrative burden.***

The final CBA produced by the department analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. Based on the estimated costs as detailed in the department's final CBA, the annualized total administrative cost of these rules is estimated to be \$13.65 million within the 10-year timeframe. The quantitative annualized benefits are estimated to be \$18.33 million to \$18.91 million over the same period. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

As described above, employers have many potential options to comply with the adopted rules and are not required to adjust salary levels. If an employer determines that converting current exempt salaried employees to non-exempt, salaried employees is too administratively burdensome, they have a number of other options to comply with the adopted rules. This compliance option is not a mandate but rather one of many options that employers can implement if they so choose.

**4. *The department failed to fully comply with the requirements of Chapter 19.85 RCW, the Regulatory Fairness Act.***

The department has met all the requirements of Chapter 19.85 RCW, the Regulatory Fairness Act, by considering steps to mitigate costs to small business. The proposed rules included a delayed implementation schedule that gives small businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. Following comments from stakeholders, the department has adopted rules that include a more extended implementation schedule than the proposed rules to give small businesses additional time to comply.

The department has also considered other methods of reducing costs under RCW 19.85.030 and found them inapplicable or infeasible. For example, these rules do not directly impose any recordkeeping or reporting requirements. Indirectly, they may affect the number of employees for whom certain recordkeeping requirements apply under the existing statutes and rules, but the department cannot reduce the requirements set in the MWA through these rules. These rules also do not require inspections and present no opportunity to reduce the frequency of inspections. These rules also do not impose fine schedules for noncompliance and present no opportunity to reduce fine schedules.

While RCW 19.85.030(2) requires the department to consider mitigation techniques, it does not require the department to adopt any specific requirements. The department also considered a number of other approaches including a suggested regional approach, the suggested inclusion of a highly compensated employee exemption, and the suggested full adoption of the federal rules. The department received thousands of public comments on the proposed rules and there was a lack of small business stakeholder consensus to support including the aforementioned suggestions in the adopted rules. As explained in the Concise Explanatory Statement, reasons these suggestions were not adopted include:

- The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should

be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of "employee" under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

The department considered adding a highly compensated employee (HCE) exemption similar to the federal regulations, but chose not to include it for several reasons. First, there was a lack of significant stakeholder interest and no consensus to support including the exemption in its rules update. Second, this exemption has historically not been included in state regulations and it contradicts the intent of the adopted rules by creating standards less favorable to workers in Washington State. And third, adding an HCE exemption would also result in denying currently-protected workers the rights to sick leave, protection from retaliation, tips and service charges, and other protections created by I-1433, which would contradict the apparent will of the voters.

- The department considered the suggestion of fully adopting the federal rules to lessen confusion or conflict between potentially different state and federal requirements, but ultimately did not choose to follow this approach in the adopted rules. The department increased consistency with the federal rules in many areas, including more closely aligning the duties tests with federal regulations. The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State.

**5. *The proposed rule will impose substantial costs and increase the administrative burden on small business owners...the only mitigation offered is a phased-in implementation approach.***

The department has met the requirements of Chapter 19.85 RCW, the Regulatory Fairness Act, by mitigating costs to small businesses. In addition to the implementation phase-in schedule with a more gradual phase-in for small businesses described above, the adopted rules also make updates to the duties tests to more closely align with federal regulations. Eliminating the current long- and short-duties test structure and replacing it with a standard test that largely aligns with the federal rules will make it easier for employers to understand and comply with the rules, and will provide greater consistency across jurisdictions for employers and workers alike. As described in more detail above, the department considered other mitigation strategies beyond the delayed implementation schedule and duties test updates, but ultimately did not choose to adopt these strategies in the adopted rules for the reasons stated above.

**6. *The method for determining employer size for the implementation schedule appears to disadvantage smaller seasonal employers, particularly those in the retail sector.***

The adopted rules provided a single snapshot approach to establish the employer size. After considering comments from stakeholders, the department adjusted its rule language to provide an additional alternative method to calculate employer size. This methodology allows employers to use the rounded-average size determination provided by the Washington State Employment Security Department (ESD) for Paid Family and Medical Leave (PFML) purposes. This approach looks back over four previous quarters and has the added advantage of reducing administrative burdens for employers, since they will be able to use ESD's calculation to comply with both MWA requirements and administration of PFML by ESD. Employers may choose either of the employer-size calculation methods in the adopted rules and may choose the option that is most consistent with their business practices.

**7. *NFIB and others suggested using plain language and redrafting the rule to make it easier to understand. However, the department instead retained the cumbersome and confusing language of the current rule.***

Where possible, the adopted rules use common wording; but the department considered the extensive stakeholder feedback, which asked the department to align the duties tests with federal standards for ease of understanding and compliance. The language in the adopted rules is largely consistent with federal language, which has a long history of interpretation of terms and definitions in case law. The department intends to rely on the interpretations of the current federal regulations, where terms are identical, and so ultimately chose to keep the language consistent where a revision might change the meaning or interpretation of the provision.

**8. *NFIB opposes an automatic updating mechanism, which is contained in the proposed rule, and instead requested a sunset or specific review period.***

The salary thresholds in the adopted rules are based on a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds and prevents the thresholds from eroding over time. The Legislature and people by the initiative process have repeatedly confirmed their legislative choice to ensure that the MWA adjusts "to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation." See RCW 49.46.020(2)(b). The adopted rules follow this same mandate. The current salary thresholds became outdated and obsolete since the last time they were updated in 1976, and the automatic updating mechanism in the adopted rules prevents that from happening again. The inclusion of an automatic updating mechanism in the adopted rules does not prevent the department from reviewing or updating the rules if economic conditions change. Although the department has not included a specific review period in the language of the adopted rules, the department will



continue to evaluate the effectiveness of the rules, and if there are economic conditions or other factors that warrant additional rulemaking, the department will consider doing so at that time.

Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

## Response to Comments by Washington Farm Bureau: Summary

The department has separately analyzed and responded to the comments submitted by the Washington Farm Bureau. The response follows the sequence of the Washington Farm Bureau comments.

### 1. *Disparate and excessive requirements hurt Washington farmers.*

The purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP employees whom it intended to exempt. These standards are consistent for all employers throughout the state. The adopted rules do not change the application of the EAP exemptions for any specific industry or sector.

The adopted rules do not include disparate requirements for Washington farmers, but this comment also reflects a common misconception regarding agricultural work. RCW 49.46.130(2)(g) exempts many agricultural workers from receiving overtime, but most agricultural workers are still entitled to the other protections provided by the MWA, including rights to minimum wages, paid sick leave, tips and service charges, and protection from retaliation/discrimination.

The salary threshold requirement has historically always been part of both the state and federal EAP exemption tests. The adopted rules update outdated salary thresholds that had not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final cost-benefit analysis (CBA). The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds and prevents the thresholds from eroding over time. The data considered by the department in arriving at the 2.5 times the state minimum wage multiplier includes the following:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state’s current rules, set in 1976, permit an employer to choose one of two “duties tests” to assess a worker’s exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replaces it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S.

Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” See RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent

with this level.

- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA's protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The adopted multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

Employers have many potential options to comply with the adopted rules and are not required to adjust salary levels. Some of the potential options to comply with the adopted rule and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
- **Limiting 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 MWA
- **Converting 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 MWA
- **Maintaining exempt status**

- Meet salary threshold requirements of 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.

The final CBA produced by the department analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. Based on the estimated costs as detailed in the department's final CBA, the annualized total administrative cost of these rules is estimated to be \$13.65 million within the 10-year timeframe. The quantitative annualized benefits are estimated to be \$18.33 million to \$18.91 million over the same period. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

## **2. *Damage to On-the-Job (OTJ) Training for already disadvantaged communities.***

This comment appears to misunderstand the impact of the adopted rules on on-the-job opportunities in rural communities. The adopted rules do not require employers to reduce professional development and training opportunities and do not take away an employer's ability to offer flexible work arrangements to exempt or nonexempt employees. Most employees engaged in on-the-job training are unlikely to meet the duties tests now, and also would not meet the less stringent duties tests under the federal rules or Washington's adopted rules. But the department has recognized employers of all sizes will have to make adjustments based on the implementation of the adopted rules. As discussed above, the adopted rules include an extended salary threshold phase-in schedule to give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees, and to find compliance solutions that will minimize negative impact to employees.

## **3. *Questionable legality.***

RCW 49.46.010(3)(c) authorizes the director of the Department of Labor and Industries (department) to adopt rules defining and delimiting what workers are employed in a "bona fide executive, administrative or professional capacity" under the MWA.

Historically, both state and federal overtime exemption rules have generally required that executive, administrative, or professional (EAP) employees meet the following three-part test to be exempt:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”);
- The amount of salary paid must meet a minimum specified amount (the “salary level test”); and
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).

The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department’s authority and are within the scope of historic norms.

## Response to Comments by Washington Food Industry Association (WFIA): Summary

The department has separately analyzed and responded to the comments submitted by WFIA. The response follows the sequence of WFIA comments.

**1. *The salary overtime threshold of 2-2.5 times the minimum wage, plus an automatic mechanism, would disproportionately affect the members of the grocery and convenience store industry due to lower wages.***

As discussed in other comments, the department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05, in considering the proposed rules changes. The department prepared a small business economic impact statement (SBEIS) and a final cost-benefit analysis (CBA), and took steps to mitigate the impact on small businesses. The department describes its analysis regarding the multiplier below, but this comment highlights several misconceptions about the EAP rules. First, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP employees who it intended to exempt. This is true regardless of the worker's industry. Additionally, employers, including employers in the grocery and convenience store industry, have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the MWA. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
  
- **Limiting 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 MWA
  
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements in adopted 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.

For those EAP workers subject to salary threshold requirements, the adopted rules also include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.

The salary threshold requirement has historically always been part of both the state and federal EAP exemption tests. The adopted rules modernize outdated salary thresholds that had not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. The department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds, and prevents the thresholds from eroding over time. The data considered by the department in arriving at the 2.5 times the state minimum wage multiplier includes the following:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state’s current rules, set in 1976, permit an employer to choose one of two “duties tests” to assess a worker’s exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.



- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short test salary level and the long test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA’s protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the

weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

The department believes that the final CBA thoroughly assesses and supports the updated salary threshold.

***Comment: The ultimate difficulty presented in choosing the salary-threshold has always been, and always will be, the rate set inevitably denies exempt status to some number of employees paid below the level who otherwise meet an exemption's duties requirements.***

The salary thresholds in the adopted rules allow employers to more easily identify the potential affected employees, and are a reliable proxy for determining which workers would likely meet the duties test requirements.

Historically, at both the state and federal level, overtime exemption rules have generally required that EAP employees meet the following three-part test to be exempt:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test").
- The amount of salary paid must meet a minimum specified amount (the "salary level test").
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the "duties test").

The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department's authority and are within the scope of historic norms.

Furthermore, consistent with the department's understanding, the U.S. Department of Labor (USDOL) "has always recognized that the salary level test works in tandem with the duties requirements to identify bona fide EAP employees" and protect the overtime rights of nonexempt white collar workers. See USDOL Final Rule publication in the Federal Register, 81 FR. 32,400. The USDOL began examining

the use and purpose of the salary level test shortly after passage of the Fair Labor Standards Act (FLSA). *See, e.g.,* Stein Report. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as “the single best test” for distinguishing exempt EAP employees from workers covered by the FLSA’s protections, by “drawing ... a line separating exempt from nonexempt employees.” *See* Stein Report at 19; 69 FR 22,165; *see also* 81 FR 32,413. The salary an employer pays an employee provides “a valuable and easily applied index to the ‘bona fide’ character of the employment for which exemption is claimed” *See* Stein Report at 19, 81 FR 32,400.

Nonetheless, there are circumstances where the salary threshold is not a sufficient proxy, because a worker may not perform the necessary duties to qualify for any of the exemptions. Employers also must look at the duties test, even if the salary threshold is met.

The state’s current salary thresholds have become outdated and obsolete, and thus no longer serve the purpose of being a reliable proxy for determining which workers would likely meet the duties test requirements. The salary thresholds in the adopted rules correct this problem.

***Comment: The District Court decision ruled that the salary threshold of \$913 per week was too high because an estimated 4.2 million employees, ineligible for overtime in 2016 and below the minimum salary level, would no longer be exempt from the federal EAP overtime rules without a change to their duties. The department is at risk of making the same mistake.***

The Legislature, under RCW 49.46.010(3)(c), authorized the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. It placed no requirements on when or how those rules should be updated. Although the Eastern District of Texas’s decision does not interpret Washington law and does not apply to the adopted rule, this comment also highlights misconceptions about both the updates to Washington’s rules and the long-standing role of the salary threshold. Federal and state EAP rules have historically always included a salary threshold alongside a duties test. The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department’s authority and are within the scope of historic norms. When the salary threshold is not updated as wages increase over time, it falls behind real earnings of nonexempt and exempt employees, making it more difficult to identify the bona fide exempt employees. The department began this rulemaking to ensure the regulations effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt.

The department recognizes that when the thresholds become outdated the protections intended by the MWA erode, and workers whom the Legislature intended to protect do not receive the protections of the MWA or the higher salaries, above-average benefits, and

greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption from the MWA's protections.

Some of the factors considered in determining whether to update the rules included the following:

- The rules governing these exemptions have not been updated since 1976. In addition, the increase in the state's minimum wage not only exceeds the state long-test salary level of \$250/week, but also the federal \$455/week salary threshold set in 2004. As such, the state and federal rules were not just ineffective at distinguishing between exempt and nonexempt workers, but failed to provide for the health, safety, and general welfare of the workers as envisioned by the Legislature when it adopted the MWA.
- The preliminary injunction and subsequent suspension of the 2016 federal rules by the Texas court heightened the need for state action. The 2016 federal rules outlined the compelling need to not only update the federal salary threshold, but also to address the flawed methodology used in 2004 of pairing the weakest parts of previous long and short tests. Given the compelling record outlined in the 2015 Notice of Proposed Rulemaking and the 2016 federal final rules discussed above, the lack of sufficient federal protection magnified the need for the state action.
- Eliminating the current long and short duties test structure and replacing it with a standard test that largely aligns with the federal rules will make it easier for employers to understand and comply with the rules, and will provide greater consistency across jurisdictions for employers and workers alike.
- The 1976 standards for exemptions may not accurately reflect the current expectations of exempt workers, given changes in the workforce over the last four decades.
- The outdated exemptions under the MWA affect what workers are eligible for the new employee rights under Initiative-1433 (I-1433), including paid sick leave and protection from retaliation. After I-1433, the MWA now provides protections for employees to receive their tips and service charges, accrue and use paid sick leave, and exercise all of their MWA rights free from retaliation or discrimination by their employer. The erosion of MWA protections thus affects access to more expansive rights than when the exemptions were first created.

Outdated salary thresholds mean that it is more difficult for employers to assess whether workers who make more than the low, outdated threshold amounts are actually the type of bona fide, exempt workers the Legislature intended to exempt from the MWA's protections. The updated salary thresholds in the adopted rules are consistent with historic norms and with the long-standing

understanding that the salary level test is “the single best test” for distinguishing exempt EAP employees from workers covered by overtime and minimum wage protections. See Stein Report at 19.

As required by the Administrative Procedures Act, the department has “[d]etermine[d] if the rule differs from any federal regulation or statute applicable to the same activity or subject matter and . . . determine[d] that the difference is justified by the following: (i) A state statute that explicitly allows the agency to differ from federal standards.” See RCW 34.05.328(i). Nonetheless, the differences are also necessary to achieve the general goals and specific objectives outlined by the department. The department’s rulemaking objectives include restoring protections so that employees who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will do so, and to implement a mechanism to ensure that the test for exemption remains up-to-date so future workers will not be denied the protections that the Legislature intended to afford them.

***Comment: While the salary level needs to be adjusted, the proposed increase with no geographic considerations, automatic adjustments and only partial consideration of incentive pay will have a significant negative impact on the supermarket and convenience industry - a place where many associates receive their first management positions and no longer have to punch a time clock.***

The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department’s authority to introduce a regionalized approach to setting salary thresholds is uncertain. The statutory definition of “employee” under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

As stated above, the department expressed the salary thresholds for exemption as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds, and prevents the thresholds from eroding over time.

The adopted rules do not require employers to reduce incentives offered to employees. For employees to whom the salary threshold applies, the adopted rules maintain the requirement that an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, that has historically been a part of state regulations. Commissions, bonuses, and incentive compensation are not salaries, and therefore have not been permitted to satisfy requirements to pay on a salary basis or meet salary thresholds. The adopted rules do not change this preexisting standard.

Additionally, the adopted rules do not take away an employer’s ability to offer flexible work schedules, provide predictable take-home pay, or opportunities for advancement. It simply requires employers to comply with the MWA with one of the options discussed above.

***Comment: The economic impact analysis does not consider the differences in industries, and the impact on people who want and need on-the-job training at an entry-level position. The economic impact analysis also does not consider that rural Washington is often served by a single independent grocer, where wages are lower, and this proposed salary threshold is completely out of the question.***

As stated above, the department has met its obligations under the Administrative Procedures Act (APA) RCW 34.05 with regard to the final CBA. The APA requires the department to determine that the probable benefits of the rules are greater than their probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented, which the department has done. The analysis in the final CBA is based on industry and occupation type. The department acknowledges the challenge of projecting the impact of these rules over such a long period of time, but the department has based its estimates on the best available data and methodology, and believes those estimates are reliable. The total impact is derived from the number of affected workers at each sector and occupation level and is aggregated from the average impact of each of these cohorts. The department is not required to analyze the specific economic impact that each individual business or a certain business group would incur, and such an approach would be impractical. The adopted rules also do not change the application of the EAP exemptions for any specific industry or sector.

Employers also have many potential options to comply with the adopted rules, and are not required to adjust salary levels. If employers choose to reclassify employees, as suggested by the comments provided, one of the compliance options includes converting currently exempt salaried employees to non-exempt salaried employees, which would allow employees to maintain the security of a steady paycheck. The adopted rules also do not require employers to reduce employee benefits or career advancement or training opportunities, and do not take away an employer’s ability to offer flexible work schedules or remote working options to exempt or nonexempt employees.

Finally, as stated above, the department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. Ultimately, the department did not choose to follow this approach in the adopted rules based on stakeholder input and the data summarized above.

***2. Any changes to the Washington State Minimum Wage Act, Executive, Administrative and Professional Exemptions should be based on the federal rules, once the federal standards are finalized.***

The Legislature authorized the director of the department to adopt rules defining and delimiting what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA, and neither adopted nor chose to incorporate the federal

regulations. Both the duties tests and salary thresholds of the rules have diverged significantly from the FLSA rules since the department promulgated its rules in 1976, so the Washington rules have rarely mirrored the FLSA exemptions. In fact, Washington's current rules differ from the federal equivalents. The adopted rules are within the department's statutory authority, and both state and federal law allow Washington to adopt labor standards that are more favorable to employees than equivalent federal regulations. But as the department discusses below, it has attempted to make Washington's EAP rules consistent with the FLSA exemptions where appropriate.

The U.S. Department of Labor announced the final updated federal rules during the state's rulemaking process, and the department had the opportunity to review and consider the updated federal rules prior to adopting the state rules. The adopted rules increase consistency with federal rules in many areas, including more closely aligning the duties tests with federal regulations.

While the state and federal regulations are aligned in many ways, it is also within the department's statutory authority to adopt labor standards that are more favorable to employees than equivalent federal regulations. Where differences between state and federal regulations exist, the department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State.

## Response to Comments by Washington Hospitality Association: Summary

The department has separately analyzed and responded to the comments submitted by the Washington Hospitality Association. The response follows the sequence of the Washington Hospitality Association comments.

**1. *We believe the proposed salary threshold of 250 percent of minimum wage is inappropriate.***

**a. *We suggest again that the department should align with the federal rule.***

The U.S. Department of Labor announced its final federal executive, administrative, and professional (EAP) rules during the state's rulemaking process. The department had the opportunity to review and consider the updated federal rules. The department's adopted rules greatly increase consistency with the equivalent federal rules. The state currently uses two duties tests, and the adopted rules combine the two duties tests into a single test that aligns more closely with the duties test used at the federal level. These changes will make classification simpler for employers, and increase the likelihood that workers are correctly classified.

The department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including salary thresholds higher than the federal thresholds. The Minimum Wage Act (MWA) is more protective in a number of aspects compared to the Fair Labor Standards Act (FLSA), so requiring a more stringent standard is consistent with Washington State's more protective MWA. This is also consistent with the Legislature's authorization to adopt rules defining and delimiting what workers are employed in a "bona fide executive, administrative or professional capacity" under the MWA, in tandem with its direction to enforce labor standards that are more favorable to employees than equivalent federal regulations. See RCW 49.46.120. It also reflects the reality that by most metrics, Washington is in the upper quartile compared to other states for both income and the cost of living.

The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final cost-benefit analysis (CBA). The department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized below. The data considered by the department in arriving at the 2.5 times the state minimum wage multiplier includes the following:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status--a more rigorous long duties test and a less rigorous



short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.

- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the

last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,372 per week. A salary level of 2.5 minimum wage is consistent with this level.

- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.
  - **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the Minimum Wage Act (MWA) protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington’s average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The adopted multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.
- b. We do not agree with the direction the department has suggested, and that tying the threshold to the minimum wage is inappropriate and conflicts with statutory intent.***

RCW 49.46.010(3)(c) authorizes the director of the Department of Labor and Industries (department) to adopt rules defining what workers are employed in a “bona fide executive, administrative or professional capacity” under the MWA. The adopted rules are within the department’s statutory authority, and both state and federal law allow Washington to adopt labor standards that are more favorable to employees than equivalent federal regulations.

Historically, both state and federal overtime exemption rules have generally required that EAP employees meet the following three-part test to be exempt:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the “salary basis test”).
- The amount of salary paid must meet a minimum specified amount (the “salary level test”).
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the “duties test”).

The adopted rules make updates to the duties tests and salary level tests. The changes in the adopted rules are within the department’s authority and are within the scope of historic norms.

The adopted rules update outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA. As discussed in more detail above, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, after significant consideration of the stakeholder input and the data summarized above. The department expressed the salary thresholds for exemption as a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary thresholds to prevent the thresholds from eroding over time.

The state minimum wage is updated annually by the department using a formula tied to the rate of inflation (based on the Consumer Price Index for Urban Wage Earners and Clerical Workers). Basing the salary thresholds on a multiplier of the state minimum wage allows for a predictable calculation, based on transparent, public information that the department already provides.

Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

**2. Proposed rules will cause significant harm.**

The department has considered comments submitted by small businesses (as referenced in this comment) in other portions of the Concise Explanatory Statement. The department recognizes that for many employers, including those in the hospitality industry, the compensation of employees is their most significant expense. But as WHA's comment indicates, employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
  
- **Limiting 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 MWA
  
- **Converting 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 MWA
  
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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.

The adopted rule also does not require employers to reduce employee benefits or career opportunities, and does not take away an employer's ability to offer flexible work schedules or remote working options to exempt or nonexempt employees.

***3. We urge you to maintain the phase-in period in the final adoption of any rules on this issue.***

The department will maintain a phase-in period in the adopted rules. However, based on stakeholder feedback, the adopted rules include a longer phase-in schedule. For those EAP workers subject to salary threshold requirements, the adopted rules include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.

**4. *We strongly urge the department, if the ultimate decision is to adopt the proposed rules, to end the increase at 2 times the state minimum wage in 2022, and then reevaluate the outcome of the policy before increasing beyond 2 times the minimum wage.***

As mentioned above, the adopted rules include a longer phase-in schedule to allow employers additional time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.

As discussed in more detail above, the department has adopted statewide salary thresholds that are tailored to the state of Washington after considering stakeholder input and the data described above. For example, the adopted multiplier is consistent with the 50<sup>th</sup> percentile of weekly earnings for salaried workers in the West Census Region. The department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that the state's adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was appropriate. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.

After the adoption of the rules, the department will continue to evaluate the effectiveness of the rules, and if there are economic changes or other factors that warrant additional rulemaking, the department will consider doing so at that time.

## Response to Comments by Washington Nonprofits: Summary

### Attachment: Survey Shows Overtime Proposal Challenging for Nonprofits Across Washington State

The department has separately analyzed and responded to the comments submitted by Washington Nonprofits. The response follows the sequence of the Washington Nonprofits comments.

**1. *Support for aligning duties test: We support L&I's decision to align the duties test with the U.S. Department of Labor's duties test...recommend that L&I create plain language guides to proper employee classification***

The department determined that moving to a standard test that more closely aligns with the test employers are already required to comply with under federal law reduces regulatory requirements and compliance costs for employers. The department is committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies.

**2. *Concerns about the proposed thresholds***

**a. *The biggest question for nonprofits is where the resources will come from to pay for increased personnel costs.***

Employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels. Some of the potential options to comply with the adopted rules and salary thresholds may mitigate costs and include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 (MWA)
  
- **Limiting 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 MWA
  
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements of 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.

In addition, for those executive, administrative, and professional (EAP) workers subject to salary threshold requirements, the adopted rules also include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary thresholds. The department is committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.

**b. *We believe that the data gathered in our survey is still relevant, especially given that the final salary threshold is higher than the previously signaled salary threshold.***

**i. *The July 1, 2020 implementation date is too soon.***

As discussed above, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers, including nonprofits, more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. With the finalization of the new federal rules and the federal rules implementation date of January 1, 2020, the department expects that employers will not need to make significant additional adjustments for the July 1, 2020 salary threshold implementation. The adopted rules' next step will not be until January 1, 2021, almost a full year after the adopted rules are published. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary thresholds.

**ii. *The final salary threshold is daunting.***

As stated above, employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels.

The final cost-benefit analysis (CBA) produced by the department analyzed the potential costs associated with the adopted rules and determined that the benefits of adopting the rules outweighed the potential costs. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverages, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provision on affected workers and on public health. Furthermore, decreased work hours due to the overtime coverage of the adopted rules will help reduce occupational injuries or illnesses by reducing stress, fatigue, and other issues related to working long hours that significantly increase the risk of workplace injuries. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

The adopted rules include statewide salary thresholds based on the department's consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state's current rules, set in 1976, permit an employer to choose one of two "duties tests" to assess a worker's exempt status -- a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) "Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition," Wage and Hour Division, U.S. Department of Labor ("Stein Report"). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are "bona fide executive, administrative, or professional" workers." RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.



- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state's multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL's experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state's adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington's objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary

threshold as the threshold has degraded over time, making these workers therefore ineligible for the MWA's protections although there has been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The adopted multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

**iii. *The proposal does not appear to leave any flexibility for workers to take compensatory time off following occasional overtime.***

The MWA allows both public and private sector employers to pay compensatory time ("comp time") instead of overtime pay when the employee voluntarily requests comp time. See RCW 49.46.130(2)(b); WAC 296-128-560; Administrative Policy ES.A.8.1. However, under the Federal Fair Labor Standards Act (FLSA), private employers cannot satisfy their overtime obligations by providing comp time and must pay overtime-eligible employees an overtime premium for any hours worked over 40 in a workweek. The FLSA only allows the use of comp time instead of overtime pay for a public agency that is a state, a political subdivision of a state, or an interstate governmental agency under certain circumstances. Because the adopted rules differ from the FLSA regulations, there may be circumstances where an employee meets the EAP exemption under the FLSA and is exempt from the federal overtime rules, but does not meet the EAP exemption under state rules and therefore must still comply with the state overtime provisions. In these circumstances, an employer may allow an employee the option to request comp time instead of overtime and still remain in compliance with both the FLSA and the MWA. For example, where the duties test is the same under the adopted rule and the federal rule, employers could allow those employees who earn more than the federal salary threshold but less than the state salary threshold the option of requesting comp time instead of overtime. Employers have the obligation of ensuring compliance with both federal and state law.

**iv. *The most significant implementation milestones do not correspond to Washington State's biennial budget schedule.***

As stated above, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers, including nonprofits, more time to adjust to

and comply with the updated salary thresholds for their salaried, exempt employees. With the finalization of the new federal rules and the federal rules implementation date of January 1, 2020, the department expects that employers will not need to make significant additional adjustments for the July 1, 2020 salary threshold implementation. The adopted rules' next step will not be until January 1, 2021, almost a full year after the adoption of the final rules. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary thresholds. The department is committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.

**3. Study the impact on nonprofit organizations before finalizing and implementing the proposal.**

The department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act (APA), RCW 34.05. The department prepared a final CBA. The final CBA analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. Based on the estimated costs as detailed in the department's final CBA, the annualized total administrative cost of these rules is estimated to be \$13.65 million within the 10-year timeframe. The quantitative annualized benefits are estimated to be \$18.33 million to \$18.91 million over the same period. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

The analysis in the final CBA is based on industry and occupation type. The available data sources do not distinguish between for-profit and nonprofit employers. The department is also aware of no data that indicates that workers in the nonprofit sector would benefit less from the adopted rules than their counterparts in for-profit business. However, the department is committed to ongoing conversations with nonprofit stakeholders during the implementation phase-in of the adopted rules to gauge impacts on nonprofits.

**4. Develop an evaluation system for tracking how this impacts nonprofit employers at each implementation milestone.**

The department intends to comply with all of the requirements under the APA, including producing a final CBA that determined whether the probable benefits of the rule are greater than its probable costs, taking into account both the qualitative and quantitative benefits and costs and the specific directives of the statute being implemented. Developing a separate evaluation system for the impact on non-

profits is not a requirement under the APA. However, the department is committed to ongoing conversations with nonprofit stakeholders during the implementation phase-in of the adopted rules to gauge impacts on nonprofits. The department is also committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.

**5. More education is needed about this issue for employers of all types, but especially nonprofit organizations.**

As stated above, the department is committed to developing and implementing a robust outreach and education program to explain the new standards, particularly where there are any differences between the federal and state rules. These efforts include creating plain language implementation guides, providing an eLearning module, offering outreach presentations and webinars, and updating relevant administrative policies. The department is also open to feedback from nonprofit stakeholders about the types of guidance that would be most helpful to their constituents.

**6. L&I should develop a cost calculator for employers to use so that they can estimate and plan for the proposal.**

As part of its education and outreach efforts, the department will consider developing a cost calculator that could be used as an implementation guide to assist employers with choosing a method of compliance.

**7. State agencies need to be thoroughly educated about this proposal so they can include increased labor costs in their appropriations requests and contracts with nonprofits.**

As stated above, the adopted rules include a more extended salary threshold phase-in schedule compared to the proposed rules. This extended salary threshold phase-in gives employers, including nonprofits, more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. The extended implementation schedule also gives nonprofits more time for legislative budget requests and increased fundraising efforts prior to the full implementation of the salary thresholds. The department is committed to communicating with other state agencies and the Legislature about the potential impacts of the adopted rules on nonprofits.

## Response to Comments by Washington Retail Association: Summary

### Attachments:

- Detailed comments by the National Retail Federation on the proposed 2016 changes to the federal salary threshold.
- Detailed economic analysis of the proposed 2016 changes by Oxford Economics
- Economic Impacts of the U.S. Retail Industry by PriceWaterhouseCooper LLC
- Rethinking Overtime – Oxford Economics
- The Proposed Overtime Regulation’s Impact on Retail and Restaurant Managers
- Exhibit A: Employee Opt In/Out Concept

The department has analyzed and responded to the three separate comments submitted by the Washington Retail Association. The response addresses and includes each of the three comments submitted by the Washington Retail Association.

**1. *The cost/benefit analysis of the proposed rule underestimates the costs of the proposed rule by underestimating the number of impacted workers in the retail sector.***

The department does not agree that the final cost-benefit analysis (CBA) underestimates the number of impacted workers in the retail sector. In the final CBA, the estimated number of affected workers in each industry is derived based on the probabilities of workers in a certain occupation being salaried, performing executive, administrative, or professional (EAP) job duties, and being paid between the current salary thresholds and the adopted salary thresholds See final CBA, page 32. The number of affected workers referenced in the comments submitted by the Washington Retail Association appears to be an estimate for the first year of the implementation (2020), and does not reflect the total number of affected retail workers during the entire eight-year phase-in period. Consistent with the total number estimated by the commenter, the department anticipates that the vast majority of 50,000-plus retail workers who are paid on a salary basis and perform EAP-related duties will be reclassified by the time the rules are fully implemented.

**2. *The cost/benefit analysis underestimates the costs to implement the rule.***

The department does not agree that its CBA underestimates the costs to implement the rules. The adopted rules include an eight-year phase-in schedule with different salary thresholds for small and large businesses in each year, so the number of the affected workers and the regulatory cost also vary by year, which the final CBA takes into consideration. Additionally, the administrative cost of \$13.7 million associated with learning the rules, adjusting employee status, and tracking hours worked for the affected employees is the annualized cost over the next 10 years, not the total cost of implementing the adopted rules. The department’s final CBA also estimates

first-year payroll increases of \$36.3 million as part of the implementation costs to affected employers, due to the overtime, minimum wage, and paid sick leave eligibility of affected employees.

**3. *The cost/benefit analysis overstates the benefits of the rule by assuming that 13% of impacted employees do not currently receive paid sick leave benefits.***

The department does not agree that it overestimates the benefits of paid sick leave (PSL) that result from the adopted rules. The department derived its estimated number of the affected workers due paid sick leave coverage in the final CBA based on multiple factors. To perform its calculation, the department first excluded all workers in Seattle and Tacoma from the calculation (16% of state workforce), as salaried workers must receive paid sick leave benefits under these cities' ordinances. The department also excludes those salaried workers it estimates will remain exempt because their employers choose to increase their salaries above the new salary thresholds. The department then applied the estimated 13% to the remaining population based on the share of workers who currently do not have PSL benefits in the Western Region. The final number of affected workers due to PSL coverage represents much less than 13% of the total affected population.

**4. *The analysis of the rule does not reflect the impact on employees.***

As discussed below, the department has fully complied with the requirements of the Regulatory Fairness Act, RCW 19.85, and the rulemaking provisions of the Administrative Procedures Act, RCW 34.05. The department prepared a small business economic impact statement (SBEIS) and a final cost-benefit analysis (CBA), and took steps to mitigate the impact on small businesses. But this comment highlights a few common misconceptions about the EAP rules. First, the purpose of the adopted rules is to set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide Minimum Wage Act (MWA) protections and bona fide EAP employees who it intended to exempt. Second, the adopted rules do not require employers to alter the professional development and training opportunities offered to exempt or nonexempt employees. Third, employers, including small retail employers, have many potential options to comply with the adopted rules, and are not required to adjust salary levels to comply with the MWA. Some of the potential options to comply with the adopted rules and salary thresholds include:

- **Converting current exempt salaried employees to non-exempt, salaried employees and paying 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 MWA
  
- **Limiting 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 MWA
- **Converting 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 MWA
- **Maintaining exempt status**
  - Meet salary threshold requirements in adopted 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.

The adopted rules include an extended salary threshold phase-in schedule to give businesses more time to comply with the updated salary thresholds if they wish to maintain the exempt status of their salary exempt employees.

The multiple compliance options and extended implementation schedule allow employers to adjust to the updated standards in the adopted rules and find compliance solutions that will minimize negative impact to employees.

5. ***The Washington Retail Association strongly opposes the dramatic increase in the salary threshold proposed in the rule.***

To comply with the Regulatory Fairness Act, the department reviewed the list of methods for reducing the impact on small businesses under RCW 19.85.030, and is taking the following steps to reduce the costs of the rules on small businesses:

- **Delayed implementation/phase-in of the salary thresholds.** For those EAP workers subject to salary threshold requirements, the adopted rules also include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to small and large employers. The salary thresholds in the adopted rules are phased in based on employer size, with the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek. Businesses with more than 50 employees are subject to an initial change to 1.25 times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek on January 1, 2027. Businesses with between one and 50 employees are subject to an initial change to 1.25

times the minimum wage for a 40-hour workweek beginning July 1, 2020, and must implement the final statewide threshold of 2.5 times the minimum wage for a 40-hour workweek by January 1, 2028. For hourly computer professionals, the adopted rules phase in implementation over three years, with a more gradual phase-in for small businesses.

- **Aligning with the federal duties test for all executive, administrative, and computer professional employees, and for most professional employees.** The department determined that moving to a standard test that more closely aligns with the test employers are already required to comply with under federal law reduces regulatory requirements and compliance costs for employers.
- **Developing and implementing a robust outreach and education program.** The department is committed to assisting small businesses to ensure they are informed about what they need to know to comply with the law.
- **Considering other mitigation techniques.** The department has considered other mitigation techniques including those suggested by small businesses or small business advocates.

The adopted rules include statewide salary thresholds based on the department’s consideration of stakeholder input and the data summarized below:

- **The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.** The state’s current rules, set in 1976, permit an employer to choose one of two “duties tests” to assess a worker’s exempt status—a more rigorous long duties test and a less rigorous short duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test. The adopted rules eliminate the current long and short test structure and replace it with a standard test that largely aligns with federal rules. The salary level test must be responsive to the changes in the duties test in order for the exemptions to function effectively. It has long been recognized that the salary level test works in tandem with the duties test. *See, e.g.,* Stein, H. (1940) “Executive, Administrative, Professional . . . Outside Salesman Redefined, Wage and Hour Division, U.S. Department of Labor, Report and Recommendations of the Presiding Officer [Harold Stein] at Hearings Preliminary to Redefinition,” Wage and Hour Division, U.S. Department of Labor (“Stein Report”). In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a more significant role in assessing whether employees are “bona fide executive, administrative, or professional” workers.” *See* RCW 49.46.010(3)(c). The adopted salary thresholds adequately compensate for the elimination of the long test.



- **The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.** At the federal level, the U.S. Department of Labor has historically recognized the fact that bona fide EAP workers are set apart from non-exempt workers because they earn salaries well above minimum wage. The department looked to the historical ratio between the federal salary thresholds and the federal minimum wage. The ratio has varied over the course of history of the federal overtime exemption rules, but the overall ratio ranges from 2.00 times to 3.44 times, with a mean of 2.53 times and a median of 2.37 times the minimum wage. This is consistent with the state’s multiplier of 2.5 times the state minimum wage.
- **The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.** The U.S. Department of Labor (USDOL) moved to a single standard duties test in 2004. At that time, the standard duties test, analogous to the previous short duties test, was paired with the salary level equivalent to the historic levels of the former long duties test. In 2016, the USDOL recognized this mismatch and examined the historical relationship between the short-test salary level and the long-test salary level. As part of this examination, USDOL looked to the 2016 Census Region data, and based on its analysis it concluded that a salary threshold between the 35th and 55th percentiles of weekly earning of full-time salaried workers nationwide, when paired with the single, standard duties test, would meet the objectives of its rules. Based in part on USDOL’s experience, the department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that calibrating the state’s adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was most consistent with meeting Washington’s objectives. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,384 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.** The last short test salary threshold set at the federal level using an analysis of actual EAP worker salaries was the 1970 level (\$200). Updating that for current dollars, it is equivalent to \$1,314 per week. A salary level of 2.5 minimum wage is consistent with this level.
- **The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.** Inflation has significantly increased the percentage of workers who technically meet the salary threshold as the threshold has degraded over time, making these workers therefore ineligible for the Minimum Wage Act’s protections although there has

been no change in their duties. Although there is no available data for the specific percentage of Washington State workers covered in 1976, the weekly wage data is instructive. Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from \$206 to \$1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between \$1,042 and \$1,680, and a 2028 threshold between \$1,462 and \$2,357. The multiplier in these final rules will bring the salary threshold to approximately \$1,603 in 2028, which falls within this range.

As stated above, employers have many potential options to comply with the adopted rules, and the adopted rules do not require employers to adjust salary levels or reduce employee benefits or career opportunities offered to exempt or nonexempt employees.

**6. *The proposed rule does not reflect the appropriate role and function of a salary threshold – nor does it reflect workers and employers use of technology in the “work environment.”***

The salary threshold requirement has historically always been part of both the state and federal EAP exemption tests. The adopted rules modernize outdated salary thresholds that have not been updated since 1976. The updated salary thresholds in the adopted rules are lawful and consistent with historic norms, as described in the final CBA.

This comment highlights a common misconception about the role of the salary threshold. The updated salary thresholds in the adopted rules allow employers to more easily identify potentially affected employees and are a reliable proxy for determining which workers would likely meet the duties test requirements. Consistent with the department's understanding, the U.S. Department of Labor (USDOL) “has always recognized that the salary level test works in tandem with the duties requirements to identify bona fide EAP employees” and protect the overtime rights of nonexempt white collar workers. See USDOL Final Rule publication in the Federal Register, 81 FR. 32,400. The USDOL began examining the use and purpose of the salary level test shortly after passage of the Fair Labor Standards Act (FLSA). See, e.g., Stein Report. Since its very first analysis and recommendations, the USDOL has reiterated that the salary level test is regarded as “the single best test” for distinguishing exempt EAP employees from workers covered by the FLSA's protections, by “drawing ... a line separating exempt from nonexempt employees.” See Stein Report at 19; 69 FR 22,165; see also 81 FR 32,413. The salary an employer pays an employee provides “a valuable and easily applied index to the ‘bona fide’ character of the employment for which exemption is claimed.” See Stein Report at 19, 81 FR 32,400.

As discussed above, the department expressed the salary thresholds for the exemptions as a multiplier of the state minimum wage because this ensures regular and automatic updates to the salary thresholds and prevents the thresholds from eroding over time. The

adopted rules include statewide salary thresholds that were arrived at with consideration of stakeholder input and the data summarized above.

The final CBA produced by the department analyzed the potential costs associated with the adopted rules, including administrative costs, and determined that the benefits of adopting the rules outweighed the potential costs. The many potential benefits of the adopted rules include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverage, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provisions on affected workers and on public health. In addition, the department anticipates that decreased work hours due to the overtime coverage of the adopted rules will reduce occupational injuries or illnesses by decreasing repetitive injuries, stress, fatigue, and other issues related to working long hours. This will result in substantial benefits for the involved employers and employees, as well as increased welfare for their families.

Additionally, the adopted rules do not take away an employer's ability to utilize new technology, offer flexible work schedules, or provide remote working options to exempt or nonexempt employees.

**7. *Washington's minimum wage should not be the basis for setting a salary threshold.***

As discussed above, the salary thresholds in the adopted rules are based on a multiplier of the state minimum wage because this ensures regular and automatic updates to the minimum salary threshold to prevent the threshold from eroding over time. The current salary threshold has become outdated and obsolete since the last time it was updated in 1976, and the automatic updating mechanism in the adopted rules prevents that from happening again.

The state minimum wage increases are updated by the department using a formula tied to the rate of inflation (based on the Consumer Price Index for Urban Wage Earners and Clerical Workers). Basing the salary threshold on a multiplier of the state minimum wage allows for a predictable calculation, based on transparent, public information that the department already provides.

Irregular updates to the salary thresholds also increase burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining which employees meet the exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing a mechanism for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

As explained in more detail above, the adopted rules include statewide salary thresholds based on stakeholder input and the following considerations:

- The adopted multiplier sets a salary level that adequately compensates for the elimination of the long duties test and allows for reliance on the current standard duties test.
- The adopted multiplier is the middle range of the historical ratios between the applicable minimum wage and the historical salary level thresholds when the thresholds were updated in the past.
- The adopted multiplier is consistent with the 50th percentile of the weekly earnings for salaried workers in the West Census Region.
- The adopted multiplier is consistent with the real value of the federal salary threshold for the short duties test when last set.
- The adopted multiplier will ensure that the minimum salary level keeps pace with the growth rate of the state average wage.

**8. *Commission, bonus and incentive compensation must be included in determining employee classification.***

The adopted rules maintain the longstanding requirement under state rules that an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities. Commissions, bonuses, and incentive compensation are not salaries, and therefore have not been permitted to satisfy requirements to pay on a salary basis or meet salary thresholds. The adopted rules do not change these longstanding standards.

**9. *Given the thin profit margins under which retailers operate, the increased salary threshold will have a particularly adverse impact on retailers in rural locations.***

As discussed above, the department complied with the APA and RFA requirements and took steps to mitigate the impact on small businesses. The department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. For example, the department heard concerns that a regionalized approach would increase the administrative burden for businesses because so many businesses in our state operate in multiple areas throughout the state. There is also increased complexity, such as determining if a regionalized approach should be based on where the worker lives, where they work, or where the business is headquartered; and what happens when an employee works at more than one location. Finally, the department's authority to introduce a regionalized approach to setting salary thresholds is

uncertain. The statutory definition of “employee” under RCW 49.46 does not differentiate between employees in different regions, nor does it establish different standards or rights for employees based on such regional variation.

The department chose the statewide salary thresholds in the adopted rules for the reasons stated above.

**10. *The proposed rule will adversely impact employees.***

As stated above, employers have many potential options to comply with the adopted rules, and are not required to adjust salary levels. One of the compliance options includes converting currently exempt salaried employees to non-exempt salaried employees, which would allow employees to maintain the security of a steady paycheck.

The adopted rules also do not require employers to reduce employee benefits or career opportunities, and do not take away an employer’s ability to offer flexible work schedules or remote working options to exempt or nonexempt employees.

**11. *We urge the department to:***

**• *Move forward with finalizing updates to the duties tests***

The adopted rules include updates to the duties tests that largely align the state tests with federal standards for ease of understanding and compliance.

**• *Slow down and re-examine the salary threshold:***

**○ *Accurately reflect the appropriate role of the salary threshold in the EAP rule***

As stated above, the inclusion of updated salary thresholds in the adopted rules are consistent with historic norms of including a salary level requirement to determine who meets the EAP exemption in both state and federal regulations. The adopted rules include a more extended salary threshold phase-in schedule than the proposed rules to give businesses more time to adjust to and comply with the updated salary threshold for their salaried, exempt employees.

**○ *Align with emerging federal standards***

The U.S. Department of Labor announced the final updated federal rules during the state’s rulemaking process, and the department had the opportunity to review and consider the updated federal rules prior to adopting the state rules. The adopted rules increase consistency with federal rules in many areas, including more closely aligning the duties tests with federal regulations.

While the state and federal regulations are aligned in many ways, it is also within the department's statutory authority to adopt labor standards that are more favorable to employees than equivalent federal regulations. Where differences between state and federal regulations exist, the department determined based on stakeholder feedback and cost-benefit analysis that preserving some differences from the federal standards was necessary to uphold important protections for employees in Washington State, including a salary threshold higher than the federal thresholds. As discussed in more detail above, the department has adopted a statewide salary threshold that is tailored to the state of Washington after considering stakeholder input and the data described above. For example, the adopted multiplier is consistent with the 50th percentile of weekly earnings for salaried workers in the West Census Region. The department looked to the 2017 Census Region data for the West Census Region as updated for inflation. Of the 13 states in the region, Washington has the second highest median wage and the highest mean hourly and annual wage. As such, the department determined that the state's adopted salary threshold at a level consistent with the 50th percentile of the weekly earning for salaried workers in the West Census Region was appropriate. Using the last published Census Region data of 2017 updated to the first quarter of 2019, the 50th percentile earning is \$1,372 per week. A salary level of 2.5 minimum wage is consistent with this level.

- ***Update the cost-benefit analysis***

The department has updated the final CBA based on the changes made in the final rules that were adopted after the public comment period. You can find more details in the final CBA report.

- ***Incorporate the ability for employees to opt-in as an exempt employee***

The adopted rules do not include an opt-in option for employees. An opt-in approach increases the risk of worker exploitation. Under-informed workers may not fully understand the rights they are asked to give up, or may feel economic or other pressure that prevents them from making an unbiased, fully informed choice. An opt-in system also creates a disincentive for employers to appropriately classify and compensate employees. Finally, an opt-in system could lead to coercion and abuse by employers who could pressure vulnerable employees to opt in. The burden is not on employees to claim or prove that the exemption does not apply to them. The adopted rules maintain the requirement that employers have the burden to show an employee meets the EAP exemption.

- ***Engage with stakeholders to accurately reflect the impact to employers and employees***

The department has extensively engaged with stakeholders throughout the rulemaking and pre-rulemaking process. Prior to filing draft rules, the department solicited stakeholder feedback on data, scoping questions, and draft rules concepts. The

department also released multiple pre-drafts and held feedback sessions throughout the state to gather feedback on the pre-drafts. Once it issued the proposed rules, the department held more than a half-dozen public hearings to gather further feedback on the rules. The department also extended the public comment period on the proposed rules to allow for greater input and participation in the rulemaking process. As discussed above, the department complied with the APA and RFA requirements and took steps to mitigate the impact on small businesses.

**12. *The proposed rule does not reflect the disparity in retail wages between King County and rest of the state.***

As stated above, the department considered a regionalized approach during the preproposal process, but both business and labor stakeholders expressed concern about this approach for a number of reasons. Ultimately, the department did not choose to follow this approach in the adopted rules based on stakeholder input and the data summarized above.

As discussed in more detail above, the department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized above. The salary threshold was not set based on wages earned in King County as suggested in this Washington Retail Association comment.

**13. *The retail exemption in the minimum wage act...doesn't resolve the underlying problem with the proposed rule.***

The updated duties tests and salary thresholds in the adopted rules set appropriate standards to effectively distinguish between workers to whom the Legislature intended to provide MWA protections and bona fide EAP employees who it intended to exempt. The department arrived at the updated salary threshold of 2.5 times the state minimum wage, with a phased-in implementation period, with consideration of stakeholder input and the data summarized above.

As discussed in more detail above, the adopted rules do not include an opt-in approach because of increased risk of worker exploitation and other issues with the potential for economic or employer coercion to the disadvantage of vulnerable employees.

The retail exemption from MWA's overtime requirements, RCW 49.46.130(3), is not affected by the adopted rule. But this comment highlights a misconception about the retail exemption. Workers qualifying under RCW 49.46.130 are exempt from the overtime requirements of the MWA, but are eligible for its other protections. To qualify for the exemption, employees must receive more than half of their pay in commissions on goods or services, and their employee regular rate of pay must exceed one- and one-half times the minimum wage. Contrary to the suggestion in the comment, calculating the regular rate of pay includes commissions earned, as explained in further detail in Administrative Policy ES.A.10.1.

**14. Detailed comments by the National Retail Federation on the proposed 2016 changes to the federal salary threshold, Detailed economic analysis of the proposed 2016 changes by Oxford Economics, Economic Impacts of the U.S. Retail Industry by PriceWaterhouseCooper LLC, Rethinking Overtime – Oxford Economics, The Proposed Overtime Regulation’s Impact on Retail and Restaurant Managers**

The department has reviewed the above-mentioned documents submitted by the Washington Retail Association, and has responded to the comments submitted by the association in response to the proposed state rules. The final CBA provides a sound analysis tailored to the unique economic circumstances of Washington State.

**15. Exhibit A: Employee opt in/out concept**

As noted above, the adopted rules do not include an opt-in option for employees. An opt-in approach increases the risk of worker exploitation. Under-informed workers may not fully understand the rights they are asked to give up, or may feel economic or other pressure that prevents them from making an unbiased, fully informed choice. An opt-in system also creates a disincentive for employers to appropriately classify and compensate employees. Finally, an opt-in system could lead to coercion and abuse by employers who could pressure vulnerable employees to opt in. The adopted rule maintains the requirement that employers have the burden to prove if an employee meets the EAP exemption. The burden is not on employees to claim or prove how they meet the exemption.



**APPENDIX A:**

**Overtime Exemptions – Federal/State Duties Tests Comparison Chart**

<b>Executive Duties Test</b>	
<b>Similarities</b>	
<p>An exempt executive employee’s primary duty must be:</p> <ol style="list-style-type: none"> <li>1. Management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and</li> <li>2. Who customarily and regularly directs the work of two or more other employees; and</li> <li>3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight.</li> </ol> <p>The term “individual employed in a bona fide executive capacity” also includes any employee who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.</p>	
<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>
Executive employees must be compensated on a salary basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Executive employees must be compensated on a salary basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
<b>§541.700</b> gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.103</b> gives additional detail and examples of possible departments or subdivisions related to customarily recognized departments or subdivisions thereof.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.104</b> gives additional detail and examples related to the definition of “two or more other employees.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>§541.105</b> gives guidance on “particular weight.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.106</b> gives guidance on “concurrent duties.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.606</b> gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>Administrative Duties Test</b>	
<b>Similarities</b>	
An exempt administrative employee’s primary duty must be:	
<ol style="list-style-type: none"> <li>1. The performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and</li> <li>2. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.</li> </ol>	
Administrative exemption for employees in an academic setting also include:	
<ol style="list-style-type: none"> <li>1. An employee performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and</li> <li>2. Who is compensated on a salary or fee basis at a rate not less than the amount specified in the respective rules or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed.</li> </ol>	
<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>
Administrative employees must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Administrative employees must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
<b>§541.700</b> gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.201</b> gives additional detail and examples of possible functional areas directly related to management or general business operations.	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>§541.202</b> gives additional detail and examples related to discretion and independent judgement.	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.203</b> gives examples of likely exempt administrative workers and likely non-exempt workers.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.204(2)(b)</b> defines “educational establishment.”	Additional language in this definition is not included in the text of the adopted state rules. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.204(c)</b> gives examples of possible administrative functions directly related to academic instruction or training and functions not directly related to academic instruction or training.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.606</b> gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>Professional Duties Test</b>
<b>Similarities</b>
<p>An exempt professional employee’s primary duty must:</p> <ol style="list-style-type: none"> <li>1. Require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or</li> <li>2. Require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.</li> </ol> <p>The professional exemption also includes teachers with:</p> <ol style="list-style-type: none"> <li>1. A primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an education establishment by which the employee is employed.</li> </ol> <p>The professional exemption also includes employees working in law and medicine who:</p> <ol style="list-style-type: none"> <li>1. Hold a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or</li> <li>2. Hold the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to</li> </ol>

practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

3. In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).
4. Salary threshold requirements do not apply to these exempt professional employees.

<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>
Splits professional exemption requirements into separate learned and creative subdivisions.	Both learned and creative professionals are included in the same rule for greater ease of reference. There is no intended difference in application.
<b>§541.700</b> gives additional guidance and examples relating to the definition of "primary duty."	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
The current federal rule does not apply salary basis or salary threshold requirements to the exemption for teachers.	Teachers must be compensated on a salary or fee basis but there is no salary threshold.
Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
<b>§541.204(2)(b)</b> gives additional guidance relating to the definition of "educational establishment."	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.301(e)</b> gives specific guidance on registered or certified medical technologists, nurses, dental hygienists, physician assistants, accountants, chefs, paralegals, athletic trainers, and funeral directors or embalmers.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.301(f)</b> gives guidance on advanced specialized degrees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>§541.302(c)-(d)</b> gives additional guidance on types of creative professionals that may or may not be exempt.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.303(b)</b> gives examples of possible types of exempt teachers.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.303(c)</b> gives guidance regarding teaching certificates or certifications.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.606</b> gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>Computer Professional Duties Test</b>	
<b>Similarities</b>	
<p>Exempt computer professionals must be employed as computer systems analyst, computer programmer, software engineer, or other similarly skilled worker whose primary duty consists of one the following:</p> <ol style="list-style-type: none"> <li>1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or</li> <li>2. 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; or</li> <li>3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or</li> <li>4. A combination of the aforementioned duties, the performance of which requires the same level of skills.</li> </ol> <p>The exemption for employees in computer occupations does not include:</p> <ol style="list-style-type: none"> <li>1. Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or</li> <li>2. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations.</li> </ol>	
<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>

Computer professionals compensated on a salary or fee basis must be compensated at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Computer professionals compensated on a salary or fee basis must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
Computer professionals compensated on an hourly basis must be compensated at a rate of at least \$27.63 per hour.	Computer professionals compensated on an hourly basis must be compensated at a rate of at least 3.5 times the state minimum wage after the phase-in schedule specified in WAC 296-128-535(1)(c).
<b>§541.700</b> gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
<b>§541.402</b> gives guidance and examples on executive and administrative computer employees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>Outside Sales Duties Test</b>	
<b>Similarities</b>	
An outside sales employee’s primary duty must be:	
<ol style="list-style-type: none"> <li>1. Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or</li> <li>2. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and</li> <li>3. Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.</li> </ol>	
There are no salary threshold requirements for outside salespeople under the federal or adopted state rules.	
<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>
Current federal rules do not have any requirements regarding compensation of outside sales employees on a guaranteed salary, commission, or fee basis.	Outside sales employees must be compensated on a guaranteed salary, commission, or fee basis.
<b>§541.700</b> gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Current federal rules do not require employers to advise employees of their status as outside salespersons.	Employers must advise employees of their status as outside salespersons.
<b>§§541.501-504</b> give additional guidance on outside sales employees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<b>Highly Compensated Employees</b>	
<b>Similarities</b>	
N/A: The adopted Washington rules do not include an exemption for highly compensated employees.	
<b>Differences</b>	
<b>Current DOL rule (2004 Rule)</b>	<b>Adopted Washington rule</b>
<b>§541.601</b> provides an additional exemption for employees with a total annual compensation of at least \$100,000 (including at least \$455 per week paid on a salary or fee basis) who customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.	The adopted Washington rules do not include an exemption for highly compensated employees.