



Updates to state's EAP overtime exemption rules

The Minimum Wage Act defines which workers qualify to earn minimum wage, overtime pay and other protections, as well as which workers are exempt from those protections. L&I has updated the rules governing exemptions for executive, administrative, and professional

(EAP) workers, as well as outside salespeople and computer professionals.

The state had not made a major update to these rules since 1976. The new rules took effect July 1, 2020.

Minimum Wage Act review

State law requires workers to be paid at least the state minimum wage, be paid overtime for any work hours over 40 per workweek, receive their tips and service charges, earn paid sick leave, and be protected from retaliation and discrimination for exercising their protected rights under the law.

Overtime pay is usually 1.5 times the employee's regular hourly rate. Employees cannot waive their right to overtime pay.

The state minimum wage for 2022 is rising from \$13.69 to \$14.49 an hour.

What it takes for a worker to be exempt

A three-step process is typically used to determine if a worker qualifies as exempt:

The salary basis test: 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 level test: The amount of salary paid must meet a minimum specified threshold.

The duties test: The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations. This is not the same as a worker's job title or job description. There are separate duties tests for computer professionals and outside salespeople.

Federal overtime rules

In addition to the state's rule changes, the U.S. Department of Labor updated the federal rules regarding executive, administrative, and professional workers, and outside salespeople and computer professionals. Those changes took effect Jan. 1, 2020.

The biggest change in these rules was an increase in the federal minimum salary threshold, from \$455 a week (\$23,660 a year) to \$684 a week (\$35,568 a year).

When state and federal thresholds conflict, employers must meet the threshold most favorable to employees.

Changes in the state job duties tests

Under the new rules, the state combined its two job duties tests into one test per exemption category that is more closely aligned with the federal standards. This will make it easier to classify workers and increase the likelihood they're correctly classified.

Changes in state salary threshold

The other change establishes a new minimum salary threshold for exempt workers. As July 1, 2020, the threshold is a multiplier of the state minimum wage. The threshold will be phased in through Jan. 1, 2028, when the threshold will be 2.5 times the minimum wage.

The rate of the phase-in will depend on

Steps employers can take

- Review workers' exemption status. Review the job duties and salary levels to make sure workers are properly classified as exempt or non-exempt.
- At the beginning of each year, make sure non-exempt workers are earning at least the new state minimum wage.
- As of Jan. 1, 2021, employers needed to follow the state salary thresholds because they exceeded the federal level.
- As of Jan. 1, 2022, for small and large businesses, the salary threshold will be 1.75 times the state minimum wage: \$1,014.30 a week (\$52,743.60 a year).

Minimum weekly salary threshold implementation schedule

Effective date		July 1, 2020	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026	Jan. 1, 2027	Jan. 1, 2028
For employers with 1-50 employees	Minimum wage multiplier	1.25	1.5	1.75	1.75	2	2	2.25	2.25	2.5
	Weekly threshold (annual)	\$675 (\$35,100)	\$821.40 (\$42,712.80)	\$1,014.30 (\$52,743.60)	\$1,041* (\$54,132)	\$1,210* (\$62,920)	\$1,233* (\$64,116)	\$1,414* (\$73,528)	\$1,443* (\$75,036)	\$1,635* (\$85,020)
For employers with 51 or more employees	Minimum wage multiplier	1.25	1.75	1.75	2	2	2.25	2.25	2.5	2.5
	Weekly threshold (annual)	\$675 (\$35,100)	\$958.30 (\$49,831.60)	\$1,014.30 (\$52,743.60)	\$1,189* (\$61,828)	\$1,210* (\$62,920)	\$1,387* (\$72,124)	\$1,414* (\$73,528)	\$1,603* (\$83,356)	\$1,635* (\$85,020)

NOTE: Salary projections after 2022 are based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W)

the size of the business. The pace for small businesses (1-50 workers) will be slower than that for large businesses (51 or more workers).

Determining employer size

The size of the employer is based on the number of Washington-based workers it employs at the time of the effective date of each step of the implementation schedule. Each employee counts, whether that person works full time or part time.

Employers will also have the option of using the employer size determination provided each fall by the Washington Employment Security Department for Paid Family and Medical Leave purposes.

Changes regarding computer professionals

The new rules changes update the job duties test, used to determine if a computer professional meets the requirements to be overtime exempt. The changes more closely align with the federal duties test. This exemption includes computer system analysts,

How to get more info

L&I rule change webpage:

lni.wa.gov/OvertimeRulemaking

Overtime rules resource center:

<https://lni.wa.gov/workers-rights/wages/overtime/overtime-rules-resources>

U.S. Department of Labor rule:

<https://www.dol.gov/whd/overtime2019>

Sign up for email updates:

lni.wa.gov/wagenews

computer programmers, software engineers, or other similarly skilled workers who meet the job duties test in WAC 296-128-535. The exemption does not include employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment.

In order to be exempt, computer professionals paid on a salary or fee basis will have to be paid at least 2.5 times the state minimum wage for a 40

-hour workweek after a phase-in leading up to 2028.

For computer professionals compensated on an hourly basis to qualify as exempt, the new rules state they must be compensated at a rate of at least 3.5 times the state minimum wage beginning Jan. 1, 2022.

Changes regarding outside salespeople

The new rules update the job duties test used to determine if an outside salesperson qualifies as overtime exempt. The main difference between the new state regulations and federal regulations is the state regulations maintain the requirements that:

- Outside sales employees must be compensated on a guaranteed salary commission or fee basis (but a salary threshold does not apply).
- Employers must advise employees of their status as outside salespersons.