



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

TITLE: EXEMPTION FROM MINIMUM
WAGE ACT REQUIREMENTS
FOR PROFESSIONAL EMPLOYEES

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CHAPTER: [RCW.49.46.010\(3\)\(c\)](#),
[RCW 49.46.130\(2\)\(a\)](#),
[WAC 296-128-530](#)

SEE ALSO: [ES.A.8.1](#),
[ES.A.8.2](#), [ES.A.9.1-9](#),
[ES.A.10.1](#), [ES.A.10.2](#),
and [ES.A.10.3](#)

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This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

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PROFESSIONAL (WAC 296-128-530)

This policy provides information on the professional exemption from minimum wage, overtime pay, and other employment protections under the Minimum Wage Act. Most workers in Washington are required by law to be paid at least minimum wage, earn overtime pay, receive paid sick leave, receive earned tips and service charges, and be protected from retaliation. However, state regulations provide an exemption from these requirements for workers employed as bona fide executive, administrative, professional, computer professional, and outside sales employees. This policy describes the specific professional exemption requirements. There are four main categories of professionals covered in the exemption: learned professionals, creative professionals, teachers, and employees practicing law or medicine. Computer professional employees are discussed in a separate WAC and policy. See [WAC 296-128-535](#); [ES.A.9.6](#). To qualify for an exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at a minimum specified salary level. Job titles and job descriptions do not determine exempt status. In order for an exemption to apply, an employee's actual job duties and salary level must meet all of the requirements of the state regulations. Employees are not exempt if they perform a combination

of some duties from one exemption and some from another, but do not meet all the qualifications for any one, specific exemption.

There are also federal rules pertaining to minimum wage and overtime pay exemptions for bona fide executive, administrative, professional, computer professional, and outside sales employees. Employers must comply with both state and federal regulations. Where differences exist between Washington State and federal regulations, an employer must follow the regulation that is most favorable to the worker.

The following information provides a summary of the requirements of both state and federal regulations for the professional exemption. For more specific information on federal regulations, see CFR Title 29. Check with the U.S. Department of Labor at their toll free # 1-866-487-9243 or on their [website](#), or with a qualified consultant, to determine how federal overtime requirements apply in specific circumstances.

1. Professional Job Duties Requirements.

Learned Professionals. To qualify for the learned professional exemption, all of the following tests must be met:

- 1) The employee's primary duty must be the performance of work requiring advanced knowledge that is predominantly intellectual in character and requires the consistent exercise of discretion and judgment;
- 2) The advanced knowledge must be in a field of science or learning;
- 3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction; and
- 4) The employee must be paid on a salary or fee basis equal to or greater than the required salary threshold.

Creative Professionals. To qualify for the creative professional exemption, both of the following tests must be met:

- 1) The employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor; and
- 2) The employee must be paid on a salary or fee basis equal to or greater than the required salary threshold.

Other Professionals. The Professional exemption also includes qualifying employees in the occupations of teaching, law, and medicine, which are discussed further below. Computer Professionals are separately addressed in [ES.A.9.6](#).

2. Salary Threshold Requirements.

To meet the state exemption requirements for the learned professional and creative professional exemptions, the employee must meet the duties test requirements and must be paid on a salary or fee basis equal to or greater than 2.5 times the state minimum wage for a 40-hour workweek (after an eight-year phase-in concluding in 2028). See Administrative Policy [ES.A.9.9](#) for more information about the salary threshold phase-in schedule. "Salary basis" is explained further in Administrative Policy [ES.A.9.1](#), and "fee basis" is addressed in Administrative Policy [ES.A.9.8](#).

To meet federal requirements, the employee must meet the duties test requirements and must be compensated on a salary or fee basis at a rate not less than that specified in the federal regulations, which is currently \$684 per week.

When the state and federal thresholds are different, workers who meet the federal exemption may not qualify as exempt under state law, or vice versa. Employers should carefully consider both sets of requirements when analyzing worker exemptions.

3. Differences Between State and Federal Regulations.

Federal regulations divide the Learned Professional and Creative Professional exemptions into two, separate sections. The Department includes both categories in the same rule for clarity and ease of reference. Notwithstanding this difference in presentation, the Department intends to rely on the interpretations of the 2019 federal regulations where the regulations are identical to the Department's rules. However, there are some areas where state and federal requirements differ.

Federal regulations do not require that teaching professionals be paid on a salary or fee basis. The federal exemption therefore can apply to hourly teaching professionals. State regulations, in contrast, require that teaching professionals be paid on a salary or fee basis to be exempt and hourly teaching professionals are therefore not exempt.

Federal regulations also provide that executive, administrative, or professional workers can be exempt from overtime pay if they earn more than \$107,432 per year and they perform at least one executive, administrative, or professional duty. These employees are often referred to as "highly compensated employees." State regulations do not contain this provision. Professional workers must meet all of the duties requirements for the state exemption to apply.

Federal regulations also allow an employer to impose *unpaid* disciplinary suspensions of *one or more full days* for workplace-conduct rule infractions for exempt workers, without affecting the exemption. Washington State allows an *unpaid* disciplinary suspension of exempt employees in increments of less than one week *only* for violations of safety rules of major significance. If an unpaid disciplinary suspension is for a non-major safety violation, it may only be in a full-week increment or it will destroy the employee's state exemption for that period. Employers can impose *paid* disciplinary suspensions in any increment without affecting the employee's exemption. See [WAC 296-128-532](#) for more information about deductions for salaried, exempt employees.

4. How to Determine Primary Duty.

"Primary duty" means the principal, main, major, or most important duty that the employee performs. A determination of whether professional work is a worker's primary duty must be based on all the facts in a particular case. It is the employer's burden to demonstrate that an employee meets the primary duty requirements.

The amount of time spent performing exempt duties can be a useful guide in determining whether the professional work is the primary duty of the employee. A good rule of thumb is that professional work is probably the employee's primary duty if the employee spends more than 50 percent of the employee's time performing exempt, professional duties.

Time alone, however, is not the sole test. An employee may still meet the primary duty requirements even if the employee does not regularly spend over 50 percent of the employee's time performing exempt professional duties, if other relevant factors support that conclusion. Some of these other factors include the relative importance of the exempt, professional duties (compared to the other types of duties performed) and the relationship between the employee's

salary and the wages paid to other employees who perform the same kind of nonexempt work as the potentially-exempt employee in question.

5. Learned Professionals: Knowledge of an Advanced Type in a Field of Science or Learning.

The requirement that a learned professional performs work “requiring knowledge of an advanced type” means the work must be predominantly intellectual in character. The work must also require the consistent exercise of discretion and judgment. Learned professional employees generally use their advanced knowledge to analyze, interpret, or make deductions from varying facts or circumstances. Learned professional work is therefore distinguished from work involving routine mental, manual, mechanical, or physical work.

The advanced knowledge used by exempt learned professionals to perform their work is restricted to certain fields. “Field(s) of science or learning” qualifying for the exemption include law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical, and biological sciences, and pharmacy sciences. Other, similar fields may qualify where they carry a recognized professional status and are distinguishable from the mechanical arts or skilled trades, where the knowledge acquired could be of a fairly advanced type, but is not in a field of science or learning.

The advanced knowledge required must also be gained through extended study. The kind of advanced knowledge required to meet the exemption cannot be attained at the high school level. Instead, the phrase “customarily acquired by a prolonged course of specialized intellectual instruction” restricts the learned professional exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. Typical examples may include fields where Masters or PhD degrees are required, or lengthy, specialized courses of study such as the certification required for a Certified Public Accountant. The prolonged course of specialized intellectual study requirement is not met where the prerequisite for entry into the field or occupation is a general, 4-year degree from any field, or a specialized, 2-year degree.

The word “customarily” means the exemption may be available to employees in some professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. As an example, the learned professional exemption is available to the occasional chemist who does not possess the typical, required degree in chemistry, or the occasional licensed lawyer who did not obtain a traditional law degree. However, the learned professional exemption is not available for occupations that are commonly or customarily performed with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical, or physical processes. The exemption also does not apply to occupations in which most employees acquire their skill by experience rather than by advanced, specialized intellectual instruction.

Typical learned professions include research and theoretical scientists, academic theologians, and other professions in which an advanced academic degree is a standard requirement. Learned professionals may also include employees whose positions require more advanced training or specialized instruction than other occupations in the same fields.

The areas in which the professional exemption may be available are expanding. As knowledge develops, academic training broadens, and specialized degrees are offered in new and diverse

fields, new specialists arise in particular fields of science or learning. When an advanced, specialized degree has become a standard requirement for entrance into a particular occupation, that occupation may have acquired the characteristics of a learned profession.

Examples of professions where employees may or may not qualify as learned professionals include:

5.1 Accountants may be exempt as professional employees, regardless of whether they are employed by public accounting firms or by other types of enterprises, if they meet the duties test and advanced learning requirements. Certified public accountants who meet the salary requirement of the regulations will, except in unusual cases, meet the requirements of the professional exemption. Similarly, accountants who are not certified public accountants may also be exempt as professional employees if they actually perform work that requires the consistent exercise of discretion and judgment and otherwise meet the tests prescribed in the definition of professional employee.

Accounting clerks, junior accountants, and other accountants, on the other hand, normally perform a great deal of routine work that does not require the type of specialized and advanced learning typical of learned professionals. Such accountants are not normally exempt. However, the title of the employee is not determinative. A “Junior Accountant” might qualify for an exemption and a “Senior Accountant” fail, depending on the work actually performed by the employee. The application of the professional exemption must be determined based on the individual employee’s duties, which must include the consistent exercise of discretion and judgment.

Some accountants may also separately qualify for exemption as bona fide administrative employees. See [ES.A.9.4](#).

5.2 Advanced Registered Nurse Practitioners (ARNPs) and Registered Nurses (RNs) have traditionally been recognized as professional employees and often qualify for the exemption. Although in some cases the course of study has been shortened, and become more concentrated, nurses who are registered by the appropriate state examining board will continue to be recognized as having met the learned professional requirements. Other types of nursing that do not require the same prolonged study or registration with an examining board, such as licensed practical nurses, nurse practitioners, and similar healthcare employees, generally do not qualify for the exemption.

5.3 Physician Assistants may qualify for the exemption if they have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant. They must also be certified by the National Commission on Certification of Physician Assistants in order to meet the exemption. Physician Assistants who do not meet these educational and certification criteria will likely not qualify for the exemption.

5.4 Dental hygienists may qualify for the exemption if they have successfully completed four academic years of pre-professional and professional study in an

accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association.

5.5 Physical Therapists may qualify for the exemption if they complete an advanced course of study, such as a post-graduate degree in physical therapy (e.g. Doctorate of Physical Therapy), from an institution of higher learning accredited by the Commission on Accreditation in Physical Therapy Education. To qualify for the exemption, physical therapists must pass the applicable state licensing requirements and meet all other requirements of the exemption.

5.6 Massage Therapists generally do not qualify for the exemption because the certificate programs that qualify an individual for licensure as a massage therapist are not a prolonged course of advanced study and massage therapists' scope of practice does not require consistent exercise of discretion and judgment within the meaning of the exemption.

5.7 Registered or Certified Medical Technologists may qualify for the exemption, even though generally less specialized course-work is required. Successful completion of three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association will be recognized as a prolonged course of specialized intellectual instruction and study.

5.8 Chefs, such as executive chefs and sous chefs, may qualify for the exemption if they have completed a four-year specialized academic degree in a culinary arts program and meet both the education and duties requirements for the learned professional exemption. However, the learned professional exemption is not available to cooks or chefs who lack this specialized education, or who perform predominantly routine mental, manual, mechanical or physical work. Prep cooks, line cooks, commis chefs, and pantry chefs, for instance, generally do not qualify for the professional exemption.

5.9 Paralegals rarely qualify for the learned professional exemption because an advanced, specialized academic degree is not a standard prerequisite for entry into the field. Paralegals typically earn either general, four-year degrees, or two-year, specialized associate degrees. Neither meets the requirement of a prolonged course of specialized intellectual instruction. Legal assistants and employees who perform a combination of paralegal and legal assistant duties do not qualify for the exemption for the same reasons. However, paralegals who possess advanced, specialized degrees in other professional fields and regularly apply that advanced knowledge in the performance of their duties may qualify as learned professionals. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer-paralegal may qualify for the exemption.

6. Creative Professionals: Performance of Work Requiring Invention, Imagination, Originality, or Talent.

An exempt creative professional employee's primary duty must be the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor. This requirement distinguishes the creative professions from professions whose work primarily depends on intelligence, diligence, and accuracy. Exemption as a creative professional depends upon how much invention, imagination, originality, or talent the employee exercises. Whether the exemption applies, therefore, is determined on a case-by-case basis. Typical Creative Professions include:

6.1 Artistic Professions. The creative professional exemption may be met if the employee's work is in a recognized field of artistic endeavor. This includes such fields as music, writing, the theater, and graphic arts.

Musicians, composers, conductors, and soloists who are engaged in original and creative work would generally meet the exemption.

In graphic arts, the requirement is generally met by painters and newspaper cartoonists who at most are given the subject matter or concept of the work and then must rely on their own creative powers to express the concept. The exemption is not normally met by a person who is employed as a copyist, inker, or retoucher of photographs, since their work is guided by more specific instructions or requirements and is not primarily imaginative or creative in character.

In the field of writing, essayists, novelists, or screenplay writers who choose their own subjects and provide a finished piece of work meet the definition. More responsible writing positions in advertising agencies that are more creative and discretionary may qualify, while lower-level copy writers with less creative freedom generally would not.

Performing arts where the employee is engaged in work where the quality or result of the work depends primarily on the invention, imagination, or talent of the employee may also qualify. A professional actor, singer, or musician might meet this requirement.

6.2 Radio and Television. There is considerable variation in the type of work performed by radio and television announcers. Some may qualify for the exemption, while others may not. In the field of radio and television entertainment, as in other fields of artistic endeavor, the status of an employee as a bona fide creative professional is in large part dependent upon whether the employee's duties are original and creative in character and the extent to which they require invention, imagination, or talent.

Exempt announcers may perform duties such as functioning as a master of ceremonies; playing dramatic, comedic, or comedic foil parts in a program; interviewing; covering public events, such as sports programs, in which the announcer may be required to ad lib and describe current changing events; and acting as narrator and commentator. In contrast, announcer work such as giving station identification and time signals, announcing the names of programs, and similar routine work is nonexempt work. The determination of whether a particular announcer is exempt as a professional employee must be based upon the employee's individual duties.

6.3 Journalism. Journalists who write original and creative content may qualify as exempt, but most news writers and reporters do not qualify for the exemption because only a minority of news writers and reporters perform work that depends primarily on invention, imagination, or talent. Often different kinds of journalists have the same or similar job titles despite the differences in their job duties, so an employer must carefully examine a journalist's job duties to determine whether the exemption applies.

Journalists who commonly perform work that qualifies as original and creative include editorial writers, columnists, critics, and top-flight reporters and writers of analytical and interpretative articles. The writing of fiction published in a newspaper or other media would also be considered exempt work. Incidental interviewing or investigation, when it is performed as an essential part of and is necessary to an employee's professional work, does not turn the otherwise qualifying work into nonexempt work. For instance, if a dramatic critic interviews a performer and writes a story around the interview, the work of interviewing and writing the story would still be exempt work.

News writers and reporters, with rare exception, do not meet the requirements for exemption as professional employees of the creative type because their writing is not predominantly original and creative in character. The majority of reporters instead do work that depends primarily on intelligence, diligence, and accuracy. This work is not generally interpretative or highly individualized, and therefore cannot be considered to be creative in nature. A reporter or news writer ordinarily collects facts about news events by investigation, interview, or personal observation, and writes stories reporting these events for publication or submits the facts to a rewrite employee or other editorial employee for story preparation. Such work is nonexempt work. Reporters covering a police beat, or sent out under specific instructions to cover a murder, fire, accident, ship arrival, convention, sport event, etc., are normally performing duties which are not professionally exempt in nature. The reporting of news, the rewriting of stories received from various sources, or the routine editorial work of a newspaper is also not predominantly original and creative in character and must be considered nonexempt work.

7. Teaching Professional Requirements. An employee may also qualify for the professional exemption if they are a teacher or related professional. Teachers are defined as employees whose primary duty is teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge in an educational establishment.

Teaching professionals must be compensated on a salary or fee basis to be exempt. However, they differ from learned professionals and creative professionals because there is no minimum salary threshold amount teachers must earn to qualify for the exemption.

Substitute teachers are primarily paid on an hourly basis and therefore do not meet the salary or fee basis requirement. These and other hourly teachers do not qualify for exemption.

Typical exempt teachers include, but are not limited to: regular academic teachers; kindergarten or nursery school teachers; teachers of skilled and semi-skilled trades and occupations; teachers engaged in automobile driving instruction; certified aircraft flight instructors; family and consumer science program (home economics) teachers; and vocal or instrument music

teachers. Employees who are primarily engaged as teachers do not lose the exemption merely because they also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisers in such areas as drama, forensics, or journalism. Such activities are a recognized part of a school's contribution to the educational development of students. In contrast, an employee who holds a full-time non-exempt position with an educational institution but who also teaches a course at night is not exempt, because the non-teaching work is the employee's primary duty.

The term "educational establishment" generally means an elementary or secondary school system (including middle school, junior high, or high school), an institution of higher education (such as a college or university), or other, similar educational institution. Other educational institutions include specialized schools for children with intellectual, developmental, or physical disabilities or for highly capable children, regardless of any classification of such schools as elementary, secondary, or higher. For purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.

Other schools and related establishments that must be individually examined to determine whether they qualify as educational establishments include:

7.1 Pre-schools. Although preschools and day care centers (particularly at the earliest ages of preparing children to enter school) may engage in some educational activities, employees whose primary duty is to provide custodial care for the basic physical needs of the children attending (as opposed to being engaged in the intellectual activities of teaching, tutoring, instructing, or lecturing in order to impart knowledge) do not ordinarily meet the primary duty test for exemption as teachers. Bona fide teachers in preschool settings may qualify for exemption under the same conditions as a teacher in an elementary or secondary school (*i.e.*, if they meet the primary duty test for a teacher and are employed and engaged in this activity as a teacher in a qualifying educational establishment). However, day care centers providing custodial care and protection of preschool age children before they are old enough to enter the kindergarten or nursery school programs established for the particular state's elementary school curriculum do not qualify as educational establishments for purposes of the teacher exemption and employees of day care centers therefore do not qualify for the exemption.

7.2 Post-secondary Career Schools. Whether an instructor at a cosmetology school, automotive technology school, or other post-secondary career school qualifies for the exemption depends on whether the instructor is employed in an educational establishment. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools. If the school qualifies as an educational establishment, the duties of the instructor must then be examined to determine if the employee's primary duty is teaching.

7.3 Job Corps Centers. A Job Corps center that provides basic educational instruction and vocational training, as well as training in personal care, to enable academically challenged enrollees to be self-supporting, is generally considered an educational establishment or institution. Teachers employed by such centers may qualify for the exemption, so long as they meet the other requirements of the exemption.

8. Law and Medicine Professional Requirements. Employees may also qualify for the professional exemption if they are lawyers, physicians, or medical professionals with a scope of practice similar to a physician. Law and medicine professionals must hold a valid license or certificate permitting the practice of law or medicine and must be actually engaged in such a practice. Neither the salary basis nor the salary threshold requirements apply to bona fide practitioners of law or medicine; they may be exempt regardless of how they are paid.

Medical professionals covered by the exemption include 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. "Physicians" includes medical doctors such as general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), naturopaths, and optometrists (doctors of optometry or bachelors of science in optometry).

Medical interns and residents are also exempt if they hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program for the profession. They do not need to be licensed before they enter the internship or resident program to be exempt.

9. Trainees. The exemption does not apply to workers in training to become exempt professionals and not actually performing the duties of a fully qualified professional employee, with the exception of medical interns and residents as described above. However, a bona fide professional employee does not lose the employee's exempt status merely by undergoing further training for the job performed.