ADMINISTRATIVE POLICY

STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: **DEFINITION OF FEE BASIS IN ADMINISTRATIVE, PROFESSIONAL AND OUTSIDE SALES POSITIONS**

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CHAPTER: **RCW 49.46.010(3)(c), RCW 49.46.130(2)(a), WAC 296-128**

SEE ALSO: **ES.A.8.1, ES.A.8.2, ES.A.9.1, ES.A.9.2, ES.A.9.3-7, ES.A.10.1, ES.A.10.2, and ES.A.10.3**

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DEFINITION OF FEE BASIS

WAC 296-128-520(1)(c) and (2)(b), WAC 296-128-530(1)(b) and (2)(b), WAC 296-128-535(1)(c), and WAC 296-128-540(3)

1. Reliance on Federal Interpretation. The Department intends to rely on interpretations of the 2019 federal regulations where identical to the state rules.

2. Fee Basis. The Administrative, Professional, and Outside Sales exemptions can include employees who are compensated on a fee basis, as well as those who are paid on a salary basis. A fee basis means a fixed charge for work performed. These arrangements are characterized by the payment of an agreed sum for a single job, regardless of the time required for its completion. To qualify for an exemption, the fee basis cannot be combined with another form of compensation such as a base salary or any hourly pay.

Fee basis payments generally apply to the kind of jobs that involve unique projects or items. This is different from piecework, which tends to be a series of jobs or tasks that are repeated an

indefinite number of times, and for which payment on an identical basis is made over and over again.

3. Payments Not Considered a Fee Basis. Payments based on the number of hours or days worked and not on the accomplishment of a specific, single task or goal are not considered payments on a fee basis. Bonuses, commissions, and benefits are also not considered part of payment on a fee basis.

4. Adequacy of a Fee Payment to Meet an Exemption. It is often only possible to know whether payment of fees equals at least the minimum salary threshold established under WAC 296-128-545 after the time worked on the job is known. To calculate whether the fee-basis payment equals the threshold for an exemption, divide the fee by the weeks it covers. For each week, divide the weekly amount by the actual hours worked, to get the effective hourly rate for that week. Compare this effective hourly rate to the hourly rate determined by dividing the weekly salary threshold by a standard, 40-hour workweek. If the effective hourly pay rate from the fee payment is less than that required by the threshold, the employee does not qualify for an Administrative or Professional exemption for that week.

It is possible for an employee to qualify for the exemption during some weeks of a project but not be exempt during other weeks. Employees must receive overtime pay and other MWA benefits for weeks they are not exempt. Although Minimum Wage Act recordkeeping requirements do not apply to exempt employees, the department recommends employers keep track of hours worked by employees paid on a fee basis to help employers evaluate whether their employees meet the fee basis requirements for exemption. In the event of a dispute, an employer's contemporaneous records will help the department resolve the dispute.

The outside sales exemption, in contrast, does not set a minimum dollar amount to qualify for that exemption. The amount of the fee compensation is based solely on the agreement between the employer and the outside sales employee.

5. Salary Basis. Administrative, Professional, Computer Professional, and Outside Sales employees may also qualify for an exemption if they are paid on a salary basis. Executive employees can only be exempt if they are paid on a salary basis. *See* Administrative Policy ES.A.9.1 for information on payment on a "salary basis."