ADMINISTRATIVE POLICY

STATE OF WASHINGTON

DEPARTMENT OF LABOR AND INDUSTRIES
EMPLOYMENT STANDARDS

TITLE: **SALARY THRESHOLDS FOR EXEMPTION FROM MINIMUM WAGE ACT FOR WHITE-COLLAR WORKERS**

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WAC 296-128-535
WAC 296-128-545

SEE ALSO: ES.A.9.1, ES.A.9.2, ES.A.9.3, ES.A.9.4, ES.A.9.5, ES.A.9.6, and ES.A.9.7

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SALARY THRESHOLDS (WAC 296-128-545)

This policy provides information on the salary threshold requirements for exemption from overtime pay and other Minimum Wage Act protections for workers employed as bona fide executive, administrative, professional and computer professional employees. 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. 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. This policy provides additional guidance on salary threshold requirements for the executive, administrative, professional, and computer professional exemptions. This policy does not apply to the outside sales exemption, which does not impose a salary threshold for 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 salary threshold requirements of both state and federal regulations. 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. Salary Threshold Requirements.

In order to qualify for exemption, in addition to meeting certain duties tests, most Executive, Administrative, Professional, and salaried Computer Professional employees must be paid on a salary or fee basis equal to at least a minimum specified amount. This minimum amount is known as the "salary threshold" and is set by WAC 296-128-545. "Salary basis" is explained further in Administrative Policy ES.A.9.1, and "fee basis" is addressed in Administrative Policy ES.A.9.8.

Beginning July 1, 2020, the state salary threshold is calculated as a multiplier of the state minimum wage. The salary threshold will increase incrementally until it is equal to 2.5 times the state minimum wage. After that, the salary threshold will remain 2.5 times the state minimum wage, but the actual dollar value of the threshold will change when the state minimum wage is updated.

The salary threshold is calculated based on a 40-hour workweek. To determine the salary threshold an employee must meet to be exempt, an employer must compare the employee's weekly salary to the required salary threshold. For employees not paid on a weekly basis, the employer must calculate what the employee's compensation would equal on a weekly basis.

To determine the salary threshold to compare the employee's weekly salary, multiply the current state minimum wage for a 40-hour workweek by the applicable salary threshold multiplier. An employee must be paid at least that amount per week, exclusive of board and lodging, in order to qualify for the exemption.

The examples below are included for illustrative purposes only. Calculations must be based on the actual state minimum wage at the time of each phase of the salary threshold phase-in schedule.

Example 1: On July 1, 2020, the state minimum wage is $13.50 per hour, which is $540 per week for a 40-hour workweek. The salary threshold for July 1, 2020 is 1.25 times the minimum wage. Multiply the weekly minimum wage amount ($540) by the salary threshold multiplier (1.25), and the result is a salary threshold of $675 per week:

Minimum wage	x	40-hour week	x	Salary Threshold Multiplier	= Salary Threshold
$13.50	x	40	x	1.25	= $675.00 per week

Example 2: On January 1, 2028, the state minimum wage is projected to be approximately $16.03 per hour*, which is $641.20 per week for a 40-hour workweek. The salary threshold for January 1, 2028 is 2.5 times the minimum wage. Multiply the weekly minimum wage amount

($641.20) by the salary threshold multiplier (2.5), and the result is a salary threshold of $1603 per week:

Minimum wage	x	40-hour week	x	Salary Threshold Multiplier	= Salary Threshold
$16.03*	x	40	x	2.5	= $1603.00 per week

*This minimum wage estimated projection is for example purposes only. Calculations in 2028 must be based on the actual state minimum wage. The estimated threshold values assume an inflation rate of 2.14%. For any year in which the applicable rate of inflation differs from 2.14%, the salary thresholds for that year will be slightly higher or lower than estimated during the rulemaking process depending on the actual rate of inflation.

The full phase-in schedule is found in the table in Section 2, below.

2. Salary Threshold Phase-in Schedule.

Before reaching the final threshold of 2.5 times the state minimum wage, the salary threshold will be phased-in over an eight-year period. The phase-in period will start July 1, 2020, when the threshold will be 1.25 times the state minimum wage for all businesses, and end in 2028, when the final threshold will be 2.5 times the minimum wage for all businesses.

Small employers (with 1-50 employees) have a more gradual phase-in schedule than larger organizations (with 51 or more employees), to give them additional time to comply with the updated rules.

The table below outlines the salary threshold phase-in schedule based on employer-size:

When the rule takes effect		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	Multiply minimum wage by…	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
For employers with 51 or more employees	Multiply minimum wage by…	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x

Note: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers. *See* Section 8 below for more details.

As described above, to determine the salary threshold multiply the current state minimum wage for a 40-hour workweek by the applicable salary threshold multiplier.

3. Employer-size Calculations.

In order to determine which salary threshold multiplier applies to an organization's employees, the employer must determine how many employees it has at the time the multiplier goes into effect each year. There are two employer-size calculation methods employers can choose from to determine which salary threshold schedule they need to follow. Employers can choose the calculation method that is most consistent with their business practices.

3.1 Default Method: Number of Washington-based Workers. The first calculation method is based on the number of Washington-based workers an employer employs at the time of the effective date of each step of the implementation schedule. For most years, this occurs on January 1st. An employer essentially takes a "snapshot" of its workforce on that date and determines whether it employs more than 50 employees as of that date. Each Washington-based employee counts as an employee whether that person works full-time or part-time. *See* Employment Standards Administrative Policy ES.A.13 for further guidance on how to determine which employees are "Washington-based employees."

3.2 Employment Security Department Determination. The second calculation method relies on the determination provided by the state Employment Security Department for Paid Family and Medical Leave purposes under RCW 50A.10.030. The ESD determination looks back over four previous quarters to determine the employee count. ESD provides its determination to businesses each fall, for the following year. A business may use an ESD determination for the following calendar year only.

Regardless of which calculation method an employer uses, it must determine employer-size each year based on the number of employees it will employ on the effective date of each phase of the salary threshold phase-in schedule. That determination will apply for the remainder of the calendar year. Employers must recalculate their size every year of the phase-in period.

4. Who is considered an employee for purposes of calculating employer size?

Under the Minimum Wage Act, "employee" includes any individual employed by an employer RCW 49.46.010(3). Only some specific kinds of workers are exempt from the definition of employee. An employer must count all of its Washington-based workers who are covered by the definition of "employee" under the Minimum Wage Act. For more information about the applicability of the Minimum Wage Act, see Administrative Policy ES.A.1, "Minimum Wage Act Applicability."

Any Washington-based employee is considered and counted as an employee, including part-time workers, minors, new hires, and seasonal or intermittent workers. Bona fide exempt executive, administrative, professional, computer professional, and outside sales employees, and other employees exempt from the Minimum Wage Act, do not count towards an employer's size calculation.

Employers must make a reasonable, good faith determination of the size of their workforce. The Minimum Wage Act is a remedial law, and the definition of employee is intended to be inclusive. The determination of whether an individual is considered an employee for purposes of employer size will be based on the facts presented. Misclassification of employees based on application of the wrong salary threshold for the business size may result in violations of the Minimum Wage Act.

5. How are employees counted in situations involving a franchise, joint employment, or a multi-employer scenario?

Employers who operate franchises or have a joint- or multi-employer relationship will need to analyze the nature of their franchise and employment agreements and determine whether the franchisor or other contracting entities could be found to be a single employer under state law. A person or entity who exercises control over an individual's wages, hours, or working conditions

could be found to be the employer of that individual. All Washington-based individuals under that employer's control would then need to be aggregated and counted as employees for purposes of determining the applicable salary threshold.

6. The Salary Threshold Calculation Does not Include Non-salary Compensation, Such as Room and Board, Bonuses, Commissions, or Other Pay or Benefits.

To meet the salary threshold requirement, the employee's salary or fee must equal or exceed the required threshold amount exclusive of board, lodging, housing, or other facilities. The salary includes only the recurring, set amount of money that compensates the employee for the work performed, and does not include any benefits, perks, or bonuses, or any other compensation that can vary based on productivity or hours worked. This means that if an employer pays for an employee's food, lodging, or other accommodations, the value of those benefits does not count towards the minimum salary threshold requirements. Bonuses, commissions, and benefits are also not salaries and therefore do not count towards the state salary thresholds.

7. Differences Between State and Federal Salary Threshold Requirements.

The Department intends to rely on the interpretations of the 2019 federal regulations where the regulations are identical to the Department's rules. However, state and federal requirements differ regarding salary threshold requirements. Where differences exist between Washington State and federal regulations, an employer must follow the regulation that is most favorable to the worker.

7.1 Federal Salary Threshold. As of January 1, 2020, the federal salary threshold is $684/week ($35,568 annualized). Federal regulations do not include an automatic updating mechanism and the federal salary threshold will remain the same unless altered by the federal Department of Labor.

7.2 Nondiscretionary Bonuses and Incentive Payments. Federal regulations allow employers to use nondiscretionary bonuses and incentive payments (including commissions) to satisfy up to 10% of the federal salary threshold, so long as they are paid out at least annually. In contrast, nondiscretionary bonuses and incentive payments do not count towards the state salary threshold.

8. Hourly Computer Professional Phase-in Schedule.

Only one category of exempt white-collar workers, computer professionals, may meet the threshold requirements while being paid on an hourly basis. *See* Administrative Policy ES.A.9.6. To meet the computer professional exemption requirements, employees must meet the duties test requirements and must be paid in one of two ways: either (1) on a salary or fee basis that meets the requirements of WAC 296-128-545 (see above); or (2) on an hourly basis that meets the requirements set by WAC 296-128-535. The hourly basis threshold is similar to the salary threshold and is also calculated as a multiplier of the minimum wage.

The hourly threshold will incrementally increase until it reaches the final rate of 3.5 times the minimum wage. After that, the hourly threshold will remain 3.5 times the state minimum wage, but the actual dollar value of the threshold will change when the state minimum wage is updated.

The computer professional hourly threshold will phase in over three years. The phase-in will start July 1, 2020 and end on January 1, 2022, when the threshold will be the final threshold of 3.5 times the minimum wage for all employers.

Small employers (with 1-50 employees) have a more gradual phase-in schedule to give them additional time to comply with the new rules compared to larger companies (with 51 or more employees).

The table below outlines the hourly computer professional threshold phase-in schedule:

When the rule takes effect		**July 1, 2020**	**Jan. 1, 2021**	**Jan. 1, 2022**
For employers with 1-50 employees	Multiply minimum wage by…	No Change (Stays at $27.63/hour)	2.75x	3.5x
For employers with 51 or more employees	Multiply minimum wage by…	2.75x ($37.13/hour)	3.5x	3.5x