



WASHINGTON STATE
OVERTIME EXEMPTION
CHANGES – 2023

MINIMUM WAGE ACT REQUIREMENTS

- State law requires workers:
 - Be paid a minimum wage;
 - Receive overtime for time worked over 40 hours per work week
 - Receive paid sick leave
 - Protection from retaliation or discrimination for exercising their rights under RCW 49.46.100.
- There are workers who are “exempt” from these protections.

WHO IS EXEMPT FROM OVERTIME PAY REQUIREMENTS?

- Minimum Wage Act provides an exemption from the state minimum wage and overtime pay requirements for employees who are:
 - Executive, Administrative or Professional, certain computer professionals

Note: Being “exempt from civil service” does not equate to being “exempt from overtime rules.” The MWA applies to all employees.

QUALIFYING FOR THE EXEMPTION

- To qualify for the exemption the employee must satisfy two tests:
 - Salary basis test
 - Job Duties test (consider only duties actually performed)
 - Executive, Administrative & Professional, Computer Professional each have their own duties analysis to meet the exemption. WAC 296-128-510, -.520, .-.530
- Teachers, Doctors DO NOT need to meet salary threshold requirements.

CHANGES TO OVERTIME RULES- L&I

The Department of Labor & Industries adopted a phase in schedule which went into effect January 1, 2021, that increases the weekly salary standard required to exempt executive, administrative or professional employees from Washington State's overtime pay requirements. This new schedule uses a multiplier times the minimum wage to update the minimum weekly standard salary level.

Although the threshold multiplier will not increase after 2028, the actual salary threshold may continue to increase as the minimum wage increases each year.

L&I also updated its EAP duties tests to more closely align with the federal standards.

WA STATE'S PHASED IN SALARY THRESHOLD

Start	Multiplier	MinWage	Weekly	Annual
7/1/2020	1.25	\$13.50	\$675	\$35,100
1/1/2021	1.75	\$13.69	\$958.30	\$49,831
1/1/2022	1.75	\$14.49	\$1,014.30	\$52,743.60
1/1/2023	2	\$15.74	\$1,259.20	\$65,478.40

WA STATE'S PHASED IN SALARY THRESHOLD FOR HOURLY COMPUTER PROFESSIONALS

Start	Multiplier	MinWage	Hourly Wage
7/1/2020	2.75	\$13.50	\$37.13
1/1/2021	3.5	\$13.69	\$47.92
1/1/2022	3.5	\$ 14.49	\$50.72
1/1/2023	3.5	\$ 15.74	\$55.09

APPLYING THE SALARY THRESHOLD

- What counts?
 - Salary threshold is applied to total compensation rather than base pay.
 - Reevaluate application of exemption if circumstances change impacting total compensation.
 - State law: bonuses, commissions and benefits are not salaries and therefore do not count towards the salary thresholds. **Food, lodging or other accommodations those costs do not count towards the minimum salary threshold requirements. WAC 296-128-505(3)**
 - Federal Law: The U.S. Department of Labor now allows employers to use nondiscretionary bonuses and) paid at least annually to satisfy up to 10% of the federal salary level. incentive payments (including commissions)
- NOTE: Federal rules have different requirements for what payments can count towards the federal salary threshold.

HANDLING STATE AND FEDERAL DIFFERENCES

There are similarities and some differences:

- State Job duties test are closely aligned with Federal job duties tests
- Federal updated its highly compensated employee salary threshold to \$107,432/yr. The **State of Washington** does not have a highly compensated employee exemption.
- Federal law allows the use of nondiscretionary bonuses to calculate salary threshold. State DOES NOT count nondiscretionary bonuses, incentive payments and commissions payments toward salary threshold. For example: relocation pay.

HANDLING STATE AND FEDERAL DIFFERENCES

When there are differences follow the standard more favorable to the employee:

** FLSA salary standard is \$684 per week or \$35,568 per year for the executive, administrative and professional exemption to apply. L&I's salary threshold is more favorable to the worker and must be applied.*

Employers need to follow the state salary standards that go into effect January 1, each year.

Effective January 1, 2023, the Salary threshold will be \$65,478.40.

GUIDANCE MOVING FORWARD

- Action needed:
 - Review job descriptions to ensure positions continue to meet duties test.
 - Clearly identify exempt duties on the position description form.
 - Apply the three tests previously discussed.
 - Re-review the position if circumstances change mid-year.

GUIDANCE MOVING FORWARD

You will need to determine how to apply the exemption.

You may have to convert current exempt salaried employees to Overtime Eligible and pay overtime because they do not meet the EAP tests. This will require you to track hours, pay overtime for work over 40 and provide protections under MWA.

If you have employees that move to OT eligible you will need to start positive timekeeping for those individuals.

- If they meet salary threshold requirements **AND** duties test. You may maintain their overtime exempt status.

This will continue to be a big undertaking moving forward.

GUIDANCE MOVING FORWARD (SPLIT PAY RANGES)

At this time, you should be reviewing current positions based on the new 2023 state salary standard, applying the new salary test which goes into effect January 1, 2023, and preparing to make adjustments, if needed to each position within a split range and switch employees overtime eligibility where appropriate.

The split range will depend on which CBA the employee is represented by and which salary schedule.

RESOURCES

- [L&I Changes to Overtime Rules Q&A](#)
- [Overtime Rules Resources](#)
- [L&I_EAPTrainingModule](#)
- [Exempt_NonExempt-Fact Sheet](#)
- RCW 49.46.010(3)(c)
- WAC 296-128

- Questions, please contact:
 - your assigned Labor & Personnel AAG
 - State Human Resources Class & Comp Email at classandcomp@ofm.wa.gov