

Overtime Exemptions – Federal/State Duties Test Comparison Chart

Executive Duties Test	
Similarities	
<p>An exempt executive employee’s primary duty must be:</p> <ol style="list-style-type: none"> 1. Management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and 2. Who customarily and regularly directs the work of two or more other employees; and 3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight. <p>The term “individual employed in a bona fide executive capacity” also includes any employee who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.</p>	
Differences	
Current DOL rule (2004 Rule)	Proposed Washington rule
Executive employees must be compensated on a salary basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Executive employees must be compensated on a salary basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase in schedule specified in proposed WAC 296-128-545.
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.103 gives additional detail and examples of possible departments or subdivisions related to customarily recognized departments or subdivisions thereof.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.104 gives additional detail and examples related to the definition of “two or more other employees.”	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.105 gives guidance on “particular weight.”	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.106 gives guidance on “concurrent duties.”	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

<p>§541.606 gives additional guidance on “Board, lodging or other facilities.”</p>	<p>This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.</p>
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<p align="center">Administrative Duties Test</p>	
<p align="center">Similarities</p>	
<p>An exempt administrative employee’s primary duty must be:</p>	
<ol style="list-style-type: none"> 1. The performance of office or non-manual work directly related to the management or general business operations of the employer or the employer’s customers; and 2. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 	
<p>Administrative exemption for employees in an academic setting also include:</p>	
<ol style="list-style-type: none"> 1. An employee performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and 2. Who is compensated on a salary or fee basis at a rate not less than the amount specified in the respective rules or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed. 	
<p align="center">Differences</p>	
<p align="center">Current DOL rule (2004 Rule)</p>	<p align="center">Proposed Washington rule</p>
<p>Administrative employees must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).</p>	<p>Administrative employees must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase in schedule specified in proposed WAC 296-128-545.</p>
<p>§541.700 gives additional guidance and examples relating to the definition of “primary duty.”</p>	<p>This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.</p>
<p>§541.201 gives additional detail and examples of possible functional areas directly related to management or general business operations.</p>	<p>This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.</p>
<p>§541.202 gives additional detail and examples related to discretion and independent judgement.</p>	<p>This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.</p>
<p>§541.203 gives examples of likely exempt administrative workers and likely non-exempt workers.</p>	<p>These examples are not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.</p>

§541.204(2)(b) defines “educational establishment.”	Additional language in this definition is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.204(c) gives examples of possible administrative functions directly related to academic instruction or training and functions not directly related to academic instruction or training.	These examples are not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.606 gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Professional Duties Test	
Similarities	
<p>An exempt professional employee’s primary duty must:</p> <ol style="list-style-type: none"> 1. Require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or 2. Require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. <p>The professional exemption also includes teachers with:</p> <ol style="list-style-type: none"> 1. A primary duty of teaching, tutoring, instructing, or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an education establishment by which the employee is employed. <p>The professional exemption also includes employees working in law and medicine who:</p> <ol style="list-style-type: none"> 1. Hold a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or 2. Hold the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession. 3. In the case of medicine, the exemption applies to 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. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry). 4. Salary threshold requirements do not apply to these exempt professional employees. 	
Differences	
Current DOL rule (2004 Rule)	Proposed Washington rule
Splits professional exemption requirements into separate learned and creative subdivisions.	Both learned and creative professionals are included in the same rule for greater ease of reference. There is no intended difference in application.

§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
The current federal rule does not apply salary basis or salary threshold requirements to the exemption for teachers.	Teachers must be compensated on a salary or fee basis but there is no salary threshold.
Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase in schedule specified in proposed WAC 296-128-545.
§541.204(2)(b) gives additional guidance relating to the definition of “educational establishment.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.301(e) gives specific guidance on registered or certified medical technologists, nurses, dental hygienists, physician assistants, accountants, chefs, paralegals, athletic trainers, and funeral directors or embalmers.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.301(f) gives guidance on advanced specialized degrees.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.302(c)-(d) gives additional guidance on types of creative professionals that may or may not be exempt.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.303(b) gives examples of possible types of exempt teachers.	These examples are not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.303(c) gives guidance regarding teaching certificates or certifications.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.606 gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Computer Professional Duties Test

Similarities

Exempt computer professionals must be employed as computer systems analyst, computer programmer, software engineer, or other similarly skilled worker whose primary duty consists of one the following:

1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or
2. The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or
3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or
4. A combination of the aforementioned duties, the performance of which requires the same level of skills.

The exemption for employees in computer occupations does not include:

1. Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or
2. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations.

Differences

Current DOL rule (2004 Rule)	Proposed Washington rule
Computer professionals compensated on a salary or fee basis must be compensated at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Computer professionals compensated on a salary or fee basis must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase in schedule specified in proposed WAC 296-128-545.
Computer professionals compensated on an hourly basis must be compensated at a rate of at least \$27.63 per hour.	Computer professionals compensated on an hourly basis must be compensated at a rate of at least 3.5 times the state minimum wage after the phase in schedule specified in proposed WAC 296-128-535(c).
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.402 gives guidance and examples on executive and administrative computer employees.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Outside Sales Duties Test

Similarities

An Outside sales employee’s primary duty must be:

1. Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or
2. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
3. Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty.

There are no salary threshold requirements for outside salespeople under the federal or state proposed rules.	
Differences	
Current DOL rule (2004 Rule)	Proposed Washington rule
Current federal rules do not have any requirements regarding compensation of outside sales employees on a guaranteed salary, commission, or fee basis.	Outside sales employees must be compensated on a guaranteed salary, commission, or fee basis.
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
Current federal rules do not require employers to advise employees of their status as outside salespersons.	Employers must advise employees of their status as outside salespersons.
§§541.501-504 give additional guidance on outside sales employees.	This guidance is not included in the text of the proposed state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Highly Compensated Employees	
Similarities	
N/A: The proposed Washington rule does not include an exemption for highly compensated employees.	
Differences	
Current DOL rule (2004 Rule)	Proposed Washington rule
§541.601 provides an additional exemption for employees with a total annual compensation of at least \$100,000 (including at least \$455 per week paid on a salary or fee basis) who customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.	The proposed Washington rule does not include an exemption for highly compensated employees.