



## **BULLETIN**

**AUGUST 21, 2014**

### **RECENT UPDATES AND CHANGES TO EMPLOYMENT STANDARDS ADMINISTRATIVE POLICIES**

Fifteen of L&I's Employment Standards administrative policies have recently been revised and have been filed with the Office of the Code Reviser. The reasons for the changes are listed below. The amended policies are effective and can be currently found on the L&I public website:

<http://www.lni.wa.gov/WorkplaceRights/Rules/Policies/default.asp>

**ES.A.1 “Minimum Wage”** – Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

In addition, the following note in the answer to 6 (j) of the old policy was removed because the policy that is mentioned in the note is not currently in the process of being written.

*Pending: (2) The department's administrative policy on paragraph 6 (j) regarding individuals who spend a substantial portion of their work time subject to call and not engaged in the performance of active duties is in the process of being written. For information, contact the Department of Labor & Industries at [esgeneral@lni.wa.gov](mailto:esgeneral@lni.wa.gov) or call 360.902.5552.*

**ES.A.2 “Definition of Wage”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A.3 “Minimum Hourly Wage”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A.8.1 “Overtime”** – Because of some recent court rulings (*Fiore v PPG Industries* and *Monahan v Emerald Performance Materials*) the department added the following note to our advice on computing overtime compensation for those non-exempt workers who are paid salaries and work more than 40 hours in a work week or work fluctuating work weeks:

*Note: To use the analysis in the following two sections about salaries for workweeks exceeding 40 hours and those with fluctuating hours – in order to apply a compensation of one half of the hourly rate to compensate the employee for the overtime hours worked, the following three requirements must all be met:*

- 1. There is a clear mutual understanding between the employer and the employee that the salary is straight pay for all hours worked in the week*



2. *There is a clear and mutual understanding between the employer and the employee that overtime will be compensated at one-half times the regular hourly rate*
3. *The overtime is paid contemporaneously with straight-time pay*

*Contemporaneous means that the overtime pay is received in the same pay period as the regular pay.*

**ES.A.8.2 “How to Compute Overtime”** – Because of some recent court rulings (*Fiore v. PPG Industries* and *Monahan v. Emerald Performance Materials*) the department added the following note to our advice on computing overtime compensation for those non-exempt workers who are paid salaries and work more than 40 hours in a work week or work fluctuating work weeks:

*Note: To use the analysis for computing salaries for workweeks exceeding 40 hours and those with fluctuating hours – in order to apply a compensation of one half of the hourly rate to compensate the employee for the overtime hours worked, the following three requirements must all be met:*

1. *There is a clear mutual understanding between the employer and the employee that the salary is straight pay for all hours worked in the week*
2. *There is a clear and mutual understanding between the employer and the employee that overtime will be compensated at one-half times the regular hourly rate*
3. *The overtime is paid contemporaneously with straight-time pay*

*Contemporaneous means that the overtime pay is received in the same pay period as the regular pay.*

**ES.A. 9.1 “Questions and answers about salary basis”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.2 “General Information applicable to exemptions from minimum wage and overtime requirements for white-collar workers”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.3 “Wage and overtime requirements for executive positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.4 “Exemption from minimum wage and overtime requirements for administrative positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.5 “Exemption from minimum wage and overtime requirements for professional positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.



**ES.A. 9.6 “Exemption from minimum wage and overtime requirements for computer professional positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.7 “Exemption from minimum wage and overtime requirements for outside sales positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A. 9.8 “Definition of fee basis in administrative, professional and outside sales positions”** - Recently the definitions section of the Minimum Wage Act (RCW 49.46.010) was rearranged alphabetically and the subsections renumbered. This policy was amended to reflect those changes.

**ES.A.10.1 “Retail Sales Exemption”** –A sentence in our policy was removed as a conformation change so that in our policy now matches the “Retail or Service Establishment” definition in the RCW 49.46.010(6).

The sentence below was removed from page 2 at the end of the first paragraph under the definition of “retail or service establishment”:

*In addition, more than 50 percent of the establishment’s dollar volume of sales of goods or services must be within the state in which the establishment is located.*

**ES.C.10 “Frequently asked questions about the Family Care Act”** - The Department received several comments from stakeholders that questions 17, 18, and 19 of the old policy were not clear. The inquiries came from both employers and employees, and the focus was primarily on the same three issues. The Department recognized the need to more clearly state our position on the meaning of “earned leave,” “entitlement to leave”, and the use of “any and all of the employee’s leave.”

The changes to old question 17 – Many readers of the old policy thought that advanced vacation scheduling policies trumped the choice of leave requirement of the family care act, which is not the case. The new policy makes that clear.

The changes to old question 18 – The first line of our original answer might have lead readers to an incorrect conclusion that the law does not prevent an employer from applying its attendance policies, when actually RCW 49.12.287 prohibits an employer from applying any attendance policy to family care leave if it has a negative consequence for the employee.

The changes to old question 19 – The guidance that the old policy provided on the issue left some readers with the impression that the lack of medical verification was a valid reason to deny family care leave when a minor child is cared for and no doctor’s note is presented to the employer.

Some questions were split into two separate questions for enhanced clarity and all of the questions were re-arranged and renumbered so as to group them in a more logical order.