



RULE-MAKING ORDER PERMANENT RULE ONLY

CR-103P (December 2017) (Implements RCW 34.05.360)

CODE REVISER USE ONLY

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STATE OF WASHINGTON
FILED

DATE: December 10, 2019

TIME: 2:25 PM

WSR 20-01-063

Agency: Department of Labor & Industries

Effective date of rule:

Permanent Rules

- 31 days after filing.
- Other (specify) July 1, 2020 (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

- Yes
 - No
- If Yes, explain:

Purpose: This rulemaking is being proposed to update the Minimum Wage Act (MWA) exemptions for executive, administrative, professional, and outside salespersons. These proposed rules will:

- Provide definitions.
- Redefine duties test for an individual employed in an executive capacity.
- Redefine duties test for an individual employed in an administrative capacity.
- Redefine duties test for an individual employed in a professional capacity.
- Redefine duties test for outside salespersons.
- Redefine duties test and hourly rate for computer professionals.
- Establish salary thresholds for such exemptions.

Citation of rules affected by this order:

New: 296-128-505, 296-128-545
 Repealed:
 Amended: 296-128-500, 296-128-510, 296-128-520, 296-128-530, 296-128-535, 296-128-540
 Suspended:

Statutory authority for adoption: RCW 49.46.010(3)(c)

Other authority:

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 19-12-102 on June 4, 2019 (date).

Describe any changes other than editing from proposed to adopted version:

WAC 296-128-530 Professional

- Subsection (2)(b)—The department added language to this subsection to provide further clarity that “[t]he requirements of WAC 296-128-545 do not apply to the teaching professionals described in this subsection.”

WAC 296-128-535 Computer Professionals

- Subsection (1)(c)—The department added illustrative tables for the hourly threshold phase-in schedule provided in subsections (1)(c)(i)-(1)(c)(iii). These tables were added for clarity and ease of reference.
- Subsection (1)(c)(iv)—The department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded-average provided by ESD for Paid Family and Medical Leave (PFML) purposes to comply with their MWA obligations. The department added this additional approach because it may reduce administrative burden for some employers.

WAC 296-128-540 Outside salesperson

- Title: “Outside salesperson”—The department updated the title of the subsection from “outside salesman” to “outside salesperson” to make the rule language gender neutral and match the current wording of RCW 49.46.010(3)(c).
- Subsection (4)—The department added language to this subsection to provide further clarity that “the requirements of WAC 296-128-545 do not apply to the outside salespersons described in this subsection.”

WAC 296-128-545 Salary thresholds

- Subsections (1)-(9)—For those EAP exemptions subject to salary threshold requirements, the department extended the implementation phase-in from six years to eight years. The department extended the salary

threshold phase-in to give employers additional time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees.

- Subsection (10)—The department added an additional alternative method to calculate employer size for purposes of the section. This methodology allows employers to use the rounded-average provided by ESD for Paid Family and Medical Leave (PFML) purposes to comply with their MWA obligations. The department added this additional approach because it may reduce administrative burden for some employers.
- The department added illustrative tables for the salary threshold phase-in schedule provided in subsections (1)-(9). These tables were added for clarity and ease of reference.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	___	Amended	___	Repealed	___
Federal rules or standards:	New	___	Amended	___	Repealed	___
Recently enacted state statutes:	New	___	Amended	___	Repealed	___

The number of sections adopted at the request of a nongovernmental entity:

New	___	Amended	___	Repealed	___
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The number of sections adopted on the agency's own initiative:

New	<u>2</u>	Amended	<u>6</u>	Repealed	___
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	___	Amended	___	Repealed	___
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The number of sections adopted using:

Negotiated rule making:	New	___	Amended	___	Repealed	___
Pilot rule making:	New	___	Amended	___	Repealed	___
Other alternative rule making:	New	___	Amended	___	Repealed	___

Date Adopted: December 10, 2019

Name: Joel Sacks

Title: Director

Signature:

