Final Cost-Benefit Analysis and Least Burdensome Analysis

Rules Defining and Delimiting Chapter 296-128 WAC, Minimum wages

Washington State Department of Labor & Industries

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CHAPTER 1: EXECUTIVE SUMMARY AND BACKGROUND INTRODUCTION

1.1 Executive summary

This report presents the economic analyses performed by the Washington State Department of Labor & Industries (L&I or department) to estimate the costs and benefits of the adopted rule updates for the executive, administrative, professional (EAP), computer professional, and outside salespersons exemptions to Washington's Minimum Wage Act (MWA). The MWA provides protections for workers including the right to minimum wages, overtime pay, and paid sick leave. As required by the MWA, these rules delineate which employees receive these protections and which are exempt from those requirements.

At both the state and federal level, the rules have generally required that EAP employees meet the following three-part test to be exempt:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test").
- The amount of salary paid must meet a minimum specified amount (the "salary level test").
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the "duties test").

Current status of the EAP rules
L&I has not updated the EAP exemption rules since 1976, with the exception of adding a separate exemption for computer professionals in 1997. The 1976 rules permit an employer to choose one of two "duties tests" to assess an individual worker's exempt status—a more rigorous long-duties test and a less rigorous short-duties test. The salary level for the less rigorous short test is significantly higher than the salary level for the long test.

For workers who meet the less stringent short test, the rule requires a minimum salary of at least $250 per week to qualify for the exemption. That equates to a minimum yearly salary of $13,000. Under the equivalent current federal rule, there is one standard-duties test, similar to the less rigorous short test, and one salary level of least $455 per week, which equates to $23,660 per year and which is most similar to salary levels previously used for the more rigorous long test. Effective January 1, 2020, the federal rules will retain the existing duties tests, but will increase the salary threshold to $684 per week, which equates to $35,568 per year.

Significant changes in the rules
The significant changes in the adopted rules include:

- Eliminating the current long and short duties test structure and replacing it with a standard test that largely aligns with federal rules.
- Setting a salary threshold that adequately compensates for the elimination of the long test and allows for reliance on the current standard test to appropriately distinguish between workers who are eligible for overtime and those who may be EAP exempt.

Updating the salary threshold test

The adopted rules set the salary level test for the EAP exemptions, excluding computer professionals paid on an hourly basis, at 2.5 times the minimum wage when fully implemented. This represents the middle range of the historical ratios between the applicable minimum wage and the historical salary levels under the federal long test and standard test; it is consistent with the 50th percentile of the weekly earnings for salary workers in the West Census Region; it is consistent with the updated federal short test salary level from 1970, when the short test salary level was last revised by considering the actual reported salaries of EAP workers; and it ensures the the salary level keeps pace with the growth rate of the state average wage.

Under the proposed rules, the salary threshold was to be phased in over a six-year period. Based on stakeholder feedback and to further mitigate costs to employers, the salary threshold phase-in was extended to eight years in the adopted rules, with a more gradual phase-in for small businesses. The department has updated its economic analysis in this final CBA to reflect the changes in the phase-in schedule.

The adopted rules initially set the salary threshold in July 2020 at 1.25 times the current state minimum wage for all employers, regardless of size. It will gradually step up through 2028 to 2.5 times the applicable state minimum wage.

Effects on computer professionals

The adopted rules also increase the hourly rate threshold for exempt computer professionals paid on an hourly basis. These workers are exempt today if they meet a duties test and are paid more than $27.63 per hour. Under the adopted rules, the hourly rate threshold increases to 3.5 times the minimum wage. The computer professional hourly salary threshold is also phased in over time.

The new rules initially set the hourly threshold for computer professional employees working for large businesses with more than 50 employees at 2.75 times the stateminimum wage starting July 2020. The hourly threshold for small businesses will not immediately change. The hourly threshold for all businesses will step up to 3.5 times the state minimum wage by 2022.

Number of workers affected

When fully implemented in 2028, approximately 259,100 workers will be directly affected by the adopted rules. Given the phase-in schedule, the total number of newly affected workers varies each year from 2020 to 2028.

These workers, who are paid above the minimum salary threshold required for exemption under the prior department rules and at the minimum salary threshold required for exemption under federal law, are currently treated as exempt from the MWA and exempt from federal overtime protections. Because they earn less than the salary threshold under the adopted rules, they will be directly affected by the adopted rules. The rules will also affect an unknown number of employees who are currently misclassified as exempt and earn less than the salary threshold under the adopted rules.

As a result of the new rules, employers have several potential options to comply with the MWA's overtime requirements, which include converting current exempt salaried workers to non-exempt, salaried employees and providing overtime, limiting hours worked to 40 hours per workweek, converting current

salaried exempt workers to hourly non-exempt employees, or maintaining the exemption status by meeting the salary threshold and ensuring the worker meets the duties test. Employers must provide paid sick leave protections unless an exemption applies.

Cost-benefit analysis

The department updated its economic analysis to reflect changes made in the adopted rules. Based on the estimated costs as detailed in this document, the updated annualized total administrative costs of the rules are estimated to be $13.65 million within a 10-year timeframe. The updated quantitative annualized benefits are estimated to be $18.33 million to $18.91 million over the same period.[1] In addition to quantifiable benefits, there are additional qualitative benefits associated with increased overtime protections and access to sick leave described in the benefits section.

Table 1

Summary of Annualized Total Administrative Costs		**Summary of Annualized Benefits**	
Costs of learning and adapting to the new rules	$1.87 million	Savings from reduced job turnover costs due to employees being newly eligible for paid sick leave	$13.34 million
Costs of reexamining and adjusting employees' exemption status	$1.95 million	Savings from the reduction in flu contagion	$1.40 million
Cost of scheduling and monitoring employees' work hours	$9.83 million	Savings in expenditures for short-term nursing home stays	$515 thousand to $1.10 million
		Reduced workplace injuries due to shorter work hours	$3.07 million
Annualized total	$13.65 million		$18.33 million to $18.91 million

Transfer payments

The report also details estimated payroll impacts from the adopted rules, such as overtime premiums paid to newly eligible workers and increased salaries for workers to remain in exempt status. Since the costs to employers are equally-valued benefits to workers, these are considered transfer payments and are analyzed separately.

L&I estimates that in the first year, the increases in payroll due to overtime, minimum wage, and paid sick leave coverage would total $36.30 million, as detailed below.[2]

[1] Both of the benefits and costs are estimated to be lower than what were in the preliminary CBA as a result of the difference in the salary threshold phase-in schedule between the proposed rules and the final, adopted rules.
[2] For the same reason as noted in Footnote 1, the transfer payment is estimated to be lower than what was detailed in the preliminary CBA.

Table 2

Total transfer payments associated with the adopted rules in 2020	
Due to overtime coverage	$20.21 million
Due to minimum wage coverage	$10.78 million
Due to paid sick leave coverage	$5.31 million
Total	**$36.30 million**

1.2 Background

1.2.1 Washington's Minimum Wage Act

Washington's Minimum Wage Act (MWA)[3], Chapter 49.46 Revised Code of Washington (RCW), guarantees to covered employees:

- A minimum wage for all hours worked.
- Overtime (time and one half) compensation for hours worked in excess of 40 per week.
- Payment of earned tips and service charges.
- Accrual and use of paid sick leave.
- Protection from retaliation or discrimination for exercising these rights.

The MWA is designed to set minimum standards for wages in order to protect employees from substandard wages, provide for the "health, safety and welfare" of Washington citizens, and to encourage Washington employment opportunities.[4] It has been repeatedly amended by both legislative action and citizen initiative to "establish and enforce modern fair labor standards," including updates to establish fair minimum wages, to establish the 40-hour workweek and the right to overtime pay, and to provide the right to paid sick leave to protect public health and allow workers to care for the health of themselves and their families.[5] The MWA was patterned after the federal Fair Standards Act (FLSA), 29 U.S.C. **§** 201 et seq., which was similarly enacted by Congress in 1938 in order to guarantee basic pay and overtime wage standards for employees engaged in interstate commerce. Both Acts are intended to protect employees, and where federal and state wage standards differ, the standard most beneficial to the employee applies.[6]

The overtime protections under the MWA and the FLSA serve two purposes: to reduce overwork and its detrimental effect on the health and well-being of workers; and to spread employment by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.[7]

[3] The Minimum Wage Act is also referred to as the "Minimum Wage Requirements and Labor Standards Act."
[4] RCW 49.46.005, *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 711, 153 P.3d 846 (2007).
[5] RCW 49.46.005.
[6] RCW 49.46.120; 29 U.S.C. § 218(a); *see, e.g.*, *Pac. Merch. Shipping Ass'n v. Aubry*, 918 F.2d 1409, 1425 (9th Cir. 1990), cert. denied, 504 U.S. 979 (1992).
[7] *See, e.g.*, 84 Fed. Reg. at 10,916; RCW 49.46.005.

As Congress did in the FLSA, Washington's Legislature included an exemption from the MWA for persons employed in a "bona fide executive, administrative or professional capacity."[8] The Legislature delegated authority to the Director of the Department of Labor & Industries (department) to adopt rules defining and delimiting these terms.[9]

The exemptions for executive, administrative, and professional workers are premised on the belief that these kinds of workers, often referred to as "white collar" workers, typically earn salaries well above the minimum wage and enjoy other privileges, including above-average fringe benefits, greater job security, and better opportunities for advancement, which set them apart from workers entitled to the protections of the Minimum Wage Act.[10] These workers are expected to have sufficient economic and bargaining power to protect themselves from insufficient compensation for hours worked.

1.2.2 Federal regulations

In 1938, the U.S. Department of Labor (USDOL) issued the first regulations defining the scope of the FLSA Section 13(a)(1) white collar exemptions. 29 C.F.R. §541. The regulations implementing the executive, administrative, and professional exemption have generally required each of three tests to be met for the exemption to apply:

- The employee must be paid a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed (the "salary basis test").
- The amount of salary paid must meet a minimum specified amount (the "salary level test").
- The employee's job duties must primarily involve executive, administrative, or professional duties as defined by the regulations (the "duties test").[11]

The USDOL implemented a salary level test in the very first regulations in 1938 and has updated the salary levels required for the exemptions nine times since then.[12] The USDOL "has always recognized that the salary level test works in tandem with the duties requirements to identify bona fide EAP employees" and protect the overtime rights of nonexempt white collar workers.[13] However, from the time of the USDOL's very first analysis and recommendations to the present, the salary level test has been consistently regarded as "the single best test" for distinguishing exempt EAP employees from workers covered by FLSA's protections, by "drawing . . . a line separating exempt from nonexempt employees."[14] The salary an employer pays an employee provides "a valuable and easily applied index to the 'bona fide' character of the employment for which exemption is claimed."[15] Setting a salary threshold thus "simplified enforcement by providing a ready method of screening out the obviously nonexempt

[8] RCW 49.46.010(5)(c). The MWA included this language from the time of its adoption in 1959.
[9] *Id.*
[10] 81 FR 32,392; 81 FR 32,394-95, citing the Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).
[11] 29 C.F.R. §541, *et seq.*
[12] 81 FR. 32,449 (rule updated seven times prior to 2016 rules); 84 FR 51,230.
[13] 81 FR. 32,400.
[14] Stein Report at 19; 69 FR 22,165; *see also* 81 FR 32,413.
[15] Stein Report at 19.

employees" and furnished a "completely objective and precise measure which is not subject to differences of opinion or variations in judgment."[16]

The first regulations in 1938, adopted to meet the effective date of FLSA, set a minimum salary level of $30 per week for exempt executive and administrative employees.[17] See Table 3 for the history of the USDOL salary levels. The executive and administrative exemptions were initially combined and included provisions requiring that exempt executives could do "no substantial amount of work of the same nature as that performed by nonexempt employees of the employer."[18]

Following the adoption of the initial rules, further hearings and reviews on the subjects of the exemptions continued, resulting in a 1940 update.[19] For the 1940 update, the USDOL looked at average salary levels for employees in numerous industries and the percentage of employees earning below these amounts. The administrative and professional salary level was raised to $50 per week, taking into account the average salary levels for employees in numerous industries and the percentage of employees earning below these amounts.[20] The executive salary level was maintained at $30 per week, because the chance of abuse of the exemption appeared to be less, based on the "compensating advantages" provided executives (greater access to opportunities for promotion and benefits); the consideration that the executive function by definition limits the application; and the fact that the nature of executive work is not "shareable," so a higher salary level would not help to spread employment.[21] At the same time, USDOL added a cap of 20% on the amount of time an exempt employee could spend on nonexempt duties.[22] A critical factor considered in assessing the appropriate salary levels was setting the salary cut-off sufficiently high that only a very small percentage of nonexempt white collar employees would satisfy the salary test: "[o]bviously, if a large percentage of persons in a highly routinized occupation would be exempted [based on the salary level], the salary qualification fails to act as a differentiating factor between the [nonexempt] clerical employee and the [exempt] administrative employee."[23]

In 1949, USDOL again looked at salary levels from a variety of sources.[24] The USDOL recognized that the salary tests set in 1940 had become outdated and were too low in later years, which "gradually weakened the effectiveness of the present salary tests as a dividing line between exempt and nonexempt employees."[25] The USDOL updated the salary level by calculating the percentage increase in weekly earnings from 1940 to 1949, setting the new salary levels "at a figure slightly lower than might be indicated by the data on increases in the earnings of nonexempt workers," both because the pay increases of executives in some industries had lagged behind their subordinates and in order to protect small businesses, who were underrepresented amongst the witnesses providing data.[26] The USDOL balanced

[16] Weiss Report 8-9.
[17] 3 FR 2518; Weiss Report 8-9.
[18] 3 FR 2518.
[19] *See* Stein Report.
[20] Stein Report at 30-32, 43.
[21] Stein Report at 21-22.
[22] Stein Report at 15-17.
[23] Stein Report at 31 (a salary level set where 5% of nonexempt clerical workers would meet the test would not be "adequate to guard against abuse.")
[24] *See* Weiss Report.
[25] Weiss Report at 8.
[26] Weiss Report at 13-15.

this slightly lower-end salary level by establishing a second test, or "short test," that had a less rigorous duties test and a higher salary level to qualify for exemption.[27] The existing duties test and salary level became known as the "long test" and included the 20% cap on nonexempt work for executives and professional employees as well as an added 20% cap on nonexempt duties for administrative workers.[28] The less rigorous short test had no cap on nonexempt duties, and instead used a much higher salary level to prevent abuse.[29] The USDOL's findings that supported creation of the short test included: employees paid at the higher salary levels almost invariably met all requirements for exemption; in rare instances where employees did not meet the other requirements for exemption, a determination of exemption would not defeat the objectives of the FLSA; providing a "short-cut test of exemption" using a higher salary with a less stringent duties test would make it easier to administer the regulation and save employers considerable time; a "considerably higher" salary was needed for the short test to include "only those persons about whose exemption there is normally no question;" and creating an alternative short test with a higher salary would not likely "lead to injustice since a bona fide executive, administrative or professional employee who does not meet the higher salary test would qualify nevertheless under the basic regulations."[30] The short test salary level in the rules ($100 per week) was 133% above the long salary levels for administrative and professional employees ($75 per week) and 180% above the long salary level for executives ($55 per week). All of the USDOL's salary level updates from 1949 until 2004 set the short test salary threshold at levels ranging from 130 to 180 percent higher than the long test salary level.[31]

In 1958, the USDOL considered information on salaries actually paid to employees who qualified for the overtime exemptions, based on survey data collected during USDOL Wage and Hour investigations.[32] The data was grouped by major geographic regions, by number of employees in the establishment, by size of city, and by broad industry groups, and was supplemented with Bureau of Labor Statistics (BLS) and other published data indicating the change in wage and salary levels since 1949.[33] The long test salary level was then set at "levels at which no more than about 10% of those in the lowest-wage region, or in the smallest size establishment group, or in the smallest sized city group, or in the lowest-wage industry of each of the categories would fail to meet the tests."[34] The long test salary levels for executives was set at $80 per week, and the salary level for administrative and professional employees was set at $95.[35] The short test salary level was set at $125, maintaining the ratios from 1949.[36]

[27] 14 Fed. Reg. 7705-06; 29 C.F.R. § 541.1(e) (1949); Weiss Report at 23.
[28] *Id.*
[29] *Id.*
[30] Weiss report at 22-23.
[31] *See* Table 1.
[32] Kantor Report at 6.
[33] Kantor Report at 6-9
[34] Kantor Report at 6-7. The method is referred to as the "Kantor method".
[35] Kantor Report at 9; 23 FR 8962.
[36] Kantor Report at 10; 23 FR 8962.

Table 3: History of USDOL Weekly Salary Levels for Exemption

Date enacted	Long test			Short test (all)
	Executive	Administrative	Professional	
1938	$30	$30	N/A	N/A
1940	$30	$50	$50	N/A
1949	$55	$75	$75	$100
1958	$80	$95	$95	$125
1963	$100	$100	$115	$150
1970	$125	$125	$140	$200
1975	$155	$155	$170	$250
Standard Test				
2004	$455			

In the 1963 update, the long test salary levels for executives and administrative employees was set at $100 per week, and the salary level for professional employees was set at $115.[37] The USDOL looked to data on actual salaries paid to EAP exempt employees and, consistent with the prior updates, set the long test salary thresholds at a level such that only a small percentage of bona fide EAP employees are denied the exemption.[38] The USDOL set the long test salary levels to be consistent with the relationships in the 1958 rules.[39] The short test salary level was set at $150 per week, which was 150% above the executive and administrative long test salary levels and 130% above the professional long test salary level.[40]

In 1970, the long test salary levels for executives and administrative employees was set at $125 per week, and the salary level for professional employees was set at $140.[41] Again, a similar approach was taken

[37] 28 FR 9505.
[38] 28 FR 7004.
[39] *Id.*
[40] 28 FR 9505.
[41] 35 FR 884-85.

using survey data of actual EAP employee salaries from 1968.[42] The short test salary level was set at $200 per week, which was 160% above the executive and administrative long salary test levels and 143% above the professional long salary level.[43]

The USDOL took a different approach in 1975 and updated the 1970 salary levels slightly below the increase in the Consumer Price Index from 1970 to 1975.[44] The long test salary levels for executives and administrative employees was set at $150 per week, and the salary level for professional employees was set at $170.[45] The short test salary level was set at $250 per week.[46] In 1975, 62 percent of full-time salaried workers, including a majority of college graduates, were eligible for overtime pay.[47] The USDOL noted that the "rapid increase in cost of living" since the last update in 1970 had "substantially impaired the current salary tests as effective guidelines" for determining the EAP exemptions.[48] While the USDOL identified the need for immediate adjustments, the stated intent was for the rates to be used on an interim basis pending the completion and analysis of a BLS study covering six months of 1975.[49] Although the 1975 rates were intended to be interim only, they were in place for 29 years until a 2004 update.[50]

Under 1990 amendments to the FLSA, the USDOL was directed to exempt certain employees in computer-related occupations. The amendments required rules be issued to allow "computer systems analysts, computer programmers, software engineers, and other similarly skilled professional workers as defined in such regulations to qualify as exempt executive, administrative, or professional employees" under FLSA if they were paid on an hourly basis at a rate of at least 6.5 times the federal minimum wage (then $4.25 per hour).[51] The USDOL adopted rules in 1992 providing for the hourly computer professional exemption and defining the primary duties of computer professionals.[52] The FLSA was amended again to add a specific statutory exemption for computer professionals in 1996, fixing the hourly rate at $27.63 an hour and including much of the primary duties of computer professionals from the USDOL rules.[53]

In 2004, USDOL rule updates made several significant changes from the approaches taken in the previous years. Under the 2004 rules, the USDOL modified the duties tests to eliminate the "long" and "short" tests that had been part of the regulations since 1949, replacing them with one "standard" test.[54] As described above, the historic long test paired a lower salary requirement with a stringent duties test, including a 20 percent cap on the amount of time most exempt employees could spend on nonexempt

[42] *Id.*; *see also* 34 FR 9934.
[43] 35 FR 885.
[44] 40 FR 7091
[45] *Id.*
[46] 40 FR 7092.
[47] USDOL Overview of the Overtime for White Collar Workers, Overview and Summary of Final Rule https://www.dol.gov/sites/default/files/overtime-overview.pdf
[48] 40 FR 7091-92.
[49] *Id.*
[50] Revisions to the rules made in 1981 were stayed indefinitely. 46 FR 11,972 (Feb. 12, 1981). https://www.federalregister.gov/citation/46-FR-11972
[51] P.L. 101-583.
[52] 57 FR 46,744.
[53] P.L. 104-188.
[54] 29 C.F.R. § 541, *et seq.*; 69 FR 22,164, 22,168–69; *see also* 68 FR 15,570.

duties, while the short test paired a higher salary requirement with a less stringent duties test. The standard test established by the USDOL in the 2004 federal rules paired a duties test closely based on the less-stringent short duties test (with no cap on time spent performing nonexempt duties) with a new standard salary level derived from the lower, long test salary level.[55]

Unlike the previous updates, the USDOL did not have available data on the actual salaries paid to exempt employees but rather used survey data from the BLS Current Population Survey (CPS) for salaried workers.[56] However, the CPS data covered all salaried workers—both exempt and nonexempt.[57] The 2004 salary level was set based on approximately 20 percent of all full-time salaried workers in the South (lowest-wage region) and 20 percent of all full-time salaried workers in the retail industry (lower-wage industry), rather than at the 10th percentile of exempt workers.[58] The USDOL asserted that the salary level was nonetheless equivalent to the long test salary level under the previous method used since 1959 (the "Kantor Method").[59] Under the Kantor method, the short test salary level would have then been set at 130 to 180 percent higher. The new standard salary level test was set at $455 per week ($23,660 annually).[60]

The 2004 federal rules also created an exemption for highly-compensated employees (HCE), which imposes a very minimal duties test, but required that an employee must earn at least $100,000 in total annual compensation.[61]

After more than a decade, during which they were able to assess the success of the 2004 rule updates, the USDOL recognized in its 2016 Final Rules that establishing a single standard salary level equivalent to the historic levels of the former long test salary and pairing it with a standard duties test based on the short duties test resulted in the exemption from overtime of many lower-wage workers who performed little EAP work and whose work was otherwise indistinguishable from their overtime-eligible colleagues.[62] The pairing resulted in the misclassification of over 700,000 nonexempt, overtime-eligible, white collar workers as exempt.[63] This included the inappropriate classification of employees as EAP exempt who passed the standard duties test but would have failed the long duties test.[64] As such, the USDOL determined that there was a need to update the salary level to account for inflation but also correct for the fact that the 2004 salary level did not adequately adjust for the elimination of the more rigorous long duties test.[65] The USDOL used the CPS data again, only this time USDOL set the salary level at the 40th percentile weekly earnings of full-time salaried workers in the lowest-wage census region (then, the South).[66] In setting the specific percentile, the USDOL examined the historical relationship of the short test salary level to the long test salary level and determined that "a salary between approximately

[55] *Id.*
[56] 69 FR 22,166-68.
[57] 69 FR 22,167.
[58] *Id.*
[59] *Id.*
[60] 69 FR 22,123.
[61] 29 C.F.R. § 541.601.
[62] 81 FR 32,400.
[63] 81 FR 32,463.
[64] 81 FR 32,392.
[65] 81 FR 32,392-93.
[66] 81 FR 32,403-05.

the 35th and 55th percentiles of weekly earnings of full-time salaried workers nationwide would work appropriately with the standard duties test."[67] The salary level chosen was at the low end of the range "to account for low-wage regions and industries and for the fact that employers no longer have a long duties test to fall back on for purposes of exempting lower-salaried workers performing bona fide EAP duties."[68] Using a standard salary threshold significantly below the 40th percentile would require a more rigorous duties test than the current standard duties test in order to effectively distinguish between white collar employees who are overtime protected and those who may be bona fide EAP employees.[69] The 2016 rules also implemented an automatic updating mechanism, which would adjust the salary levels every three years based on the 40th percentile of weekly earnings of full-time non-hourly workers in the lowest-wage Census Region.[70]

The 2016 rules were scheduled to take effect on December 1, 2016. However, on November 22, 2016, the Eastern District of Texas granted a nationwide preliminary injunction preventing the rules from taking effect. The Eastern District of Texas subsequently granted summary judgment against the USDOL in consolidated cases challenging the rules. The Department of Justice, on behalf of the USDOL, appealed the district court's decision to the U.S. Court of Appeals for the Fifth Circuit and thereafter requested and was granted a stay of the appeal while the USDOL undertook further rulemaking regarding the salary level.

On September 24, 2019, the USDOL issued its new, final rules, which have an effective date of January 1, 2020.[71] The USDOL's final rules follow the 2004 method to update the salary threshold, using the 20th percentile of earnings of full-time salaried workers in the lowest-wage Census Region (again the South) and the retail industry.[72] This resulted in a salary level of $684 per week ($35,568 annually).[73] The 2019 USDOL final rules also allow nondiscretionary bonuses and incentive compensation to count towards the salary threshold for the first time, up to a cap of 10 percent of the minimum salary level.[74]

1.2.3 History of the department's rules

L&I promulgated its rules on the executive, administrative, and professional (EAP) exemptions in 1976 and has not substantially updated the rules since that time. The 1976 rules require most workers to meet a duties test and be paid a minimum salary between $155 and $250 per week to qualify for these exemptions, which equates to a minimum yearly salary of $13,000.[75] Following the USDOL 2004 rule change, the department did not update its rules. Employers are required to comply with both state and federal overtime regulations, but where differences exist between Washington State and the 2004 federal overtime regulations, employers are required to follow the regulation that is most favorable to the worker.

[67] 81 FR 32,404.
[68] 81 FR 32,404.
[69] *Id.*
[70] 81 FR 32,551.
[71] 84 FR 51,230 (Sept. 27, 2019).
[72] 84 FR 51,231.
[73] *Id.*
[74] *Id.*
[75] *See* WAC 296-128-500, -510, -520, and -530.

Following the adoption of the 2004 USDOL rules, the department updated its policies for EAP exemptions to indicate where the federal rules were more favorable.

Since 1976, there has been one significant modification to these rules, which was the addition of the rule addressing computer professionals in 1997. The 1997 rulemaking adopted equivalent language to the federal rules and set the hourly salary level for computer professionals at $27.63 per hour.[76]

1.2.4 The department's current rulemaking effort

The department began this rulemaking to ensure the regulations effectively distinguish between employees who the Legislature intended to be protected by the MWA and bona fide EAP workers who it intended to exempt. The department recognizes that when the definitions become outdated the protections intended by the MWA erode, and employees whom the Legislature intended to protect do not receive the protections of the MWA or the higher salaries, above-average benefits, and greater job security and advancement opportunities expected for bona fide EAP employees, which justify the exemption from the MWA's protections.[77] Additionally, employers do not have an efficient and reliable means of identifying which workers are or are not entitled to these protections.

Some of the factors considered in determining to update the rules included the following:

- The rules governing these exemptions have not been updated since 1976. In addition, the increase in the state's minimum wage not only exceeds the state long-test salary level of $250/week but also the federal $455/week salary threshold set in 2004 as well. As such, the state and federal rules were not just ineffective at distinguishing between exempt and nonexempt workers, but also failed to provide for the health, safety, and general welfare of the workers envisioned by the Legislature when it adopted the MWA.
- The preliminary injunction and subsequent suspension of the 2016 federal rules by the Texas court. The 2016 federal rules outlined the compelling need to not only update the federal salary threshold but also to address the flawed methodology used in 2004 of pairing the weakest parts of previous long and short tests. Given the compelling record outlined in the 2015 Notice of Proposed Rulemaking and the 2016 federal final rules discussed above, the lack of increased federal protection magnified the need for the state action.
- The 1976 standards for exemptions may not accurately reflect the current expectations of exempt workers, given changes in the workforce over the last four decades.[78]
- The outdated exemptions under the MWA affect what workers are eligible for the new employee rights established by I-1433, including paid sick leave and protection from retaliation. After I-1433, the MWA now provides protections for employees to receive their tips and service charges, accrue and use paid sick leave, and exercise all of their MWA rights free from retaliation or discrimination by their employer. The erosion of MWA protections thus affects access to more expansive rights than when the exemption was first created.

[76] WAC 296-128-535; *see* 29 U.S.C. **§** 213(a)(17).
[77] The USDOL has consistently noted the role of outdated EAP rules, and particularly outdated salary thresholds, in eroding the protections of the FLSA. *See, e.g.*, 69 FR 22122 ("Revisions to both the salary tests and the duties tests are necessary to restore the overtime protections intended by the FLSA which have eroded over the decades.")
[78] *See, e.g.* 69 FR 22124 ("The Department is responsible for updating regulations that, with each passing decade of inattention, have become increasingly out of step with the realities of the workplace.")

With these adopted rules, L&I intends to restore protections so that workers who should receive minimum wage, overtime, tips and service charges, paid sick leave, and protection from retaliation will do so, and to implement a mechanism to ensure that the tests for exemption remain up-to-date so future workers will not be denied the protections that the Legislature and the voters intended to afford them.

1.2.4.a The adopted duties requirements

As stated above, the department's current rules are based on the 1976 federal rules. As such, the current rules have the long and short tests – the long duties test having a 20 percent cap on performing nonexempt duties, with a 40 percent cap on nonexempt duties for executive and administrative employees of a retail or service establishment.

Employer stakeholders have been consistent in their position that the duties test should align with the federal standard, requesting that the department adopt the "standard test" from the federal 2004 rules (not changed in the 2019 final rules). Labor advocates were generally in favor of aligning the duties tests, but some comments requested retention of the cap on nonexempt work and clarification of the definition of "primary duty" under the standard test.

The adopted rules largely align the duties tests with the federal duties tests. Simplifying the rules to have one duties test will make it easier for employers to understand and comply with the rules and will provide greater consistency across jurisdictions for employers and workers alike.

1.2.4.b Setting the salary level

In order to account for a single, less-stringent duties test, the salary threshold will necessarily play a greater role in protecting overtime-eligible employees.[79] This is consistent with the USDOL's longstanding recognition that the "salary level test works in tandem with the duties requirements to identify bona fide EAP employees and protect the overtime rights of nonexempt white collar workers."[80] As such, the adopted salary levels need to compensate for the elimination of the long duties test and allow for reliance on the current standard duties test to appropriately distinguish between workers who are eligible for overtime and those who may be EAP exempt.

The department has based the salary level on a multiplier of the state minimum wage.[81] The basis for this decision includes:

- Changes to the MWA under I-1433 included increases to the state-wide minimum wage over four years to $13.50 on January 1, 2020, with subsequent annual increases based on Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).[82] As such, a multiplier of

[79] *See* 81 FR 32,412. Both the USDOL's 2004 rules and 2016 update noted the need to adjust the salary methodology to account for the move to the standard duties test.
[80] 81 FR 32,444.
[81] California and Alaska both set the salary level threshold for EAP exemptions at 2 times the state minimum wage. Cal. Lab. Code § 515(a); AS § 23.10.055(b). The statewide minimum wage in California increases to $15.00/hour by 2023 with annual adjustments thereafter based on the CPI-W. Cal. Lab. Code § 1182.12. The Alaska minimum wage is currently $9.89/hour, with annual adjustments based on the CPI-W for the Anchorage metropolitan area. AS § 23.10.065(a). http://labor.alaska.gov/lss/whact.htm
[82] RCW 49.46.020.

the minimum wage ensures regular and automatic updates to prevent the salary level from eroding.

- Historically, the USDOL has recognized the fact that bona fide EAP workers, or "white collar workers," are set apart from non-exempt workers because they earn salaries ***well above the minimum wage***, receive fringe benefits, and have greater job security and opportunities for advancement.[83] Using a multiplier of the minimum wage provides a ready yardstick to help ensure the salary level is continuing to reflect an appropriate dividing line between exempt and nonexempt employees.
- The USDOL has consistently recognized that failure to timely update and adjust the salary levels erodes the intended protections of the FLSA. The same erosion happens to the protections of the MWA, absent an updating mechanism.[84]

In considering at what level to set the multiplier, the department reviewed multiple data sources, historical methods of setting and calculating salary levels, and extensive stakeholder feedback. Factors considered included the following:

- **The historical ratio between the salary threshold as set by USDOL under the FLSA and the federal minimum wage for a 40-hour workweek at the time the threshold was set –** The relationship between the salary thresholds set by the USDOL and the federal minimum wage has varied over the course of the history of the rules defining and delimiting these exemptions at the federal level. Overall, the ratio ranges from **2.00 times** to **3.44 times**, with a mean of **2.53 times** and a median of **2.37 times**. See Table 4.

Table 4: Historical Ratio between Federal Salary Threshold and Federal Minimum Wage

Date enacted	Long test salary threshold (lowest level)	Standard test salary threshold	Federal minimum wage[85]	Federal minimum wage (40 hour work week)	Ratio of salary threshold to federal minimum wage
1938	$30	-	$0.25	$10	3.00
1940	$30	-	$0.30	$12	2.50
1949	$55	-	$0.40	$16	3.44
1959	$80	-	$1.00	$40	2.00
1963	$100	-	$1.15	$46	2.17
1970	$125	-	$1.30	$52	2.40
1975	$155	-	$1.90	$76	2.04

[83] 81 FR 32,394-95, citing Report of the Minimum Wage Study Commission, Volume IV, pp. 236 and 240 (June 1981).
[84] *See*, *e.g.*, Weiss Report at 8; 69 FR 22,122, 22,164; 81 FR 32,450.
[85] USDOL History of Federal Minimum Wage Rates Under the Fair Labor Standards Act, 1938 – 2009 https://www.dol.gov/whd/minwage/chart.htm

2004	-	$455	$5.15	$206	2.21
2016*	-	$913	$7.25	$290	3.15
2019	-	$684	$7.25	$290	2.36
				Minimum	**2.00**
				Maximum	**3.44**
				Mean	**2.53**
				Median	**2.37**

- **The inflation-adjusted value of the 2017 weekly earnings for full-time salaried workers in the West Census Region** – The BLS research series on deciles of usual weekly earnings of non-hourly full-time workers was used by the USDOL in the 2016 Final Rules. As discussed above, the USDOL examined the historical relationship of the short test salary level to the long test salary level and determined "a salary between approximately the 35th and 55th percentiles of weekly earnings of full-time salaried workers nationwide would work appropriately with the single, standard-duties test. Of the 13 states in the West Census Region, Washington has the second highest median wage and the highest mean hourly and annual wage (See Tables 5 and 6). As such, the percentiles are likely to be overestimations of the actual salary distributions in Washington.

Table 5: Deciles of Weekly Earnings of Nonhourly Full-time Workers in West Region[86]

	Third decile	**Fourth decile**	**Fifth decile**	**Sixth decile**
2017 annual average	$943	$1,127	$1,329	$1,539
Adjusted to 2019 dollar value (as of December 2019)	$982	$1,174	$1,384	$1,603

Table 6: State Wage Estimates - May 2018[87]

State	**Median hourly wage**	**Mean hourly wage**	**Annual mean wage**
Alaska	$23.09	$28.22	$58,710
Arizona	$17.08	$23.70	$49,290
California	$20.40	$28.44	$59,150

[86] BLS Research series on deciles of usual weekly earnings of non-hourly full-time workers https://www.bls.gov/cps/research_nonhourly_earnings_2017.htm

[87] BLS May 2018 State Occupational Employment and Wage Estimates, https://www.bls.gov/oes/current/oessrcst.htm

State	Median hourly wage	Mean hourly wage	Annual mean wage
Colorado	$20.34	$26.84	$55,820
Hawaii	$20.42	$25.43	$52,900
Idaho	$16.42	$20.90	$43,480
Montana	$16.87	$21.09	$43,860
Nevada	$17.09	$22.20	$46,170
New Mexico	$16.40	$21.83	$45,400
Oregon	$19.03	$25.00	$52,000
Utah	$17.69	$23.04	$47,920
Washington	$22.17	$28.56	$59,410
Wyoming	$19.34	$23.38	$48,630

- **The real value of the 1970 salary threshold for the short duties test as set by USDOL under the FLSA –** The last short test salary threshold set by USDOL using an analysis of actual EAP worker salaries was the 1970 ($200)[88]. By updating that for real dollars, it is the equivalent to $1,314 per week (1970 level of $200 per week).[89]

- **The growth rate of the state average wage[90] –** Between 1976, when the salary thresholds were last updated in the rules, and 2018, Washington's average weekly wage grew 517% from $206 to $1,272, and the annual average growth rate was 4.3%. Applying this same rate of growth to the minimum salary threshold results in a threshold for 2020 between $1,042 and $1,680, and a 2028 threshold between $1,462 and $2,357. The adopted multiplier in these final rules will bring the salary threshold to approximately $1,603 in 2028, which is within this range.

In reviewing the stakeholder input and the data above, the department adopted a salary level of 2.5 times the state minimum wage. The proposed rule language reflected a phased-in implementation period of six years. Following extensive comments from stakeholders, the Department made updates reflected in the adopted rules to include an eight-year implementation phase-in schedule, with a more gradual phase-in for small businesses. The implementation phase-in schedule in the adopted rules is two years longer than the phase-in schedule included in the proposed rules, which will further mitigate impact to employers and give businesses more time to adjust to and comply with the updated salary thresholds for their salaried, exempt employees. Absent the phase-in, the multiplier would equate to a salary level of $1,350 per week, or $70,200 per year, as of January 1, 2020 (based on a minimum wage of $13.50 per hour).

[88] As discussed above, the 1975 short test was an update to the 1970 value.
[89] Updated to 2019 dollar value (CPI-U data as of December 2019)
[90] While this factor was not previously noted in the Preliminary Cost-Benefit Analysis for the proposed rule, it is consistent with the factors considered at that time and was assessed in determining the final rule.

A multiplier of 2.5 times the state minimum wage is the middle range of the historical ratios and provides for a salary level that is consistent with the 50th percentile of the weekly earnings for salary workers in the West Census Region, is slightly above the updated real value of the 1970 short test, and is consistent with the growth rate of the state average wage since the state adopted its rules in 1976. The adopted rule salary level of 2.5 times the state minimum wage provides for automatic updates and ensures the effective balance of an appropriate salary level paired with the standard duties test to identify those workers who legitimately should be exempt from the MWA protections. The result is a test for EAP exemption that furthers the MWA purpose of providing modern labor standards that protect Washington workers and encourages employment opportunities within the state.

Setting the salary level – hourly computer professionals

The current hourly salary level for computer professionals is the same as the $27.63 per hour set by the FLSA in 1990. As discussed above, the federal salary level when originally set equaled 6.5 times the federal minimum wage. Updating this formula to the current federal minimum wage ($7.25 per hour) it equals $47.13 per hour.[91] However, Washington minimum wages are substantially higher than the federal equivalents, and a similar 6.5 multiplier would not realistically capture Washington computer professional wages.[92] The department reviewed the 2018 average hourly wages for 15 computer professional occupations: the average hourly wages ranged from $75.95 per hour to $30.08 per hour, with the mean average wage of $51.92. See Table 7. In consideration of these factors, the department is proposing an hourly salary rate of 3.5 times the state minimum wage, corresponding to a salary level of $47.25 per hour as of January 1, 2020, (based on a minimum wage of $13.50 per hour). Implementation will be phased-in.

Table 7: 2018 Occupational Wage Statistics for Computer Professionals

Washington statewide occupational title	**Average wage[93]**
Computer & Information Systems Managers	$75.95
Computer & Information Research Scientists	$66.03
Computer Systems Analysts	$46.12
Information Security Analysts	$51.77
Computer Programmers	$59.07
Software Developers, Applications	$64.17
Software Developers, Systems Software	$57.52
Web Developers	$45.04
Database Administrators	$47.91

[91] https://www.dol.gov/general/topic/wages/minimumwage

[92] California's EAP exemption includes a provision specific to certain computer professionals with a statutorily specified rate that is updated each year based on the CPI for Urban Wage Earners and Clerical Workers. Cal. Lab. Code § 515.5. As of January 1, 2019, the salary levels are $45.41 per hour and $94,603.25 per year. https://www.dir.ca.gov/oprl/ComputerSoftware.pdf

[93] The average hourly wages by occupation are from the Occupational Employment Statistics survey (OES) data.

Network & Computer Systems Administrators	$44.08
Computer Network Architects	$51.21
Computer User Support Specialists	$30.08
Computer Network Support Specialists	$37.57
Computer Occupations, All Other	$44.22
Computer Hardware Engineers	$58.00

1.2.5 Rule development process

In 2016, the Department of Labor & Industries (L&I) launched an effort to update the rules that define and delimit the executive, administrative, and professional (EAP), computer professional, and outside sales exemptions from the Minimum Wage Act. Following the adoption of rules to implement Initiative 1433, L&I formally initiated the EAP rulemaking in 2018. L&I filed a CR-101 Preproposal Statement of Inquiry on March 20, 2018. L&I conducted extensive pre-proposal stakeholder engagement and education, including the following meetings and invitations for written comment:

- April 11, 2018: An informational kickoff meeting, including a call for stakeholders to submit key questions to explore in the rulemaking process.
- May 8, 2018: A meeting to discuss the first round of feedback for the recommended content of this rulemaking.
- June 8, 2018: A meeting to present stakeholder-requested data on state wages and economic characteristics.
- June 26, 2018: A follow-up meeting with stakeholders to present additional requested data.
- August 1, 2018: A meeting to discuss rule update draft concepts.

L&I released an initial pre-draft version of potential proposed rule language for stakeholder discussion and comment on October 5, 2018, and held feedback sessions to discuss the language on:

- October 9, 2018, in Tumwater, Washington.
- October 16, 2018, in Everett, Washington.
- October 17, 2018, in Richland, Washington.
- October 18, 2018, in Spokane, Washington.

L&I released a second pre-draft version of potential proposed rule language for stakeholder discussion and comment on November 19, 2018, and held feedback sessions to discuss the language on:

- November 27, 2018, in Seattle, Washington.
- November 28, 2018, in Yakima, Washington.
- November 29, 2018, in Vancouver, Washington.

On June 4, 2019, L&I filed the CR-102 proposed rule language. The department held seven statewide public hearings on:

- July 15, 2019, in Tumwater, WA
- July 16, 2019, in Seattle, WA
- July 17, 2019, in Bellingham, WA
- August 5, 2019, in Ellensburg, WA
- August 6, 2019, in Kennwick, WA
- August 7, 2019, in Spokane Valley, WA
- August 15, 2019, in Vancouver, WA

The public hearings yielded 625 attendees, 182 of whom provided testimony. In addition to the comments provided at the public hearings, the department also received 2,266 written comments. Comments received in response to the proposed rule langauge reflected both support for and concerns about the proposed updates, and came both from individuals and from various representatives of business, labor, and nonprofit interests.[94]

1.3 The description of the rule amendments

As required by the Administrative Procedures Act, L&I analyzed its proposed and final, adopted rules to determine whether the rules are "significant legislative rules" as defined in RCW 34.05.328(5)(a)(i). The proposed rules and the final, adopted rules are considered significant legislative rules. A description of the changes are as follows:

WAC 296-128-500 Purpose.
Rule Overview: This section is amended to align with other changes in the adopted rules and to clarify existing language.

WAC 296-128-505 Definitions.
Rule Overview: This new section is added to define terms used in the chapter.

WAC 296-128-510 Executive.
Rule Overview: This section is amended to redefine the duties test for an individual employed in an executive capacity. Harmonizes duties test with equivalent federal regulations. Requires compliance with salary levels set in the new salary threshold section.

To qualify for the executive employee exemption, all of the following tests must be met:

- The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- The employee must customarily and regularly direct the work of at least two or more other full-time employees;
- The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight; and

[94] For information on stakeholder comments and department responses, see the Concise Explanatory Statement accompanying the rule.

- The employee must be compensated on a salary basis at a rate not less than the salary threshold set under WAC 296-128-545.

An employee can also qualify for the executive exemption if the employee owns at least a 20-percent equity interest in the enterprise and is actively engaged in its management.

WAC 296-128-520 Administrative.
Rule Overview: This section is amended to redefine the duties test for an individual employed in an administrative capacity. Harmonizes duties test with equivalent federal regulations. Requires compliance with salary levels set in the new salary threshold section.

To qualify for the administrative employee exemption, all of the following tests must be met:

- The employee's primary duty must be 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.
- The employee's primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.
- The employee must be compensated on a salary or fee basis at a rate not less than the salary threshold set under WAC 296-128-545.

To qualify for the administrative employee exemption for academic administrators, all of the following tests must be met:

- The employee's primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision of the institution.
- The employee must be compensated on a salary or fee basis at a rate not less than the salary threshold set under WAC 296-128-545, or on a salary basis that is at least equal to the entrance salary for teachers in the educational establishment by which the worker is employed.

WAC 296-128-530 Professional.
Rule Overview: This section is amended to redefine the duties test for an individual employed in a professional capacity. Harmonizes duties test with equivalent federal regulations, except it retains the requirement that teachers be paid on a salary basis to qualify for the exemption. Requires compliance with salary levels set in the new salary threshold section.

To qualify for the professional employee exemption, all of the following tests must be met:

- The employee's primary duty must be the performance of work:
    - Requiring advanced knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
    - Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
- The employee must be compensated on a salary or fee basis at a rate not less than the salary threshold set under WAC 296-128-545.

To qualify for the professional employee exemption for teachers, all of the following tests must be met:

- The employee's primary duty is 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 educational establishment by which the employee is employed.
- The employee must be compensated on a salary or fee basis.

To qualify for the professional employee exemption for the practice of law or medicine, one of following tests must be met:

- The employee holds a valid license or certificate permitting the practice of law or medicine and the employee is actually engaged in such a practice.
- The employee holds the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program in the profession.

WAC 296-128-535 Computer professionals.
Rule Overview: This section is amended to redefine the duties test for certain computer professionals. Harmonizes duties test with equivalent federal regulations. Requires compliance with salary levels set in the new salary threshold section or the payment of hourly wages of 3.5 times the state minimum wage. Provides a phase-in schedule for the updated hourly wage threshold.

To qualify for the computer employee exemption, the following tests must be met:

- The employee must be employed as a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker.
- The employee's primary duty must consist of:
    - The application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specification; or
    - 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
    - The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or
    - A combination of the aforementioned duties, the performance of which requires the same level of skills.
- The employee must be compensated on a salary or fee basis at a rate not less than the salary threshold set under WAC 296-128-545, or if compensated on an hourly basis, at a rate not less than the hourly threshold set in this section. The hourly threshold is phased in based on employer size with the final statewide threshold of 3.5 times the state minimum wage per hour effective January 1, 2022.

WAC 296-128-540 Outside salespersons.
Rule Overview: This section is amended to redefine the duties test for an outside salesperson. Harmonizes duties test with equivalent federal regulations, except it retains the requirements that the employee must compensated on a guaranteed salary, commission, or fee basis and must be advised of the status as an outside salesperson.

To qualify for the outside sales employee exemption, all of the following tests must be met:

- The employee's primary duty must be making sales as defined in the rules or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.
- The employee must be customarily and regularly engaged away from the employer's place or places of business.
- The employee must be compensated by the employer on a guaranteed salary, commission, or fee basis, and must be advised of the employee's status as an "outside salesperson."

WAC 296-128-545 Salary thresholds.
Rule Overview: Establishes updated salary thresholds for an employee to be considered exempt as an executive, administrative, or professional employee, where the salary threshold test is applicable. The salary threshold is phased in based on employer size, with the final statewide threshold of 2.5 times the state minimum wage for a 40-hour workweek effective January 1, 2028.

The following changes from the proposed rule language were made in the adopted rules:

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).
- 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 purposes.

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 "[t]he 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. This extended salary threshold phase-in gives employers more 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 the Employment Security Department for Paid Family and Medical Leave purposes.

- The department added illustrative tables for the salary threshold phase-in schedule provided in subsections (1)-(9).

CHAPTER 2: ASSESSING COSTS

The Administrative Procedure Act (APA) requires that, before adopting a significant legislative rule, the Department of Labor & Industries (L&I) must analyze the probable costs and benefits of the rule and determine that the benefits are greater than its costs, taking into account both the qualitative and quantitative benefits and costs per RCW 34.05.328(1)(d).

The costs analyzed in this chapter are the regulatory costs associated with these adopted rules, and they are borne by affected employers in the state. While it is impossible to analyze the cost for each individual employer, the department is required to estimate the total cost across all affected employers.

This cost assessment updates the cost assessment from the preliminary cost-benefit analysis and reflects the costs associated with the rules as adopted.

2.1 Methodology and data sources

2.1.1 Baseline standard

Before quantifying any potential cost impact of this proposal, it is worth noting that the probable costs estimated in this analysis are limited to the new costs of complying with the adopted rules for the affected parties and exclude those realized or potential costs associated with or originated from current practices or "baseline" standards set forth under current applicable laws, rules, or national consensus standards.

The Fair Labor Standards Act (FLSA) provides minimum wage and overtime pay protections for workers who do not meet the exemption criteria stated in 29 C.F.R. §541 *et seq.* for bona fide executive, administrative, and professional (including computer professional) workers, or outside salespersons. Both the FLSA and state law provide that where standards differ, the standard more protective to workers applies.[95] While Washington employers must comply with both state and federal rules, they must follow the standards that are more favorable to their workers where any differences exist between these rules.

The current effective federal standard was adopted in 2004, but Washington State still follows the 1975 federal regulation. For the most part, the state standard is less protective or favorable to workers than the current federal rule.[96] For example, the federal standard under 29 C.F.R. §541.600(a) states that to qualify as an exempt executive, administrative, or professional employee, the employee must be compensated on a salary basis at a rate of not less than $455 per week, along with other requirements. In contrast, the state rule under WAC 296-128-500 through 296-128-540 require a much lower salary threshold for the same worker to be exempt (between $155 and $250 per week depending on the type of work and the job duties). Therefore, the department applies the 2004 federal standard as the baseline standard for analysis

[95] RCW 49.46.120; 29 U.S.C. § 218(a).

[96] On its face, the state standard is more favorable to certain workers in the named occupations (teachers, lawyers, judges, etc.) because they are subject to a salary requirement, which theoretically limits the scope of the exemption, while under the federal standard, the exemption is not limited by either a salary level or a salary basis test. But the current state salary threshold for these professionals is so low (between $170 and $250 per week) that it fails to limit the reach of the exemption or provide more protections than the federal standard.

of the salary threshold and only analyzes the costs and benefits associated with the adopted requirements that are above and beyond this baseline standard.[97]

2.1.2 Identification of affected population

The most significant aspect of the adopted rules are the higher salary level thresholds, which will be phased in over multiple years. The salary threshold for executives, administrative, and professional employees will initially be set at 1.25 times the state minimum wage for all affected businesses, regardless of size, in July 2020.[98] The salary thresholds for these employees will gradually increase through 2027 for large businesses and through 2028 for smaller businesses, until both reach 2.5 times the applicable state minimum wage (see Table 8). The new rules also phase-in the hourly threshold of 3.5 times state minimum wage for computer professionals. For large businesses, the rules set an hourly threshold of 2.75 times state minimum wage in 2020, and 3.5 times in 2021 and thereafter. For small businesses, the computer professional hourly threshold will be unchanged in 2020 but will increase to 2.75 times the state minimum wage in 2021 and to 3.5 times the state minimum wage by 2022 and thereafter.

Table 8: Adopted Salary Threshold Phase-in Schedule

Type of workers	**Type of business**	**Salary threshold as a state minimum wage multiplier (Starting January 1 of each year except for July 2020)**								
		2020	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**	**2028 and thereafter**
Non-computer	≤ 50 FTEs	1.25	1.5	1.75	1.75	2.0	2.0	2.25	2.25	2.5
	>50 FTEs	1.25	1.75	1.75	2.0	2.0	2.25	2.25	2.5	2.5
Computer	≤ 50 FTEs	No change	2.75	3.5	3.5	3.5	3.5	3.5	3.5	3.5
	>50 FTEs	2.75	3.5	3.5	3.5	3.5	3.5	3.5	3.5	3.5

To estimate the total costs of the adopted rules, the department first needs to identify the workers who are currently exempt under the baseline standard but will receive new protections for overtime (OT), minimum wage (MW), and paid sick leave (PSL) benefits under the adopted rules.

Workers will be affected differently by the new rules depending on the occupation to which they belong. For workers in occupations subject to a weekly salary threshold under the adopted rules,[99] they must meet certain requirements related to their primary job duties and be paid on a salary basis that is between the

[97] On September 24, 2019, the U.S. Department of Labor announced updated EAP rules that would raise the standard salary threshold to $684 per week. The rules are intended to go into effect on January 1, 2020. Because the USDOL final rules are not yet in effect, the current, 2004 federal rule is still used as the baseline for this analysis.
[98] The adopted July 2020 Washington salary threshold (1.25 times state minimum wage, or the equivalent of $675 per week) is slightly below the weekly salary threshold adopted in the 2019 federal rules ($684 per week).
[99] Some workers are not covered by the overtime premium requirement based on the statutory exemptions to overtime provided in RCW 49.46.130(2). Such workers include, for example, seaman, farm workers, seasonal employees who are employed at concessions and recreational establishments at agricultural fairs, and certain workers covered by federal laws or rules.

current salary threshold of $455 and the new level (except for the PSL coverage as indicated in the table). For computer professionals, they will be subject to the new hourly threshold if paid hourly and the new weekly salary threshold if salaried. For teaching professionals, they will remain exempt if paid on a salary basis and continue to be eligible if hourly. Therefore, teaching professionals will not be affected as a whole. Because these two groups are treated slightly different than other professionals under the rules, we analyze them separately.

Table 9: Determination of Affected Workers

For workers other than hourly computer professionals[100] and teaching professionals:				
If a worker is	**With weekly earnings at**	**Under baseline standard**	**Under the adopted rule**	**Affected Population**
an hourly employee	Any level	Guaranteed OT, MW and PSL coverage	Guaranteed OT, MW and PSL coverage	No
not performing EAP job duties	Any level	Guaranteed OT, MW and PSL coverage	Guaranteed OT, MW and PSL coverage	No
a salaried worker performing EAP duties	<$455	Guaranteed OT, MW	Guaranteed OT, MW and PSL coverage	Yes, only for PSL
a salaried worker performing EAP duties	Between $455 and the new level	Exempt from OT, MW, and PSL coverage	Guaranteed OT, MW, and PSL coverage	Yes
a salaried worker performing EAP duties	Above the new level	Exempt from OT, MW, and PSL	Exempt from OT, MW, and PSL	No
For computer professionals paid on an hourly basis:				
any hourly employee paid between $27.63 and the new rate		Exempt from OT, MW, and PSL	Guaranteed OT, MW, and PSL coverage	Yes
For teaching professionals:				
any hourly employee		Guaranteed OT, MW, and PSL coverage[101]	Guaranteed OT, MW, and PSL coverage	No
any salaried worker		Exempt from OT, MW, and PSL coverage[102]	Exempt from OT, MW, and PSL coverage	No

2.1.3 Method used to estimate the number of affected workers

There is no available data that identifies Washington workers based on whether they meet all three criteria in the exemption rules: no data set exists to identify workers who perform EAP-related job duties, are salary based, and are paid between these two specific salary (or hourly for computer professionals) levels. Therefore, the department developed an alternative approach to approximate these estimates for the purpose of this report. Specifically, this method involves three major steps:

Step 1: Identify the occupations that likely have exempt EAP workers.

In order to estimate the number of workers who would be affected, the USDOL developed a set of probability codes in its 2004 rule analysis to characterize the estimated likelihood that a worker in a

[100] Computer professionals paid on a salary basis are subject to the same weekly salary threshold as other professionals.

[101] Hourly teaching professionals are exempt under the current federal standard but eligible under the current state standard. The more favorable state standard is thus the baseline.

[102] For salaried teaching professionals, they are exempt under the current federal standard, and are most likely also exempt under the current state standard since the salary threshold level is too low to make a difference.

specific occupation would perform EAP-related duties,[103] and continued to rely on these probabilities in its 2016 and 2019 rule analyses.[104] Table 10 presents these probability categories and their corresponding likelihood ranges. For example, if an occupation is assigned with probability code 2, it is estimated that for every 10 workers in this occupation, between 5 and 9 would pass the duties test. The required duties tests in the adopted rules are mostly similar to those in the federal standards for most occupations, so it is a reasonable proxy for the department to adopt these probability estimates and use the 269 occupations identified in the USDOL's set of probability codes[105] to help the department identify the occupations that are likely to have exempt EAP workers (those with probability code 1-4).[106]

Table 10: Probability Workers in Each Category Would Pass the EAP Duties Test

Probability Code	Lower bound estimate	Upper bound estimate
0	0%	0%
1	90%	100%
2	50%	90%
3	10%	50%
4	0%	10%

Step 2: Simulate individual earnings records by occupation and sector.

Lacking relevant data on whether an individual worker in Washington is paid above $455, but below the new weekly salary threshold (or between $27.63 and the new hourly rate for hourly computer professionals), it is impossible to identify the exact number of workers who will be affected by the changes adopted in these rules. But L&I developed a simulation method that can generate individual earnings data for workers in the EAP-likely occupations in each of the 20 sectors they are associated with, and it used the simulated data to determine whether an individual would likely be affected or not by comparing worker's weekly earnings with these two threshold levels.

[103] See Table 3-2 on Page 22200, Federal Register Vol. 69, No. 79. April, 2004.
[104] See Table 6 on Page 32458, Federal Register Vol. 81, No. 99. May, 2016; Table 3 on Page 51259, Federal Register Vol. 84, No. 188, September 2019.
[105] See Table A1 of the Appendix for the complete list of these occupations and their probability categories.
[106] The department excludes the following named occupations that will not be affected by the rules (not subject to the salary level or salary basis tests): Lawyers, Judges, magistrates, and other judicial workers, Dentists, Optometrists, Physicians and surgeons, and Podiatrists, as well as those occupations exempted from the overtime requirements in RCW 49.46.130(2). The department also excludes education administrators, educational, guidance, school, and vocational counselors. The adopted rules exempt such individuals who are compensated at the salary threshold for other EAP workers "or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed[.]" Entrance salaries at the educational establishment of employment cannot be distinguished in the data and so this alternative is not considered (thus these employees were excluded from the analysis, the same as was done in the federal rule analyses in 2004, 2016, and 2019). The analysis also excludes the named occupations specific to outside salespersons (Door-to-door sales workers, news and street vendors, and related workers). Outside salespersons must be compensated on a guaranteed salary, commission or fee basis under the department's current and new, adopted rules. However, the adopted rules change the duties test to align with the federal duties test. Since outside salespersons are not subject to the salary level and the current requirement to be paid a guaranteed salary, commission or fee basis is also not affected, they are excluded from the analysis as well. The other occupational codes for salespersons do not distinguish whether they are inside or outside salespersons. As such, some outside salesperson costs may be included in the costs for other sales professions in this analysis.

More specifically, to generate the earnings records for each cohort (all workers in a certain occupation and sector) that are as accurate as possible, the department relied on the log-normal distribution[107] and the reported earnings statistics (mean, 25th percentile, median, and 75th percentile) for a specific cohort as the distribution parameters for the simulation process.[108] For example, the 20,094 first-line supervisors of retail sales workers (SOC: 41-1011) hired in the retail trade (NAICS: 44-45) were reported with the 25th, median, mean, and 75th percentile wages of $18.72, $23.84, $26.91, and $31.30 respectively.[109] Plugging these parameters into the defined distribution, we were able to randomly generate earnings records for each individual worker in this cohort, and we believe they are a good representative of the actual wage data for these workers.[110] The table below presents the wage statistics from the simulated data for the 10 cohorts with the largest employment.

Table 11: Simulated Wage Records for 10 largest Cohorts in 2020[111]

Occupation	Sector	Employment	25th percentile[112]	Median	Mean	75th percentile
Retail Salespersons	Retail trade	94,848	$13.50	$16.33	$17.71	$21.27
Cashiers	Retail trade	62,596	$13.50	$14.52	$15.00	$17.15
Registered Nurses	Healthcare and social assistance	52,048	$30.41	$39.56	$42.57	$51.27
Software Developers, Applications	Information	38,743	$48.92	$67.42	$75.47	$92.75
Sales Representatives,	Wholesale trade	31,439	$19.18	$31.07	$40.11	$50.11
Miscellaneous Healthcare Support Occupations	Healthcare and social assistance	31,336	$15.84	$20.10	$21.34	$25.44
First-Line Supervisors of Retail Sales Workers	Retail trade	20,094	$16.97	$23.72	$26.85	$33.22
First-Line Supervisors of Food Preparation and Serving Workers	Accommodation and food services	18,160	$13.50	$18.08	$20.93	$25.75
Office Clerks, General	Healthcare and social assistance	16,564	$13.73	$18.49	$20.53	$24.97

[107] The log-normal distribution is widely used and has proved to fit the earnings data well, so the department decided to use this distribution for the data simulation.
[108] The reported mean wage for each cohort is used as the mean of the log-normal distribution, and the mean wage multiplied by the difference between 75th percentile and 25th percentile and then divided by median wage approximates the standard deviation of the distribution for that cohort.
[109] Data source: Occupational Employment Statistics by BLS and ESD. All data are adjusted to 2020 levels based on the projected wage and employment growth rates for Washington (see Table A2 and A3 in Appendix for more details).
[110] The simulated model fits well for this cohort and the vast majority of others when compared to the reported statistical values. The 25th, median, mean, and 75th percentile wages from the simulated data are very close to those actually used to generate the individual records. Another example is the retail cashiers. The 25th, median, mean, and 75th percentile wages for this cohort are $12.31, $14.52, $15.00, and $17.15, compared to the reported rates of $12.67, $14.28, $14.97, and $16.21 for 62,596 workers in this cohort.
[111] Not considering teaching professionals who are not subject to salary level test.
[112] The 25th percentile wages are adjusted to $13.50 for certain cohorts with lower projected wages to reflect the 2020 minimum wage in Washington.

Secretaries and Administrative Assistants	Healthcare and social assistance	15,700	$15.21	$20.06	$21.79	$26.36

Step 3: Estimate the workers who are paid on a salary basis, perform the specific job duties as required, and are compensated at a rate between the current and new threshold levels.

In addition to the salary threshold test, to be exempt from the Minimum Wage Act requirements a worker must be paid on a salary basis (except for computer professionals who can be paid hourly) and meet the primary job duties test. Therefore, the department also needs to estimate the share of workers who are paid on a salary basis and also perform EAP-type job duties for each of these cohorts.

As to the shares of salaried workers for each occupation, L&I relies on the data from the USDOL's EAP rule analyses.[113] Table 12 shows that Actuaries and Mathematicians, along with a few others have 90% or more workers on a salary basis. At the other end, Recordkeeping related occupations, Cashiers, and Proofreaders & Copy Markers have the lowest percentages of salaried workers.[114]

Table 12: White-Collar Occupations with Highest and Lowest Shares of Salaried Workers

Occupation with highest shares		Occupation with lowest shares	
Actuaries	100.0%	Recreation and Fitness Workers	13.8%
Mathematicians	100.0%	Licensed Practical and Licensed Vocational Nurses	12.2%
Sociologists	100.0%	Hosts and Hostesses, Restaurant, Lounge, and Coffee Shop	12.0%
Petroleum Engineers	94.9%	Hotel, Motel, and Resort Desk Clerks	12.0%
Chiropractors	94.0%	Cargo and Freight Agents	11.1%
Veterinarians	94.0%	Shipping, Receiving, and Traffic Clerks	11.0%
Sales Engineers	92.8%	Commercial Divers	10.9%
Appraisers and Assessors of Real Estate	88.5%	Proofreaders and Copy Markers	10.4%
Real Estate Brokers and Sales Agents	88.5%	Cashiers	6.6%
Advertising and Promotions Managers	87.9%	Weighers, Measurers, Checkers, and Samplers, Recordkeeping	6.6%

Generally speaking, the higher a worker's salary is, the more likely the worker performs EAP-type duties. To capture the relationship between earnings and exemption status, an individual worker's probability of passing the EAP duties test is adjusted by the worker's earnings and that occupation's exemption category

[113] The estimates on the shares of salaried workers for each occupation were developed in 2004 USDOL rule analysis (see table A-2 of FR 69, No. 79). These estimates were also adopted in its 2016 and 2019 rule analyses.
[114] See Table A1 in the Appendix for the complete list of estimates on the shares of salaried workers by occupation.

based on the gamma distribution.[115] Table 13 presents the adjusted probabilities under various compensation levels for each exemption category.

Table 13: Adjusted Probability of Passing Duties Test for Each Category

Weekly compensation	Probability category 1	Probability category 2	Probability category 3	Probability category 4
$250	90.1%	51.3%	11.4%	0.9%
$450	90.9%	56.0%	16.3%	3.1%
$650	92.2%	62.9%	23.4%	5.5%
$850	93.9%	70.0%	30.6%	7.4%
$1,050	95.5%	76.2%	36.7%	8.6%
$1,250	96.8%	80.8%	41.3%	9.3%
$1,450	97.9%	84.2%	44.5%	9.7%
$1,650	98.6%	86.4%	46.7%	9.8%
$1,850	99.1%	87.8%	48.0%	9.9%
$2,050	99.5%	88.7%	48.8%	10.0%
$2,250	99.7%	89.3%	49.3%	10.0%
$2,450	99.8%	89.6%	49.6%	10.0%
$2,650	99.9%	89.8%	49.8%	10.0%

Using the estimated shares of salaried workers and the probabilities of passing duties test, together with the simulated salary records for each individual worker, the department is able to compute the aggregated probability of an individual being affected by the rules (salaried, meeting EAP duties test, and paid between the current and the new threshold levels) for any worker who is not an hourly computer professional. For example, a first-line supervisor or manager of office and administrative support workers has a 51%-57% chance of being affected (based on its estimated 57% chance of being salaried workers and 90%-100% chance of passing the EAP duties test) prior to the salary threshold test. The final probability would be 0% if the worker's weekly compensation is below $455 or above the new threshold, or a percentage between 51% and 57% otherwise, slightly adjusted by the worker's compensation level as indicated in Table 13.[116] For hourly computer professionals, a similar method is conducted to derive their probabilities of being affected (meeting EAP duties test, and paid between the current and the new hourly threshold levels). Then these probabilities are aggregated across all occupations and sectors to derive the total number of workers affected by the adopted rules.

[115] The gamma distribution is a family of right-skewed continuous probability distributions defined by its shape parameter and scale parameter. This non-linear distribution was identified by USDOL as the one that can adjust workers' probability of meeting the EAP duties test by their earnings and produce the results that best fit the data in its 2004 and 2016 EAP rule analyses.

[116] The expected probability of an individual satisfying all these three conditions is the multiplication of the probability that each condition would occur. So for a first-line manager of office and administrative support workers with the weekly earnings of $850, the probability of this individual satisfying the condition of salary basis, EAP duties test, and the salary level is 57%, 93.9% (see Table 13), and 100% respectively. So the expected probability of this individual being affected by the rules in the first year is 57%*93.9*100%=53.5%. However, if the worker's weekly earnings are below $455 or above $675, the expected probability will drop to 0% (as the likelihood of meeting the salary level test is 0).

2.1.4 Major data sources

The department reviews existing studies or data available that will help estimate the number of affected workers and businesses, as well as the average compliance costs of these rules. More specifically, L&I relies on the wage information from the Occupational Employment Statistics (OES) data for the U.S. and Washington State as the basis of wage simulation, and the Occupation-Industry Matrices as the employment basis for each cohort analyzed in this report. L&I also relies on the Quarterly Census of Employment and Wages (QCEW) for the estimates of business count in Washington. In addition, the long-term occupation and industry projection data and the 2009-2017 average wage statistics from QCEW are used to adjust the occupational and industrial employment and the overall wages to 2020 levels. Furthermore, the department adopts some key results and assumptions from the USDOL's analyses for its EAP rulemaking projects since 2004.

Table 14: Major Data Sources or Studies for This Analysis

Data / Studies	Related to	Source
2017 OES data series- national and state	Wage simulation, employment estimates for each occupation in each sector	BLS, ESD
2017 QCEW -Washington	Estimates of business count	ESD
Occupation and Industry Projections	Adjusting the 2017 employment estimates to 2020 and future year levels	ESD
2009-2017 QCEW Average Wages	Adjusting the 2017 wage estimates to 2020 and future year levels	ESD
1999-2018 CPI-Urban Wage Earners and Clerical Workers	Projecting future minimum wage increases based on the annual average growth rate.	BLS
Labor force characteristics from the 2017 Current Population Survey (CPS)	Estimates of average hours worked per week, and number of workers by hours	BLS
Estimates of time needed to perform each task associated with the new EAP rules	An input for calculating the cost of each administrative burden	USDOL rule analyses (2004, 2016)
Estimates of share of salaried workers by each occupation	An input for estimating the total number of affected workers	USDOL rule analyses (2004)
Estimates of probability of passing duties test for workers in each occupation	An input for estimating the total number of affected workers	USDOL rule analyses (2004)

2.2 Profile of affected EAP workers

2.2.1 Overview of affected workers

Administrative costs, transfer payments, and the benefits of these rules analyzed in this report all depend on the estimated number of affected workers. Applying the method described in Section 2.1.3 to the occupation-by-industry wage and employment data, the department estimates that out of 1.86 million workers in the 258 EAP-likely occupations[117] in 2020, about 654,000 salaried workers (and hourly computer professionals) would perform EAP-type duties. Approximately 637,000 salaried workers, or more than 97% of these workers, will be potentially affected by these rules (workers who are salaried, performing EAP duties, and will pass the current salary or hourly threshold test).

[117] Excluding 11 teaching professional occupations that will not be affected by the rules.

The increase of the salary threshold from $455 per week to $675 (one and one-quarter times the state minimum wage) in 2020 is expected to affect approximately 25,696 non-computer related workers (i.e., the number of potentially affected workers who earn $455 or more but less than the new salary threshold per week) in the first year after the promulgation of the new rules. The changes in the rules will also affect approximately 14,647 computer professionals. All together, the total number of affected workers is estimated to be approximately 40,343 or 1.13% of total employment in the state.[118]

The salary and hourly (for computer professionals) thresholds are tied to the state minimum wage, which will be updated by annual inflation rate. Using the 20-year annual average rate of 2.17% for CPI-W, the weekly salary threshold is projected to be $1,638 (two and a half times state minimum wage), and the hourly threshold will rise up to $57.33 for computer professionals in 2029.

Table 15: Salary and Hourly Threshold Projections: 2020-2029

Year	Minimum wage (MW) projection [119]	Weekly salary threshold (based on minimum wage multiplier)						Hourly threshold for computer professionals[120]	
		1.25*MW	1.5*MW	1.75*MW	2*MW	2.25*MW	2.5*MW	2.75*MW	3.5*MW
2020	$13.50	**$675**	$810	$945	$1,080	$1,215	$1,350	**$37.13**	$47.25
2021	$13.79	$690	**$827**	**$965**	$1,103	$1,241	$1,379	**$37.92**	**$48.27**
2022	$14.09	$705	$845	**$986**	$1,127	$1,268	$1,409	$38.75	**$49.32**
2023	$14.40	$720	$864	**$1,008**	**$1,152**	$1,296	$1,440	$39.60	**$50.40**
2024	$14.71	$736	$883	$1,030	**$1,177**	$1,324	$1,471	$40.45	**$51.49**
2025	$15.03	$752	$902	$1,052	**$1,202**	**$1,353**	$1,503	$41.33	**$52.61**
2026	$15.36	$768	$922	$1,075	$1,229	**$1,382**	$1,536	$42.24	**$53.76**
2027	$15.69	$785	$941	$1,098	$1,255	**$1,412**	**$1,569**	$43.15	**$54.92**
2028	$16.03	$802	$962	$1,122	$1,282	$1,443	**$1,603**	$44.08	**$56.11**
2029	$16.38	$819	$983	$1,147	$1,310	$1,474	**$1,638**	$45.05	**$57.33**

Using these threshold projections and the wages as well as the employment adjusted by the projected wage and employment growth rate,[121] the department estimates that the newly affected workers will only compose approximately 0.2% - 1.4% of total state employment in any future year. The breakdown of

[118] The estimated number of the affected workers in the first year is significantly lower than what was in the preliminary CBA report as the salary threshold for large businesses, which account for more than 60% of total employment, is much lower for that year in the final rules than in the proposed rules.
[119] Based on the annual growth rate for CPI-W in 1999-2018. See Table A5 for more details. The annual growth rate of 2.17% also aligns with the inflation projections from various sources including the International Monetary Fund, the Federal Reserve, and Washington State Economic and Revenue Forecast Council.
[120] The hourly threshold will start at a lower rate but will increase to 3.5 times state minimum wage within 2.5 years. For simplicity purpose, the department chose to estimate the number of affected hourly computer professionals based on the ultimate multiplier of 3.5 for all years, however we recognize this overestimates costs.
[121] See Table A2 and A3 for more details.

affected worker population by firm size shows small businesses account for as low as 7.1% of affected workers in 2023 and as high as 78.5% in 2022.[122]

Table 16: Estimated Numbers of Affected Workers in Future Years

Year	Total WA employment [123]	Total affected workers	Affected workers- from small businesses	Affected workers- from large businesses	Affected workers- small business share	Affected as share of WA employment	Total affected workers - cumulative[124]
2020	3,568,014	40,343	14,978	25,365	37.1%	1.1%	40,343
2021	3,635,807	49,973	11,183	38,790	22.4%	1.4%	90,316
2022	3,682,345	16,992	13,344	3,648	78.5%	0.5%	107,308
2023	3,729,479	28,300	2,023	26,277	7.1%	0.8%	135,608
2024	3,777,216	18,968	14,608	4,360	77.0%	0.5%	154,576
2025	3,825,565	30,367	2,350	28,017	7.7%	0.8%	184,943
2026	3,874,532	20,429	15,501	4,928	75.9%	0.5%	205,372
2027	3,924,126	32,158	2,757	29,401	8.6%	0.8%	237,530
2028	3,974,355	21,569	15,921	5,648	73.8%	0.5%	259,099
2029	4,025,227	8,676	2,976	5,700	34.3%	0.2%	267,775

2.2.2 Affected workers by sector, occupation type, and hours worked

This subsection illustrates the distribution of affected workers by sector, occupation, and average hours worked. The total number of affected workers in a certain sector or occupation is derived from the aggregation of all individual probabilities for workers in that sector or occupation as described in Section 2.1.3. It is worth noting that the number of affected workers at an individual firm or establishment level is unknown to the department and would depend on the unique characteristics of that firm.

The sector with the largest number of affected workers is Professional & Scientific & Technical Services (6,486), followed by Retail Trade (5,282), Information (4,698), and Healthcare and Social Assistance (3,264). The sector with the largest share of potentially affected workers who are affected is Arts & Entertainment & Recreation (15.9%). Other sectors where a large proportion of potentially affected workers are actually affected include Accommodation and Food Services (13.8%), Retail Trade (10.9%), and Other Services (9.4%). In terms of the affected workers as a share of total sector employment, Information, Finance and Insurance, Professional & Scientific & Technical Services, and Management of companies and enterprises are the top four sectors (3.5%, 3.1%, 3.0%, and 2.3% respectively).

[122] The estimates of affected workers by firm size are based on the small business share of total employment by each sector in 2017 and 2018 (see Table A6) assuming the distribution of affected workers by each sector is similar to that of the general workforce, and the specific salary threshold phase in schedule for large and small businesses described in Table 8.

[123] Based on the projected annual average employment growth rate of 1.9% for Year 2021 and 1.28% for Years 2022-2029, Long-term Industry Projections, ESD, 2018.

[124] The numbers of affected workers for paid sick leave protection are slightly higher than what are shown in this table because some workers who are currently paid less than $455 (already eligible for overtime and minimum wage protections) can be newly eligible for the sick leave benefit as a result of this proposal (the baseline standard of 2004 federal regulation does not mandate a paid sick leave protection).

Table 17: Estimated Number of Affected Workers by Sector in 2020

Sector	Sector employment	Potentially affected workers	Affected workers	as % of potentially affected	as % of sector employment
Agriculture, forestry, fishing, & hunting	122,097	1,147	71	6.2%	0.1%
Mining	2,486	234	6	2.6%	0.2%
Utilities	4,844	1,241	25	2.0%	0.5%
Construction	200,897	17,838	729	4.1%	0.4%
Manufacturing	289,553	63,985	2,252	3.5%	0.8%
Wholesale trade	137,035	32,696	2,089	6.4%	1.5%
Retail trade	389,298	48,479	5,282	10.9%	1.4%
Transportation & warehousing	115,148	8,624	485	5.6%	0.4%
Information	134,870	87,420	4,698	5.4%	3.5%
Finance and insurance	99,019	39,307	3,112	7.9%	3.1%
Real estate, rental and leasing	55,764	8,063	695	8.6%	1.2%
Professional, scientific, and technical services	213,504	107,581	6,486	6.0%	3.0%
Management of companies and enterprises	45,650	23,641	1,058	4.5%	2.3%
Administrative and waste management services	177,580	27,204	2,121	7.8%	1.2%
Educational services	344,931	26,220	2,231	8.5%	0.6%
Healthcare and social assistance	461,412	54,371	3,264	6.0%	0.7%
Arts, entertainment, and recreation	71,768	7,308	1,161	15.9%	1.6%
Accommodation and food services	295,556	3,804	524	13.8%	0.2%
Other services (except public administration)	131,729	13,298	1,253	9.4%	1.0%
Government[125]	274,874	65,020	2,801	4.3%	1.0%
All	3,568,014	637,481	40,343	6.3%	1.13%

The Professional related occupations account for the largest proportion of all affected EAP workers (21,141 workers, or 52.4% of total affected), followed by Management, Business, and Financial related occupations (10,020 workers, or 24.8% of total affected). The type of occupations with the largest share of potentially affected workers who will be affected by the rules is the Services related one (14.1%). The Office, Administrative support related occupations, and Sales related occupations also have large proportions of potentially affected workers who will be affected (12.2% and 11.7%).

Table 18: Estimated Number of Affected Workers by Occupation Type in 2020

Type of Occupation group	Potentially affected workers	Affected workers	as % of potentially affected	As % of total affected
Professional related occupations	305,776	21,141	6.9%	52.4%
Management, business and financial related	249,985	10,020	4.0%	24.8%
Sales and related occupations	40,438	4,750	11.7%	11.8%
Office, administrative support occupations	27,418	3,356	12.2%	8.3%
Services occupations	5,323	750	14.1%	1.9%
Transportation and material moving	2,349	117	5.0%	0.3%
Production occupations	2,605	104	4.0%	0.3%

[125] Under the Washington statute, the head of the State Human Resource Department has the authority to set forth a similar rule for state employees specifically. This report does not separate the state government workers from other government workers, so the number for this section is likely to be overestimated.

Type of Occupation group	Potentially affected workers	Affected workers	as % of potentially affected	As % of total affected
Installation, maintenance, and repair occupations	2,587	72	2.8%	0.2%
Others	1,000	33	3.3%	0.1%
All	637,481	40,343	6.3%	100%

At an individual occupation level, Software Developers-Applications is the occupation with the most affected workers, followed by Computer User Support Specialists, Computer Systems Analysts, General and Operations Managers, First-Line Supervisors of Retail Sales Workers, Business Operations Specialists, and First-Line Supervisors of Office and Administrative Support Workers. The percentage of potentially affected workers ranges from as low as 4.6% for Software Developers-Applications to as high as 22.6% for Athletes, Coaches, Umpires, and Related Workers. In terms of the affected workers as a share of total occupational employment, Computer User Support Specialists, Computer Network Support Specialists, Web Developers, All Other Computer Occupations, Network and Computer Systems Administrators, and Designers are the occupations with the highest shares.

Table 19: Occupations with 500 or More Affected Workers in 2020

Occupation	Total employment	Potentially affected workers	Affected workers	as % of potentially affected	as % of employment
Software Developers, Applications	75,869	74,753	3,440	4.6%	4.5%
Computer User Support Specialists	17,968	15,156	2,828	18.7%	15.7%
Computer Systems Analysts	21,868	20,734	2,038	9.8%	9.3%
General and Operations Managers	49,582	34,103	1,492	4.4%	3.0%
First-Line Supervisors of Retail Sales Workers	21,831	9,331	1,439	15.4%	6.6%
Business Operations Specialists, All Other	37,516	25,695	1,317	5.1%	3.5%
First-Line Supervisors of Office and Administrative Support Workers	29,716	15,952	1,315	8.2%	4.4%
Accountants and Auditors	33,885	22,669	1,240	5.5%	3.7%
Designers	12,428	5,599	1,198	21.4%	9.6%
Computer Occupations, All Other	10,038	9,272	1,045	11.3%	10.4%
Software Developers, Systems Software	16,194	15,851	1,022	6.4%	6.3%
Network and Computer Systems Administrators	10,139	9,500	996	10.5%	9.8%
Sales Representatives, Wholesale and Manufacturing	45,242	13,013	861	6.6%	1.9%
Market Research Analysts and Marketing Specialists	20,105	13,657	802	5.9%	4.0%
Computer Programmers	14,188	12,030	794	6.6%	5.6%
Customer Service Representatives	53,761	3,712	778	21.0%	1.4%
Insurance Sales Agents	9,438	4,769	698	14.6%	7.4%
Web Developers	5,980	5453	676	12.4%	11.3%
Human Resources Specialists	17,607	8,794	580	6.6%	3.3%
Computer Network Support Specialists	4,459	4,026	578	14.4%	13.0%
Athletes, Coaches, Umpires, and Related Workers	7,413	2,491	562	22.6%	7.6%
Computer Network Architects	6,962	6,681	560	8.4%	8.0%

The hours these workers typically work and their compensation levels will affect how employers respond to the adopted salary threshold change: employers can increase the workers' earnings to the new threshold level in order for them to remain exempt, or they can choose to pay their workers overtime premiums for the extra hours they work. To quantify this effect size, the department further estimates that for all the affected workers, about 59% of them do not work overtime, 21% of them work 41-48 hours in a typical week (light overtime workers), 14% of them work 49-59 hours (moderate overtime workers), and the remaining 6% work 60 hours or more (heavy overtime workers). [126] Overall, these workers work an average of 42.5 hours per week, with the Management, Business and Financial Related occupations working the longest (44.3 hours), and Office, Administrative Support occupations working the shortest (40.5 hours).

Table 20: Distribution of Affected Workers by Hours Worked Each Week

Type of Occupation	**No overtime (<=40 hours)**	**41-48 hours**	**49-59 hours**	**>=60 hours**	**Average weekly hours worked**
Management, business and financial	51%	22%	14%	13%	44.3
Professional related	61%	21%	14%	4%	42.0
Services occupations	64%	20%	13%	3%	41.5
Sales and related	55%	24%	14%	7%	42.9
Office, administrative support	72%	15%	11%	2%	40.5
Construction and extraction	64%	18%	12%	6%	41.9
Installation, maintenance, and repair	58%	20%	15%	7%	42.8
Production occupations	62%	16%	16%	6%	42.4
Transportation and material moving	56%	18%	18%	8%	43.4
Others	60%	20%	14%	6%	42.4
Total	59%	21%	14%	6%	42.5

2.3 Probable administrative costs of the adopted rules

2.3.1 Costs of learning and adapting to the new rules

The first direct cost of these rules that the department has identified is the cost associated with employers reviewing and learning how to apply these rule changes, updating their company policies accordingly, and notifying their employees of the policy changes.

The time a business needs to perform these tasks can vary significantly based on a number of factors including whether there are potentially affected EAP workers in that company, and the readiness of its payroll system and human resources. Assuming these workers are evenly distributed across all establishments, the department estimates that in 2020, about 44,969 establishments employ potentially affected EAP workers, and the remaining businesses do not.[127] The department expects that companies

[126] The percentages of workers who do not work overtime, who work 41-48 hours, who work 49-59 hours, and who work more than 59 hours for each occupation type are estimated based on the 2017 reported average hours for these occupation groups (https://www.bls.gov/cps/cpsaat23.pdf), and the distribution of workers by hours of work (https://www.bls.gov/cps/cpsaat19.pdf) for 2017, Current Population Statistics (CPS), BLS.

[127] The department chose to base this cost on the number of establishments instead of number of firms to produce the most inclusive estimate of affected businesses. For a firm with multiple establishments, the headquarters will generally conduct this task, so the actual total cost is likely to be significantly lower.

with these workers will likely spend significantly more time reviewing and adapting to the rule changes than those with no such workers.[128] The department estimates that it takes an average of 90 minutes for the former to complete rule reviews and make necessary updates to their policies, and 15 minutes for the latter to quickly review the rules in the first year.[129] The department further estimates that it will take all establishments an average of 5 minutes in each future year to obtain and read the published new salary threshold. Employing the base wage of $33.99 plus fringe benefits (46.4% of the base wage[130]) for a Human Resource Specialist,[131] the department estimates that the total regulatory familiarization cost in the first year will equal $5.93 million, and the total cost in each future year will range between $1.09 million for 2021 and $1.57 million for 2029.[132] Using the discount rate of 5%,[133] the annual regulatory familiarization cost is estimated to be $1.87 million for all businesses (with paid employees) in Washington State.

Table 21: Regulatory Familiarization Cost

Median wage of a HR specialist in WA in Year 1	$33.99
Benefits as % of base wage	46.4%
1-hour total cost for a HR specialist in Year 1	$49.77
Time needed per establishment for those with no potentially affected workers (minutes)	15
Time needed per establishment for those with potentially affected workers (minutes)	90
Estimated number of establishments with no potentially affected workers	206,726
Estimated number of establishments with potentially affected workers	44,969
Total regulatory familiarization costs in Year 1 - for all establishments (millions)	$5.93
Extra time needed to review the updated salary level in each future year (minutes)	5
Total cost in every future year before wage and establishment count adjustments (millions)	$1.04
Total cost in every future year after wage and establishment count adjustments	(millions)
Year 2	$1.09
Year 3	$1.14
Year 4	$1.20
Year 5	$1.25
Year 6	$1.31
Year 7	$1.37
Year 8	$1.44
Year 9	$1.50

[128] Those companies with no potentially affected workers (no currently exempt salaried EAP workers) may only need to spend a few minutes to review the rules and determine that they will not be affected, while those with potentially affected workers will have to spend more time on a thorough rules review and policy updates accordingly.

[129] The major data source for these time estimates are the USDOL analyses for its 2016 and 2019 EAP rules, which estimated an average of 60 minutes for each establishment to review and learn about the changes in the regulation. These estimates are adjusted to reflect the fact that some establishments may also need to learn about the state PSL rule if they have employees who are newly entitled to the PSL protection under these rules. The final estimates are determined based on these factors and technical expertise and judgment from the rulemaking program within L&I.

[130] Based on the estimated 31.7% of total compensation being paid benefits from Employer Costs for Employee Compensation data series (data series: CMU1030000000000P), 2018Q2, BLS.

[131] This is the projected 2020 median wage for a HR specialist in Washington.

[132] The projected future costs are also based on the annual growth rate of 3.46% and 1.17% for average wage and the number of establishments in Washington respectively (see Table A2 and A4 for more details).

[133] This rate is chosen to reflect the department's conservative estimate in contrast to the 7% that the Office of Management and Budget (OMB) has recommended in its guidelines and discount rates for benefit-cost analysis of federal programs (https://www.wbdg.org/FFC/FED/OMB/OMB-Circular-A94.pdf).

Year 10	$1.57
Discount rate	5%
Annualized cost (millions)	**$1.87**

2.3.2 Costs of reexamining and adjusting exemption statuses

Businesses with affected employees will also incur expenses related to reexamining and adjusting these workers' statuses, in addition to the costs of reviewing and adapting to the new rules. The total cost in a certain year is the function of the total number of the affected workers in that year, and the average cost per affected worker. Using the same hourly rate for compensating a HR specialist to do this work as in Subsection 2.3.1, and assuming the average adjustment time of 75 minutes per affected worker,[134] the average cost is estimated to be $62.21 per worker in Year 1. Combined with the estimated number of affected workers in each year (see Table 16), the first-year adjustment cost totals $2.51 million and the annualized cost in the 10-year period is estimated to be $1.95 million.

Table 22: Re-examination and Adjustment Cost

1-hour total cost for a HR specialist in Year 1 (base wage plus benefits)	$49.77
Time needed to examine and adjust the exempt status	75
Average cost per affected worker in Year 1	$62.21
Estimated number of affected workers in Year 1	40,343
Total adjustment cost in Year 1 (millions)	$2.51
Total adjustment cost in Year 2 Year 3 Year 4 Year 5 Year 6 Year 7 Year 8 Year 9 Year 10	(millions) $3.22 $1.13 $1.95 $1.35 $2.24 $1.56 $2.54 $1.76 $0.73
Discount rate	5%
Annualized cost (millions)	**$1.95**

2.3.3 Costs of scheduling and monitoring employees' work hours

Businesses that have affected workers who work overtime may also incur costs related to assessing the options to meet the regulatory requirements (such as whether to pay overtime premiums, increase workers' earnings so they may remain in exempt status, redistribute workloads to avoid paying overtime premiums, or hire part-time workers to cover these overtime hours). These costs may also include managerial time spent selecting the most feasible approach that balances their business needs and the financial impact of the options, and scheduling and monitoring work hours and productivities more closely for certain employees. Unlike other administrative burdens analyzed in this section that mostly

[134] The department adopted this time estimate from the USDOL (2016 and 2019 EAP rule analyses) as it believes this is also a reasonable estimate for the state given the similarity of these two rules.

occur in the first year, such managerial costs are incurred fairly evenly across time because these are more routine and regular tasks, and the population of the workers who are reclassified and do work overtime does not vary much each year.

Similar to the other costs analyzed in this section, three elements need to be estimated in order to derive the total costs: the amount of time needed to manage each affected worker, the total compensation paid for the allotted time, and the total number of affected workers. Adopting the time estimate from the USDOL rule analyses that on average, a mid-level manager will spend 5 minutes per week, or 4.33 hours per year, handling these tasks for each affected worker, and multiplying this by the total hourly compensation of $77.14 ($52.69 for base wage and $24.45 for benefits) for a manager in WA in 2020, it yields a total annual cost of $334.27 per worker.

The department assumes that about 10% of light overtime workers (who work 41-48 hours in a typical week), 50% of moderate overtime workers (49-59 hours per week), and all heavy overtime workers (more than 59 hours in a week) are expected to be affected by this requirement. Based on the projected number of affected workers for each of these groups from Table 16 and Table 20, the total managerial cost amounts to $2.08 million in Year 1, and will gradually increase to $18.73 million in the 10th year following the promulgation of these rules. Therefore, the annual cost is estimated to be $9.83 million.

Table 23: Scheduling and Monitoring Cost

1-hour total cost for a mid-level manager in Year 1 (base wage plus benefits)	$77.14
Time required for scheduling and monitoring per affected worker per week (minutes)	5
Average annual cost per affected worker	$334.27
Total number of affected workers in	Cost (millions)
Year 1: 6,216	$2.08
Year 2: 13,916	$4.81
Year 3: 16,534	$5.92
Year 4: 20,894	$7.73
Year 5: 23,817	$9.12
Year 6: 28,496	$11.29
Year 7: 31,643	$12.97
Year 8: 36,598	$15.52
Year 9: 39,921	$17.51
Year 10: 41,258	$18.73
Discount rate	5%
Annualized cost (millions)	**$9.83**

2.3.4 Total administrative costs of the adopted rules

Based on the estimated costs from Section 2.3.1 to 2.3.3, the annualized total administrative costs of these rules are estimated to be $13.65 million within the 10-year timeframe.

Table 24: Summary of Annualized Total Administrative Costs

Costs of learning and adapting to the new rules	$1.87 million
Costs of reexamining and adjusting the exemption status	$1.95 million
Costs of scheduling and monitoring employees' work hours	$9.83 million
Annualized total	**$13.65 million**

CHAPTER 3: ASSESSING BENEFITS

The purposes of the Minimum Wage Act (MWA) include providing overtime protection to reduce overwork and its detrimental effect on health and providing paid sick leave to protect public health and to allow workers to care for the health of themselves and their families. The adopted rules will mean that for many low-and mid-level salaried EAP workers who work extra hours, they will now receive overtime premiums for these hours. In addition, the adopted rules will ensure that affected employees will have the ability to take time off when they, their child, or their other loved one are sick without losing pay or risking losing their jobs. Accordingly, the adopted rules will potentially result in a number of measurable probable benefits to society overall. These include, but are not limited to, the probable increase in pay to workers due to overtime and minimum wage coverages, improved work-life balance, reduced reliance on social welfare and unemployment programs, and positive impacts of the paid sick leave provision on affected workers and on public health.

The probable increases in pay due to overtime and minimum wage coverage and the increased payroll to cover the hours sick workers take under the paid sick leave provision are referred to as transfer payments from employers to workers and are addressed in detail in Chapter 4.

In addition, these rules may result in probable benefits related to positive psychological impacts, stability in family income, and improved quality of life for workers and their families as a result of stronger protection policies and overtime provision.

The benefit analysis only monetizes the societal benefits and the reduction in costs on all affected parties associated with the paid sick leave provisions and benefits from reduced risk of workplace injuries, illnesses, and other adverse conditions due to increased overtime protections.

The following benefit assessment updates the benefit assessment from the preliminary cost-benefit analysis and reflects the benefit associated with the rules as adopted.

3.1 Quantitative benefits of paid sick leave coverage

In order to estimate the probable benefits that can be attributed to employees being newly eligible for paid sick leave (PSL), the department relied on various sources including the Washington State Employment Security Department (ESD) and the Bureau of Labor Statistics (BLS) databases, as well as other existing relevant studies and external data sources.

Specifically, the methodology, assumptions, and quantitative and qualitative benefits of PSL are explained below:

3.1.1 Methodology and assumptions

Actual total benefits are expected to be significantly higher than the benefits L&I is able to reasonably quantify below. For example, we do not attempt to quantify the benefit of avoiding exposure to viruses other than the flu in the workplace, nor do we quantify the benefit of avoiding transmission of such viruses to family members outside the workplace.

- To assess the benefits of being newly eligible for PSL, the department relied mainly on the approach used by the Institute for Women's Policy Research (IWPR)[135] in its efforts to calculate the benefits of paid sick days on society in numerous states/cities including: Chicago, Colorado, Maryland, Massachusetts, Oregon, District of Columbia, Vermont, Louisiana, California, Florida, North Carolina, and Connecticut.
- To monetize both the benefits of reduced jobs turnover and less flu contagion in the workplace, the department chose an average hourly wage of $19.60 for a replacement worker, which is the same wage used in the cost analysis in Section 4.3, assuming employers do not need to pay fringe benefits to this type of workers.
- Workers in the cities of Seattle and Tacoma have been totally excluded from the quantitative benefits calculations given the fact that they are already covered by their municipal paid sick leave ordinances.
- Another major determinant is the percentage of employees covered by their employers' paid sick leave policies. In order to aggregate the total benefits, the department needs to estimate the number of employees who are already covered by a paid sick leave policy as well as those who do not have one yet. The latest BLS data indicated that approximately 87% of workers in the Pacific region (including California, Washington, Oregon, Alaska, and Hawaii) had access to paid sick leave.[136] Lacking the data at a state level, the department adopts this percentage for Washington workers. The department also believes this is a conservative assumption given the fact that even these 87% currently covered employees may still benefit from the adopted rules if their current paid sick leave policies are less generous than what the state law requires should they become eligible under the adopted rules.

Accordingly, to monetize the benefits of paid sick leave, the department applied all the above assumptions to the affected worker population in each year. (Table 16: Estimated Numbers of Affected Workers in Future Years). The table below presents this projection for paid sick leave beneficiaries.

Table 25: Estimated Numbers of Affected Workers for Paid Sick Leave Benefits Calculations[137]

Year	Cumulative Affected Workers
2020	4,582
2021	8,943
2022	10,426
2023	12,895
2024	14,551

[135] Paid Sick Days Benefit Employers, Workers, and the Economy https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B361.pdf

[136] "Table 32: Leave benefits: access, civilian workers, March 2018, Employee Benefit Survey." BLS. https://www.bls.gov/ncs/ebs/benefits/2018/ownership/civilian/table32a.htm

[137] Numbers of the estimated affected workers in future years presented in Table 16 less: a) workers in cities of Seattle, and Tacoma who are already covered (15.88%), b) the percent of affected workers who will remain exempt under the adopted rules (20.2%), and c) the percent of nonexempt workers in other cities who are already provided PSL (87%).

2025	17,201
2026	18,984
2027	21,790
2028	23,672
2029	24,429

3.1.2 Reduced job turnover

Workers value paid sick days. When they have this benefit, they are less likely to look for a different job. Workers who experience a health care crisis are also more likely to return to their employer if they have a paid leave policy.[138] Under the adopted rules, employers are required to provide paid sick days to eligible workers, so the effect on voluntary turnover may be reduced since workers considering a job change will have paid sick days both at their current job and at their potential new job. Also, changing jobs may be costly and risky for both workers and employers, and having paid sick days in a current job may increase employee loyalty to the current employer and reduce work/life conflict, even if another employer offered the same benefit. In addition, having paid sick days affects involuntary turnover by protecting workers from being fired for unauthorized work absences when they are sick or must care for sick family members.

Based on all the factors described in Table 26, the department estimates the annualized savings from the reduced job turnover costs to be $13.34 million.

Table 26: Cost Savings from Reduced Turnover

Expected reduction (savings) in turnover cost due to the adopted rules in 2020	
Factor	**Value**
Workers affected by the rules in WA State in 2020	4,582
Average hourly wage for affected employees, 2020	$19.60
Average daily work hours for affected workers	8
Benefits as a percentage of base wage	46.4%
Annual total compensation of affected employees (in millions)	$273.47
Turnover as a percentage of total compensation	25%[139]
Average cost of turnover for all affected employees (in millions)	$68.37
Average percentage point reduction in turnover when PSL is provided through EAP rulemaking	5%[140]
Expected reduction (savings) in turnover cost due to the adopted rulse in 2020 (in millions)	$3.42
Total benefits of reduced turnover in every future year after wage and establishment count adjustments	
Expected reduction (savings) in turnover cost in 2021 (in millions)	$6.90
Expected reduction (savings) in turnover cost in 2022 (in millions)	$8.33
Expected reduction (savings) in turnover cost in 2023 (in millions)	$10.65
Expected reduction (savings) in turnover cost in 2024 (in millions)	$12.44
Expected reduction (savings) in turnover cost in 2025 (in millions)	$15.21
Expected reduction (savings) in turnover cost in 2026 (in millions)	$17.37
Expected reduction (savings) in turnover cost in 2027 (in millions)	$20.63

[138] https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B270.pdf
[139] Based on the Institute for Women's Policy Research various studies and data sources in a number of cities. https://iwpr.org/wp-content/uploads/wpallimport/files/iwpr-export/publications/B270.pdf
[140] https://iwpr.org/publications/valuing-good-health-in-oregon-the-costs-and-benefits-of-earned-sick-days/

Expected reduction (savings) in turnover cost in 2028 (in millions)	$23.18
Expected reduction (savings) in turnover cost in 2029 (in millions)	$24.75
Discount rate	5%
Total net present value of expected reduction (savings) in turnover cost due to the adopted rules over 10 years (in millions)	$108.17
Annualized expected reduction (savings) in turnover cost due to the adopted rules (in millions)	**$13.34**

3.1.3 Reduced flu contagion in the workplace

Because influenza (the flu) is highly contagious and accounts for most illness-related employment absences, the impact of paid sick days on transmission of the flu virus is a large component of the benefits of these adopted rules. By a very conservative estimate, five percent of healthy working adults will get the flu in a given flu season.[141] Studies find that workers with the flu miss one to five days of work, and the department selects only two days for this factor. Most workers out sick with the flu are attended by a caregiver, with an average work-loss of 0.4 days per caregiver.[142] Workers with the flu also incur costs for doctor visits, hospitalizations in some cases, and the purchase of prescription and non-prescription medications and other treatments. The department estimates that the workers infected with a flu will purchase non-prescription medications, and only 25% of them will see the doctor and purchase the prescriptions.

According to Centers for Disease Control and Prevention, sasonal influenza-related deaths are deaths that occur in people for whom seasonal influenza infection was likely a contributor to the cause of death, but not necessarily the primary cause of death.[143] For this reason, costs of influenza-related deaths are excluded from this benefit analysis.

Given the unit cost for each component described in Table 27, the department estimates the annualized savings from the reduction in flu contagion to be $1.40 million.

Table 27: Cost savings from reduced flu contagion in workplace

Expected reduction (savings) in flu contagion cost in workplace due to the adopted rules in 2020	
Factor	**Value**
Workers affected by the rules in WA State in 2020	4,582
Flu illness rate	5%
Contagion rate (i.e., each co-worker's chance of contracting the flu)	18%[144]
Assumed number of daily work contacts	5
Number of missed workdays per infected co-worker	2
Number of missed workdays for employed caregivers of ill workers	0.4
Lost productivity for infected co-workers on return to work	50%
Average cost of doctor's visit	$100
Average cost of prescription drugs	$50

[141] U.S. Influenza Surveillance Report
https://www.cdc.gov/flu/weekly/index.htm
[142] Washington State 2015-2016 Influenza Surveillance Report
http://www.doh.wa.gov/Portals/1/Documents/5100/420-100-FluUpdateSeason2016.pdf
[143] Centers for Disease Control and Prevention
https://www.cdc.gov/
[144] https://iwpr.org/publications/valuing-good-health-in-oregon-the-costs-and-benefits-of-earned-sick-days/

Average cost of over the counter flu drugs	$10
Estimated number of workers subject to flu each year (5% of affected workers)	229
Estimated number of infected workers as a result of a sick worker in the workplace due to the lack of paid sick leave policy (assuming 18% contagion rate & 5 daily work contacts)	206
Total number of WA workers infected with a flu	435
Cost of 2 missed workdays for all affected workers	$199,846
Cost of 2 days lost productivity on return to work for all affected workers	$99,923
Cost of missed workdays for employed caregivers of ill workers for all affected workers	$39,969
Cost of doctor's visit (assuming 25% will go to the doctor)	$10,882
Cost of drugs (prescription & over the counter)	$9,794
Expected savings from the reduction in flu contagion in 2020 (in millions)	**$0.36**
Total benefits in every future year after wage and establishment count adjustments	
U.S. Health care services inflation rate	2.03%[145]
Expected savings from the reduction in flu contagion in 2021 (in millions)	$0.73
Expected savings from the reduction in flu contagion in 2022 (in millions)	$0.88
Expected savings from the reduction in flu contagion in 2023 (in millions)	$1.12
Expected savings from the reduction in flu contagion in 2024 (in millions)	$1.31
Expected savings from the reduction in flu contagion in 2025 (in millions)	$1.60
Expected savings from the reduction in flu contagion in 2026 (in millions)	$1.82
Expected savings from the reduction in flu contagion in 2027 (in millions)	$2.16
Expected savings from the reduction in flu contagion in 2028 (in millions)	$2.43
Expected savings from the reduction in flu contagion in 2029 (in millions)	$2.59
Discount rate	5%
Total net present value of expected savings from the reduction in flu contagion over 10 years (in millions)	$11.36
Annualized expected savings from the reduction in flu contagion due to the adopted rules (in millions)	**$1.40**

3.1.4 Reduced expenditure for short-term nursing home stays

Workers with the flexibility to provide informal care for elderly, disabled, and medically fragile relatives may be able to reduce household expenditures for health care, including paid care at home or in nursing homes. Approximately 34.2 million Americans have provided unpaid care to an adult age 50 or older in 2015, approximately 11% of the population.[146] Based on this information, the department assumes between 7% and 15% (with the mid-point estimate of 11%) of the affected workers will need to provide care for their relatives, with the average length of stay in a nursing home being 2 days. Multiplied by the average cost of $222 for each day of a stay in a nursing home, the department estimates the annualized savings from the reduced expenditures in nursing home stays to be $0.51 - $1.10 million.

[145] https://ycharts.com/indicators/us_health_care_inflation_rate
[146] Caregiving in the U.S. 2015 Report
http://www.aarp.org/content/dam/aarp/ppi/2015/caregiving-in-the-united-states-2015-report-revised.pdf

Table 28: Cost savings from reduced expenditures for short-term nursing home stays

Expected reduction (savings) in expenditures for short-term nursing home stays in 2020		
Factor	**Value**	
Workers currently affected by the rule in Washington State	4,582	
Average cost of one day of nursing home stay, semi-private room	$222[147]	
Estimated average length of nursing home stay	2[148]	
National rate of adult caregivers for elderly/disabled family member	11%	
Expected reduction in nursing home stays cost due to the adopted rules in 2020 (in millions)	**Low**	**High**
	7% of adult caregivers	15% of adult caregivers
	$0.14	**$0.31**
Total benefits in every future year after wage and establishment count adjustments		
Expected reduction in nursing home stays cost in 2021 (in millions)	$0.28	$0.61
Expected reduction in nursing home stays cost in 2022 (in millions)	$0.34	$0.72
Expected reduction in nursing home stays cost in 2023 (in millions)	$0.43	$0.91
Expected reduction in nursing home stays cost in 2024 (in millions)	$0.49	$1.05
Expected reduction in nursing home stays cost in 2025 (in millions)	$0.59	$1.27
Expected reduction in nursing home stays cost in 2026 (in millions)	$0.67	$1.43
Expected reduction in nursing home stays cost in 2027 (in millions)	$0.78	$1.67
Expected reduction in nursing home stays cost in 2028 (in millions)	$0.86	$1.85
Expected reduction in nursing home stays cost in 2029 (in millions)	$0.91	$1.95
Discount rate	5%	
Range	**Low**	**High**
Total net present value of expected reduction (savings) in expenditures for short-term nursing home stays over 10 years (in millions)	$4.17	$8.95
Annualized expected reduction (savings) in expenditures for short-term nursing home stays (in millions)	**$0.51**	**$1.10**

3.2 Quantitative benefits from reduced risk of workplace injuries, illnesses, and other adverse conditions[149]

Research has consistently shown that stress, fatigue, and other issues related to working long hours significantly increase the risk of workplace injuries, although the precise degree of relationship varies across these studies. For example, Lombardi et al. (2010) examined the data from the US National Health Interview Survey for 2004-2008, and found that compared to those working between 31 and 40 hours a week, workers working 40-50 hours, 50-60 hours, and more than 60 hours are associated with a 41%, 51%, and 77% higher risk of workplace injuries respectively, independent of industry, occupation, type of

[147] http://health.usnews.com/health-news/best-nursing-homes/articles/2013/02/26/how-to-pay-for-nursing-home-costs

[148] https://iwpr.org/publications/valuing-good-health-in-oregon-the-costs-and-benefits-of-earned-sick-days/

[149] The Preliminary Cost-Benefit Analysis include consideration of the qualitative benefits associated with the reduced risk of workplace injuries, illnesses, and other adverse conditions, but did not monetize them.

pay, sex, age, education, and body mass. Dembe et al. (2005) assessed the impact of extended work hours and overtime on illnesses and injuries via the National Longitudinal Survey of Youth and demonstrated that after controlling for other factors, there was a 61% higher injury hazard rate for overtime workers than workers in jobs without overtime. In addition, working 12 hours or longer per day was associated with a 37% increased hazard rate. Another study conducted by Salminen (2016) concluded that compared to a compared to a regular 8-hour working day, the average risk of occupational injuries was 15% higher for a 10-hour working day and 38% higher for a 12-hour day, based on his review of 12 relevant studies. When working more than 12 hours a day, this risk was further increased by 147%. Similarly, an earlier literature review by Folkard et al. (2006) revealed that injury risk begins increasing after 8 hours, with a 13% increase on a 10-hour shift and a 28% increase on a 12-hour shift. A National Institute for Occupational Safety and Health (NIOSH) report (Caruso et al., 2004) showed that overtime was associated with poorer health conditions, higher injury rates, more illnesses, or increased mortality in 16 of 22 studies reviewed. As to the relationship between overtime and injuries, one study (Lowery et al., 1998) indicated a rate ratio of 1.57 for those working at least 20% overtime, and another study (Simpson and Severson, 2000) reported a rate ratio of 1.71 for workers working more than 2000 hours per year compared to those working fewer hours. The National Employer and Employee Surveys on Workplace Fatigue (National Safety Council, 2017) showed that 93% of all surveyed employers agreed that fatigue was a safety issue and 45% of employers in Construction and Transportation industries had reported safety incidents due to fatigue. Across all industries, 32% employers reported injuries and near misses due to fatigue. In terms of what factors cause fatigue, 43% of all employers reported that long shift (10 or more hours a day) or long week (50 or more hours a week) is the major factor.

In addition to increasing the frequency of workplace injuries, long work hour schedules may also increase the severity of injuries. One study based on the data from US Mine Safety and Health Administration reports for 1983–2015 (Friedman et al., 2019) revealed that incidents occurring during long working hours (9 or more hours after the start of a shift) were 32% more likely to result in a death, and the number rose to 73% more likely where incidents involved multiple injured workers.

Based on these studies, the department believes the decreased work hours due to the overtime coverage of these rules will help reduce occupational injuries or illnesses, resulting in substantial benefits for the affected employers and employees, as well as the increased welfare for their families. To quantify this effect, the department assumes a 10% reduction in the risk of workplace injuries for the workers with reduced work hours due to these adopted rules, which is a very conservative estimate compared to the findings from the studies we reviewed. Using the reported overall incidence rate of 4.2 per 100 full-time workers in Washington,[150] and the number of workers who will see their work hours reduced,[151] the department estimates that at least 34 nonfatal injuries will be prevented due to the adoption of these rules in 2020, and this number will be gradually increased to 226 by 2029. Given the average cost of each

[150] Washington 2017 Nonfatal industry incidence rates and counts, BLS.
[151] See Table 31 and 38 in Chapter 4.

nonfatal injury claim and the average annual growth rate of 1.65% for claim costs,[152] the adopted rules are expected to result in an annual benefit of at least $3.07 million from reduced workplace injuries.[153]

Table 29: Cost Savings from the Reduced Number of Workplace Injuries

Year	Number of affected workers	Workers with reduced hours	Number of injuries reduced	Average cost of a nonfatal injury	Benefit from reduced injuries (in millions)
2020	40,343	8,496	34	$15,965	$0.54
2021	90,316	19,019	76	$16,229	$1.23
2022	107,308	22,598	90	$16,497	$1.49
2023	135,608	28,557	114	$16,770	$1.92
2024	154,576	32,551	130	$17,047	$2.22
2025	184,943	38,946	156	$17,328	$2.70
2026	205,372	43,248	173	$17,614	$3.05
2027	237,530	50,020	200	$17,905	$3.58
2028	259,099	54,562	218	$18,201	$3.97
2029	267,775	56,390	226	$18,502	$4.17
Discount rate					5%
Annualized benefit (in millions)					**$3.07**

In addition to the impact of the occupational injuries analyzed above, numerous studies have indicated that there is a strong association between long working hours and other adverse outcomes including coronary heart disease, diabetes, mental illness, alcohol use, and even car crashes. Given the fact that these adopted rules would reduce work hours for many workers, especially those working long hours on a regular basis, the rules are expected to significantly benefit these workers in terms of lower risks of occurrence of these adverse events.

3.3 Estimated total quantifiable benefits of the adopted rules

Using the methodology described above, L&I estimates the total quantifiable probable benefits of the adopted rules due to increased paid sick leave coverage and reduced occupational injuries to be in a range of $18.33 million to $18.91 million per year within the 10-year timeframe.

[152] Based on all closed nonfatal injury claims in Fiscal Year 2010-2019 from L&I's administrative database.

[153] This is only the direct benefit from the claim costs. The actual benefit may also include cost savings from the reductions in property damages associated with the injury incidents; loss of productivity of the injured worker; loss of productivity of other workers; time lost by supervisors and managers; cost of transportation to the nearest medical-treatment facilities; reduced employee morale and heightened fear of accidents; additional recruitment and training efforts for replacement workers; additional administrative costs for dealing with the injuries; and negative impacts of the injuries on victims' families or friends, etc.

3.4 Qualitative benefits of the adopted rules

3.4.1 Strengthened overtime protection for vulnerable workers and restoration of intended benefits for misclassified employees[154]

The adopted rules provide stronger overtime protection for salaried workers who are currently overtime eligible because of their non-EAP job duties and help restore overtime benefits for misclassified workers. These workers include those who earn between $455 per week and the new salary thresholds and who would be overtime exempt under the current rules if they also meet the appropriate duties test. They are vulnerable to misclassification because their exemption status is completely reliant upon the duties test, which is more subjective and harder to correctly apply than a clear-cut salary threshold test. Under the new rules, their status as overtime-eligible will be assured based on their salaries alone, without the need for the type of subjective duties test examination that can result in erroneous classification. Therefore, the adopted rules will help strengthen overtime protections for these workers, help reduce potential worker misclassification, and restore overtime benefits to workers who were previously missclassified.

Based on the same data used for cost estimates in this report, the department estimates that overtime protection will be strengthened for an additional 63,000 salaried workers in 2020 (who earn between the current salary level of $455 per week and the updated salary level for 2020, but do not pass the duties test). Over a 10-year period (2020-2029), a total of 239,000 workers will have their overtime protections strengthened as a result of these rules. If we assume that 12.8% of these workers are currently misclassified as overtime exempt,[155] the rules will restore overtime and other protections to more than 30,000 currently-misclassified workers.

Table 30: Workers Whose Overtime Protection Will be Strengthened or Restored by the Rules

Year	Number of workers whose OT status will be strengthened	Number of misclassified workers who will have their overtime benefit restored
2020	62,586	8,011
2021	62,595	8,012
2022	17,060	2,184
2023	21,780	2,788
2024	14,655	1,876
2025	18,374	2,352
2026	12,299	1,574
2027	15,597	1,996
2028	10,542	1,349
2029	3,696	473
All	239,184	30,616

[154] The Preliminary Cost-Benefit Analysis did not detail an estimation of the number of workers with strengthened overtime protections. Stakeholder input suggested a numerical estimation would be of interest to the public.
[155] This was the estimate from the USDOL rule analysis, FR 81, No. 99, May 23, 2016.

3.4.2 Qualitative benefits of paid sick leave coverage

Due to the limitations on available data, the department does not attempt to monetize all the cost reductions in lost jobs and wages as a result of the paid sick leave provision of the adopted rules for the affected workers. Nor do we try to quantify the benefits of the improved financial stability, social status, and economic well-being of the affected Washington workers as a result of the adopted rules. While these qualitative benefits are difficult to measure, their values and impacts on society may be significant, so they need to be addressed.

In addition to what has been outlined in the quantitative benefits section, we provide a brief summary of some other qualitative benefits that may influence employers, employees, and society as a whole below.[156]

- **Avoided lost wages** – With paid sick leave policies in place, workers will not be suspended or fired for missing work without authorization when they are sick or a family member needs care. This will avoid the unexpected loss of wages and will keep affected workers employed and productive.
- **Reduced reliance on social welfare and unemployment programs –** Workers who might have lost their jobs because of having an inadequate number of paid sick days or because their place of employment lacks a paid sick leave policy will be less likely to lose their jobs under the adopted rules, which will make them less reliant on public assistance, i.e. social welfare and unemployment programs.
- **Improved quality of life –** Better health due to access to paid sick days under the adopted rules will improve quality of life for affected workers and their families.
- **Reduced long-term, harmful social impacts on families –** When parents cannot stay home to care for sick children, older siblings may be kept out of school to care for their younger siblings. These school absences may affect school performance and may have long-term impacts on the older children's education and future work productivity.
- **Limited health care impacts from children with contagious diseases –** Keeping children at home when they have contagious diseases like the flu can prevent illness and work absence among their schoolmates and their schoolmates' parents. Preventing children from being disease vectors in schools and day cares can significantly reduce workplace absence and productivity effects among adults as well.
- **Reduced expenditures for treating victims of contagious diseases –** Paid sick days that allow ill workers to stay home can have very important public health impacts by limiting the spread of contagious diseases. This report quantifies benefits from reduced flu contagion in the workplace, but it does not quantify benefits of limiting the spread of other contagious diseases on employers and workers, and on public health, such as reduced expenditures for treating victims of norovirus outbreaks in nursing homes.

[156] White House Council of Economic Affairs, The Economics of Paid and Unpaid Sick Leave https://obamawhitehouse.archives.gov/sites/default/files/docs/leave_report_final.pdf

3.4.3 Qualitative benefits of other protections from these rules

In addition to the benefits of paid sick leave coverage analyzed above, these rules are expected to result in other benefits that are obvious but difficult to quantify.[157] Some of these additional benefits are as follows:

- **Improved clarity to both workers and employers, and restoration of benefits for misclassified employees** – The updated salary thresholds provide a bright-line rule within each test, making it easier for employers to identify employees who may be exempt and more difficult for employees to be misclassified. Workers who are currently eligible for protections under the MWA but are misclassified and denied these protections will be unambiguously covered when the updated salary thresholds apply.[158] Others who are near the current salary level will see their status as protected strengthened by the higher threshold. Aligning the Washington duties tests more closely with the federal duties tests also makes it easier for employers to accurately apply the test, based on their experience applying the similar federal duties tests, and be more confident they are doing so correctly. Because workers will likewise be more easily able to determine whether they are properly classified as exempt under the rules, misclassified workers are more likely to seek the benefits due to them under the MWA. The rules will also increase protections for affected workers reporting concerns or filing wage and overtime complaints.
- **Fewer complaints and litigation for employers and better protection for workers from retaliation** – The restoration of effective bright-line salary thresholds will allow employers to quickly and easily identify workers who are not exempt without having to repetitively apply the duties tests. The duties tests, by themselves, are more resource-intensive to apply and can result in misapplication. Complementing the duties tests with salary threshold tests reduces the potential for wage complaints or private litigation based on a misapplication of or disagreements over the application of the duties test. Conforming the state duties tests more closely with the federal duties tests will likely also simplify the process of assessing exempt status and therefore decrease both questionable classifications and the wage complaints and litigation that might result from a duties test alone.
- **Greater certainty about hours** – Workers between the current salary thresholds and the new salary thresholds may see fewer requests to work overtime or shorter overtime hours because employers would be required to compensate previously exempt workers for hours worked over 40 during a workweek. While the transfer payment analysis does not capture the quality of life improvements provided by more predictable schedules, such benefits still serve the goals and objectives of the MWA.
- **Better work-life balance for certain workers** – Some workers who experience a reduction in work hours, without the commensurate reduction in pay, may see an improved work-life balance.
- **Increased productivity** – The incremental increase in the cost of some workers' labor may impact the worker productivity in two potential areas. As the cost of labor increases, employers'

[157] The payroll impacts of these rule changes due to overtime, minimum wage, and paid sick leave protections for the newly eligible workers are different from what are described in this section, and they are presented in Chapter 4.
[158] It is unknown how many of the newly eligible workers are currently misclassified, but the department has provided some general estimates above. The estimates align with the department's enforcement experience, which indicates that the number is significant. As the salary levels reaches the full thresholds, the number of misclassified workers will be further reduced.

incentive in utilizing employees' work hours more efficiently among various work tasks also increases, which may result in increased productivity. On the other hand, higher wage rates or a reduction in overtime reduces employee turnover, and worker productivity may be further increased. This is a result of more experienced workers (those who stay on the job for a longer tenure) usually being more productive.

- **Reduced social service demands** – Where wage rates are increased to meet the higher salary threshold or workers are paid for overtime hours worked, reliance on social services and other government assistance may be reduced.
- **Extended employment opportunities** – When more accurate exemption classifications result in determinations that salaried workers' excessive hours would violate MWA requirements or that the resulting premium pay is too costly, excess hours may be shifted to other workers – including new workers. In addition, where employers choose to reduce overtime hours worked by newly covered workers to avoid costs associated with overtime pay, they may hire new workers to fill the hours, resulting in new employment opportunities.
- **Increased local economic activity** – If income through transfer payments to workers is increased, these workers would spend more of this income locally than their employers do, increasing local economic activity.

CHAPTER 4: ASSESSING PROBABLE TRANSFER PAYMENTS

The increases in salary and hourly (for computer professionals) threshold levels under these rules may result in higher payroll costs from either the overtime premiums paid to the newly eligible workers or an increase in salaries for workers to remain in exempt status. Employers may also incur payroll costs if some of their affected workers are currently paid less than the state minimum wage. In addition, employers may incur payroll costs transferred to the newly nonexempt employees and their replacement workers to cover the hours their newly eligible employees take as sick leave. All of these payroll impacts essentially represent the redistributed income from employers to workers. Unlike the costs analyzed in Chapter 2, the costs to employers described here are equally-valued benefits to workers, so they cancel out. In addition, they don't create new social values.[159] Therefore, they are considered transfer payments and are analyzed separately in this section.[160]

4.1 Transfer payment due to overtime coverage

For the affected workers who already do not work overtime, their hours or weekly earnings will not change even when they are reclassified as nonexempt under the new rules. To estimate the size of the transfer payment due to the overtime provision for those who are affected, the department needs to estimate the number of workers who work overtime and how their hours and earnings will be affected. Depending on workers' current salaries and the overtime hours they work, their employers may choose to reclassify them as nonexempt so they receive overtime premiums, or to increase their salaries to the adopted threshold levels so they remain exempt. The department expects that all light overtime workers will be simply reclassified as nonexempt and provided overtime premiums for hours in excess of 40 rather than receiving significant overall increases in salary to meet the new thresholds. The department also estimates that moderate overtime workers and heavy overtime workers will see their salaries increased to the new threshold level,[161] and their weekly hours will remain the same since they are still exempt. All considered, about 58.8% of affected workers do not work overtime, another 21.1% of affected workers work overtime and will be reclassified as nonexempt, and the remaining 20.2% of affected workers will continue to be exempt as a result of their salaries increasing to the new threshold levels.

[159] The higher earnings as a result of overtime premiums or minimum wages paid to these affected workers are not expected to change the type of work they do or the amount of output they produce.
[160] Transfer payments are treated in the same way as other costs in a financial or fiscal impact analysis, but are normally treated differently in an economic impact analysis for the reason described in this paragraph.
[161] These percentages are estimated based on their current salaries, the average overtime hours they work, and the new threshold of $675 per week in 2020. For example, an employer would have to pay at least $985.50 per week ($13.5*40+$13.5*1.5*22=$985.50) to a heavy overtime worker given the minimum wage of $13.50 in 2020, the average of 62 hours worked in a week for this type of workers, and the overtime premium of one and a half times the regular rate. Compared to the salary threshold of $675, a rational decision for that employer would be increasing the weekly salary of that worker to $675 so that the worker remains exempt.

Table 31: Distribution of Affected EAP Workers by Overtime Type, 2020

	No Overtime	OT-Newly nonexempt	OT- Remain exempt	All
Total Affected EAP Workers	23,708	8,496	8,140	40,343
Share of Workers by Type	58.8%	21.1%	20.2%	100%

The department further assumes that newly nonexempt workers who work overtime will incur a 1% reduction in their regular hourly rates[162] as a result of their employers' response to the entitlement to overtime premiums. Their total work hours will also decrease by 1% as employers are more careful in scheduling and monitoring their hours. However, their average weekly earnings still increase by $12.21 due to the added overtime premium. For those who remain exempt, their earnings gains are more significant due to their increased salaries, although their work hours remain the same.

Table 32: Changes in Regular Hourly Rate, Hours Worked, and Weekly Earnings, 2020

Type of workers	No Overtime	Newly OT protected	Remain exempt
Average implicit hourly rate[163]			
Prior to the new rules	$15.15	$13.77	$11.32
After the new rules	$15.15	$13.64	$11.94
Hours worked per week			
Prior to the new rules	39.6	44.0	56.5
After the new rules	39.6	43.6	56.5
Average weekly earnings			
Prior to the new rules	$599.94	$606.00	$640.00
After the new rules	$599.94	$618.21	$675.00
Weekly change ($)	$0.00	$12.21	$35.00
Annnual payroll changes			
Annual change per worker ($)	$0.00	$635	$1,820
Annual total changes (million $)	$0.00	$5.39	$14.82

Based on the estimated annual payroll change per worker and the number of affected workers, the total transfer payments due to the overtime coverage amount is $20.21 million in Year 1.

4.2 Transfer payments due to minimum wage coverage

The department estimates that approximately 8,734 affected workers are paid less than the minimum wage of $13.50 per hour in 2020. Their average hourly rate is estimated to be $12.49. To bring their rates

[162] This percentage is between the estimated average rate cut for occasional overtime workers (-0.4% and -0.3%) and regular overtime workers (-5.3% and -4.3%) in both the 2016 and 2019 USDOL EAP rule analyses.
[163] The average hourly rates for each group are derived from the breakeven points where there is no difference between the two options: reclassifying workers and paying them overtime premiums, and increasing their salaries to the new threshold level to avoid paying their overtime premiums.

to the state minimum wage, the annual increase in payroll per worker is approximately $2,101. This unit cost is multiplied by the number of affected workers who do not work overtime to yield a total of $10.78 million in transfer payments due to new minimum wage coverage.[164]

Table 33: Increased Payroll from Minimum Wage Provision, 2020

Number of affected workers paid less than $13.5 per hour	8,734
Share of workers who do not work overtime	58.8%
Average hourly rate of these workers	$12.49
Annual cost per affected worker	$2,101
Transfer due to minimum wage pay (millions)	**$10.78**

4.3 Transfer payments due to paid sick leave coverage

4.3.1 Transfer payment related to the affected employees

Workers who become nonexempt under these rules will now be entitled to paid sick leave benefits under RCW 49.46.210 and WAC 296-128. The department estimates that about 4,582 workers will be affected in the first year, i.e., workers who currently do not have paid sick leave benefits but will be entitled to this benefit under the new rules. Based on findings from various studies, the department assumes these workers will use three days of sick leave per year.[165] Therefore, the total number of used sick leave amounts to 109,968 hours per year. Multiplied by the average hourly rate of $19.60 plus the benefits, the total transfer payment to the affected employees amounts to $3.16 million in the first year of the adopted rule implementation.

Table 34: Transfer Payment Related to the Affected Employees

Factor	**Value**
Workers in Seattle and Tacoma (who are already provided with PSL) as a share of state workforce	15.88%[166]
Workers in other cities who are already provided PSL	87.0%[167]
Affected workers who will remain exempt as a share of total affected	20.2%
Number of workers who are newly entitled with PSL	4,582
Paid sick leave hours used per year per worker	24
Total hours used per year	109,968
Average hourly rate	$19.60
Benefits as a percentage of base wage	46.4%[168]
Total compensation of PSL to the affected employees in 2020 (in millions)	**$3.16**

[164] The increased compensation to workers who earn less than $13.50 per hour and do work overtime is treated as a transfer payment due to overtime protection, and has already been counted in Section 4.1.
[165] A number of existing studies have indicated a total of three or fewer days of sick leave usage during the whole year for a typical worker (Drago and Lovell, 2011; Institute for Women's Policy Research, 2010, etc.).
[166] Data source: 2017 QCEW Average Employment for Counties (ESD, WA) and 2017 Population Estimates for Cities and Counties in WA (OFM, WA).
[167] Based on March 2018 estimate for Pacific Region, Employee Benefit Survey. BLS.
[168] See Footnote 130.

4.3.2 Transfer payments related to the replacement workers

Employers who hire newly nonexempt workers also incur the costs of finding and hiring replacements for these employees when they take sick leave. As estimated in 4.3.1, these workers on average will use 3 days of sick leave per year, and the total hours of used sick leaves are estimated at 109,968 hours in a year. Using the average hourly rate of $19.60 paid to a replacement worker,[169] the total payroll increase is estimated to be $2.15 million in the first year due to this provision.

Table 35: Increased Payroll from PSL Provision, 2020

Number of workers who are newly entitled to PSL	4,582
Paid sick leave hours used per year per worker	24
Total replacement hours per year	109,968
Average hourly rate	$19.60
Transfer payment for replacement hours (millions)	**$2.15**

4.4 Total transfer payments associated with the adopted rules in 2020

The department estimates that in the first year, the increases in payroll due to overtime, minimum wage, and paid sick leave (PSL) coverages amount to $20.21 million, $10.78 million, and $5.31 million respectively. All together, the transfer payments are estimated to be $36.30 million.[170]

Table 36: Summary of Total Transfer Payments in 2020

Due to overtime coverage	$20.21 million
Due to minimum wage coverage	$10.78 million
Due to PSL coverage	$5.31 million
Total	**$36.30 million**

4.5 Range of total transfer payments due to overtime coverage: 2021-2028

The phase-in schedule for the salary level tests in these rules results in a wide range of the number of affected workers each year; therefore, the total transfer payment also varies greatly between the first year when the new rules are adopted (2020) and the year when the rules are fully implemented (2028). This section aims to provide a high-level estimate of the total potential transfer payments associated with overtime protection for each year from 2020 to 2028.

Using the methodology and results discussed in Section 4.1, affected employers will see an increased payroll of $635 per worker for newly eligible workers and $1,820 for workers who would remain exempt in 2020 (see Table 32). Given the similar level of salary threshold adopted in the 2019 USDOL rules, the

[169] Assuming employers do not need to pay fringe benefits to these replacement workers.

[170] These transfer payments might also impact the overall labor market in potentially distorting the equilibrium wage and reducing economic efficiency. This so-called deadweight loss is not a direct cost to employers, but rather a cost to the society as a whole. Given the fact that the workers affected by these rules only account for a small share of the total employment in Washington (see Table 16), the department anticipates this impact to be very small and does not quantify it in this report.

Department also reviewed the projected overtime transfer payments for those rules. It shows that compared to the estimated unit cost in this analysis, the average cost is lower for the newly nonexempt workers and higher for the workers who would remain exempt. The factors contributing to these discrepencies may include the differences in the average level of earnings and composition of the affected workers between the U.S. and Washington State, and the differences in certain data sources, assumptions and methods each analysis employs.

Table 37: Per-worker Per-year Cost Comparison

Rules	Newly nonexempt[171]	Remain exempt	Adopted salary threshold in 2020
Washington EAP Rule Analayis	$635	$1,820	$675
USDOL 2019 EAP Rule Analysis	$493	$2,338	$684

To provide a high-level estimate, the department uses both of these unit cost estimates, coupled with the projected numbers of newly nonexempt workers and workers who would remain exempt, to generate a range of total potential transfer payments in each future year. As indicated in the table below, the probable transfer payment is estimated to be $43.60 million to $49.87 million in 2021, and would gradually increase to $92.07 - $100.66 million in 2028, when the rules are fully implemented.[172] The actual transfer payments may fall within the indicated range, though much depends how employers choose to comply with the adopted rules.

Table 38: Overtime Related Transfer Payments beyond 2020

Year	Number of nonexempt workers - cumulative	Number of workers who remain exempt - cumulative [173]	Total transfer payment (in millions)
2021	19,019	17,320	$43.60 - $49.87
2022	22,598	19,505	$49.85 - $56.74
2023	28,557	23,293	$60.53 - $68.54
2024	32,551	25,005	$66.18 - $74.51
2025	38,946	28,068	$75.81 - $84.82
2026	43,248	29,115	$80.45 - $89.39
2027	50,020	31,298	$88.72 - $97.84
2028	54,562	31,549	$92.07 - $100.66

[171] This is the weighted average of payroll cost for overtime eligible workers with occasional overtime (T2) and regular overtime (T3) under the USDOL rules.
[172] These are rough estimates and should only be used for informational purposes.
[173] This assumes that the share of workers who remain exempt due to their salaries increasing to the updated salary level will decrease by 1% each year from the 2020 level (20.2%), as the higher salary threshold in each subsequent year would make it more difficult for employers to increase their workers' earnings to that new level in order for them to remain exempt.

CHAPTER 5: LEAST BURDENSOME ALTERNATIVE ANALYSIS

The department must determine whether a rule being adopted is the least burdensome of the alternative requirements that still achieves the goals and objectives of the authorizing statutes.[174] The authorizing statutes are contained in the Minimum Wage Act (MWA).[175] The goals of the Minimum Wage Act are three-fold: (1) to establish a minimum wage to encourage employment opportunities; (2) to establish and enforce modern fair labor standards, including periodically updating the minimum wage and establishing the 40-hour workweek and the right to overtime pay; and, (3) to establish modern labor standards that protect from detrimental working conditions to protect the health, safety, and welfare of workers, including the right to overtime pay and paid sick leave to protect public health and allow workers to care for the health of themselves and their families.[176] The department assessed the alternatives to elements of the adopted rules, and determined whether they met these goals and objectives. Of those that met the goals and objectives, the department determined that the adopted rules were the least burdensome version of the rules for those who are required to comply, given the goals and objectives of the law.

5.1. Standard Duties Test

The adopted rules for the standard duties tests for executive, administrative, professional, and computer professional workers are the least burdensome alternatives to achieve the general goals and specific objectives of the MWA.

The adopted rules eliminate the long and short duties test structure that exists in the current rules and replace it with a simplified standard duties test that largely aligns with the standard duties test under the federal rules. The department considered keeping the long and short test structure or adding some of the more restrictive requirements from the long test to the standard test, such as a cap on performing nonexempt work and modifying the definition of the term "primary duty." The department determined that moving to a standard test that closely aligns with the test employers are already required to comply with under federal law was the least burdensome option. By having a closely aligned standard duties tests, the department reduces compliance costs for employers.

5.2 Duties test for executive employees who are also business owners (executive)

The adopted rules conform more closely with the federal rules by specifying that executive employees are exempt if they own at least twenty percent equity interest in the business and their duties include active engagement in the management of the business. The salary basis test and the salary level test do not apply to these business owner-executives. The current rule does not specifically identify a separate test for these type of executive employees. However, when analyzed for an employer-employee relationship under the MWA, these individuals would likely currently be considered "employers" and thus exempt from MWA coverage. Aligning with the federal rule brings additional clarity and reduces the potential for conflicting

[174] RCW 34.05.328(1)(e).
[175] RCW 49.46.010(3)(c); see also Chapter 49.46 RCW. The Minimum Wage Act was renamed "Minimum Wage Requirements and Labor Standards Act," but is generally still referred to as the Minimum Wage Act.
[176] RCW 49.46.005.

decisions. The adopted change is the least burdensome alternative because it reduces the administrative burdens on employers associated with the application of different standards.

5.3 Duties test and salary level for academic administrators (administrative)

The adopted rules amend the exemption for academic administrators to conform more closely with the standard federal test for academic administrators. The current rule is effectively a long test only, and no short test equivalent is available for academic administrators. The adopted rule change aligns with the federal rules. As it eliminates the long test type cap on performing nonexempt work, as in other rules, it thereby eliminates the burden and expense of tracking to ensure that the cap is not exceeded, and is therefore the less burdensome alternative to the current duties test. Aligning with the federal duties test also reduces burden on employers by having more consistent standards.

5.4 Duties and salary basis test for teachers (professional)

The adopted rules eliminate the long and short duties test structure to align with the standard federal duties test for teachers. The adopted rules also eliminate the long and short salary threshold requirements provided by the current rule and instead allows teachers paid on a salary or fee basis to be exempt. This change aligns with the federal rule in part; the federal rules do not require teachers be paid on a salary or fee basis in order to be exempt. The department determined that maintaining the salary basis requirement was the least burdensome approach that met the above goals of the MWA. The department determined that including teachers who are not paid on a salary or fee basis, but rather paid on an hourly basis, does not provide the income security or other privileges necessary to set them apart from the workers the Legislature intended the MWA to protect. Including teachers paid on an hourly basis in the exemption would deny them rights they currently have to minimum wage for all hours worked, overtime, paid sick leave, and protection from discrimination. As such, the department determined that moving to the standard test for teachers and keeping the salary basis requirement is the least burdensome option that still ensures that hourly workers receive the protections intended by the MWA.

5.5 Duties for outside salespersons

The adopted rules amend the exemption for outside salespersons. Currently, the outside salesperson exemption applies to workers who are engaged in outside sales away from the employer's place of business, and where the outside salesperson controls the hours worked with a cap of 20 percent time spent performing inside office work not related to outside sales duties. In addition, the current rule requires the payment of a guaranteed salary, commission, or fee payment (or combination). The adopted rules align the duties test with the federal test, eliminating the cap on time spent performing inside office work not related to outside sales duties. The adopted rules maintain the current requirements, which are not included in the federal rule, that employers pay a guaranteed salary, commission, or fee and notify workers of their status as outside salespersons. There is no dollar amount established for the guaranteed salary or fee basis, and there is no percentage or dollar amount established for the commission payment. In aligning the duties test, the adopted rules reduce the burden on employers by reducing differences between the two tests and eliminating the burden and expense associated with tracking to ensure that the cap on unrelated inside office work time is not exceeded. Maintaining the existing requirements to pay a guaranteed salary, commission, or fee and provide notification of outside salesperson does not impose an

additional burden over the current state requirement and is necessary to maintain standards at least as protective as current law. Eliminating this requirement would provide less security for workers whose amount of compensation is based primarily on the volume of sales attributable to their efforts, and therefore would not serve the goals of the MWA. Aligning the duties test while retaining the guaranteed compensation requirement is the least burdensome alternative that serves the goals and objectives of the statute.

5.6 Salary threshold for executive, administrative, and professional employees

As described above, the adopted rules eliminate the long and short duties test structure and set one salary level that works in tandem with the standard duties test for each exemption. Consistent with the Legislature's intent to limit the exemptions to those working in the capacity of "*bona fide* executive, administrative and professionals," this structure appropriately identifies exempt EAP workers and protects the MWA rights of nonexempt EAP employees.

A salary threshold that is outdated or too low provides a less effective means to determine which workers are intended to be covered by the MWA. Since the salary level test works in tandem with the duties test, a low salary threshold requires increased reliance on the duties test to determine whether a worker is exempt. This increases burden on employers by requiring employers to engage in more complex and burdensome analyses of each individual employee's actual job duties as performed, in order to determine whether each employee is appropriately classified as exempt or nonexempt. A salary threshold that appropriately reflects the likelihood a worker is legitimately exempt, in contrast, reduces the administrative burden for employers.

Further, inappropriately low salary thresholds have historically had the effect of increasing misclassification of EAP workers.[177] This increased misclassification fails to serve the goals and objectives of the law. It also burdens law-abiding employers who must compete with enterprises that fail to appropriately and accurately classify their employees.

The department determined that setting a salary threshold specific to the State of Washington was necessary to effectively define and delimit bona fide EAP workers given the following factors: 1) adopting the current federal salary level of $455 per week would be inconsistent with the goals of the MWA as it is well below the current minimum wage 40-hour workweek salary of $480 ($12.00 per hour); 2) the federal 2016 Final Rule proposing an updated threshold of $913 per week, with automatic updating, did not go into effect; and 3) the September 24, 2019, final federal rule salary level of $684 per week is too low to distinguish and delimit the exemption to bona fide EAP workers in Washington state, especially given the high income levels in Washington compared to other regions in the United States.

As discussed in Section 1, the federal 2016 Final Rule used extensive data analysis and historical benchmarks to set a nation-wide updated salary threshold of $913 per week that would have gone into effect in 2016. This level was based on the lower federal minimum wage and lowest-wage census region; Washington's higher minimum wage rates and wages overall would require a higher salary threshold rate to have an equivalently protective effect. The 2016 Final Rule was stayed prior to its effective date, and the September 24, 2019, salary level update was set at a substantially lower and less adequate level. The

[177] *See, e.g.,* 81 FR 32,463

2019 federal salary level uses a flawed methodology first introduced in the 2004 federal rules, by pairing what was effectively the less stringent short tests from the previous rule with a lower, long test-equivalent salary level. When applied to the economic realities of Washington workers, the federal 2019 final rule salary level is clearly inadequate under the MWA given Washington's high minimum wage rates. The federal final rule salary level of $684 equates to just over 50 hours of straight-time pay at the January 1, 2020, minimum wage of $13.50. This means that an exempt white-collar worker working just 51 hours would be worse off than a Washington worker making minimum wage and working only 47.5 hours ($691.86, based on 40 regular hours at $13.50 per hour and 7.5 overtime hours at 1.5 times $13.50 per hour). This is contrary to two primary purposes of the overtime protections under the MWA—to reduce overwork and its detrimental effect on the health and well-being of workers and to spread employment by incentivizing employers to hire more employees rather than requiring existing employees to work longer hours.

In setting a Washington state standard, the department considered updating the hourly salary level to a multiplier of the state minimum wage as described in Section 1 of this report, allowing for regular automatic updating. The current salary thresholds became outdated and obsolete since they were adopted in 1976. The Legislature and people by the initiative process have repeatedly confirmed their legislative choice to ensure that the MWA adjusts "to maintain employee purchasing power by increasing the current year's minimum wage rate by the rate of inflation." RCW 49.46.020(2)(b). The department considered following this same mandate by using a multiplier of the state minimum wage in the adopted rules to allow for automatic updating and maintain the effectiveness of the salary threshold.

In addition, irregular updates increase the burden on employers because the eroding value of a set salary level inevitably causes the test to lose effectiveness as a tool in determining exemption, and thus increases analysis and compliance costs as well as indirect costs from competitive misclassification. Providing for automatic updates reduces these potential compliance costs, offers employers and employees more predictability, and allows salary level increases to occur gradually. It is therefore a less burdensome alternative to irregular updates provided through formal rulemaking.

As discussed in Section 1 of this report, the department adopted a multiplier of 2.5 times the state minimum wage for a 40-hour workweek. This threshold is the middle range of the historical ratios between the federal minimum wage and the federal long test and standard test thresholds, provides for a salary level that is consistent with the 50th percentile of the weekly earnings for salary workers in the West Census Region, is slightly above the updated real value of the 1970 short test, and is consistent with the growth rate of the state average wage since the rules were first adopted in 1976. A threshold of 2.5 times minimum wage results in an effective salary level that, when paired with the standard duties test, identifies those workers who legitimately should be exempt from the MWA protections. The department recognizes that the significant differential in the threshold over the current federal standard could result in additional expense and administrative costs and therefore proposes a multi-year phase-in schedule in part to reduce the potential challenges and burdens associated with the update and to minimize potential employer disruptions.

The department considered the following four other minimum wage multiplier alternatives to the adopted level of 2.5 times the state minimum wage rate.

The department determined that 1.5 times the state minimum wage for a 40-hour work week was too low because it does not take into account the current earnings of workers in Washington or the historical relationships of the thresholds to wages. At 1.5 times the state minimum wage, the January 1, 2020, salary level would be $810 per week, $100 less than the threshold set three years ago in the federal 2016 Final Rule of $913 per week, which was already based on a lower-wage region. Based on 2017 data, it corresponds to the earnings of less than the 30th percentile of all salaried full-time workers in the West Census Region.[178] In addition, it is well below the lowest historical ratio between the federal minimum wage and the federal long test and standard test salary thresholds. As discussed further in Chapter 1, historically EAP workers were exempted at least in part because they earned substantially more than the minimum wage and were likely to have greater benefits and job security. A threshold of 1.5 times the state minimum wage would fail to effectively identify bona fide exempt workers and would fail to meet the goals and objectives of the law.

The department also determined that both 2 and 2.25 times the state minimum wage for a 40-hour workweek were too low to serve as effective thresholds for the exemption tests. These thresholds, which correspond to $1,080 and $1,215 per week as of January 1, 2020, straddle the inflation-adjusted 2017 weekly earnings for 40th percentile of the full-time salaried workers in the West Census Region ($1,151). As discussed in Section 1 of this report, a salary between approximately the 35th and 55th percentiles of weekly earnings of full-time salaried workers nationwide when paired with the standard duties test was equivalent to the historical relationship of the short test salary level to the long test salary level. The 40th percentile is the lower end of this range and Washington is a high wage state in the West Census Region. As such, the department determined that both 2 and 2.25 times the state minimum wage for a 40-hour workweek were not sufficiently high enough of a salary level when paired with the standard duties test to effectively identify bona fide exempt workers.

Finally, the department considered the possible threshold of 3.0 times the state minimum wage for a 40-hour workweek. This threshold, corresponding to $1,620 per week as of January 1, 2020, is less than the maximum historical ratio between the federal minimum wage and the federal long test and standard test thresholds of 3.44 times (1949) and consistent with the 1938 level of 3.0 times. In addition, it is just above the inflation-adjusted 2017 weekly earnings for 60th percentile of the full-time salaried workers in the West Census Region ($1,572). As stated in Section 1 of this report, 62 percent of full-time salaried workers were eligible for overtime pay when the 1975 threshold was set.[179] The department determined that a salary level of 3.0 times the state minimum wage would be more burdensome than 2.5 times the state minimum wage. A rate of 2.5 times the state minimum wage still achieves the goals and objectives of the authorizing statutes for the reasons discussed above, so the 2.5 multiplier was the therefore the least burdensome alternative.

5.7 Hourly threshold for computer professional employees

The adopted rules increase the hourly rate threshold necessary for hourly computer professionals to qualify for the computer professional exemption. The current rule sets an hourly rate threshold of $27.63 per hour for an hourly employee to qualify for the exemption. This requirement, originally adopted in

[178] https://www.bls.gov/cps/research_nonhourly_earnings_2017.htm
[179] USDOL Overview of the Overtime for White Collar Workers, Overview and Summary of Final Rule https://www.dol.gov/sites/default/files/overtime-overview.pdf

1998, was consistent with the federal requirement at that time. The original federal requirement was derived from a calculation based on 6.5 times the 1991-1996 federal minimum wage of $4.25 per hour. When adopted in 1998, the hourly rate threshold in the Washington regulation represented just over 5.3 times the state minimum wage of $5.15 per hour (which was the same as the federal minimum wage at that time).[180] The hourly rate is no longer effective at identifying bona fide exempt computer professionals. Effectively differentiating bona fide exempt computer professionals from nonexempt computer professionals is necessary to be consistent with the MWA's goals and objectives.

The department considered updating the hourly threshold to a multiplier of the state minimum wage to be consistent with the salary threshold formulas and to allow for regular automatic updating. This is consistent with the original federal methodology that based the threshold on a multiplier of the minimum wage. In the first stakeholder discussion draft, the department sought input on a range of 2.5 times to 6.5 the state minimum wage. In the second stakeholder draft, the department sought input on a narrower range of 3 to 4 times the state minimum wage. Since this is the only "salary threshold" in the rule that is on an hourly basis, the department was able to review the average hourly wages of the various computer professional occupations in Washington State. After reviewing and considering this data, the department determined that ranges of 5.3 to 6.5 times the state minimum wage would not accurately identify appropriately exempt workers and would be too burdensome for employers. However, a rate of 3.5 times the state minimum wage, which is equivalent to 6.5 times the current federal minimum wage ($7.25), would more accurately identify *bona fide* exempt computer professionals and is consistent with both the rule's original formulation and the mean average hourly wages for 15 computer professional occupations. The department determined that using a multiplier of 3.5 times the state minimum wage, corresponding to an hourly rate of $47.25 per hour as of January 1, 2020, met the objectives of the statute, ensured the hourly rate threshold maintained its effectiveness over time, and was the least burdensome means on employers to do so.

[180] https://www.lni.wa.gov/WorkplaceRights/Wages/Minimum/History/default.asp
https://www.dol.gov/whd/minwage/chart.htm

CHAPTER 6: CONCLUSION

There is always some degree of uncertainty in anticipating what the costs and benefits of adopted rules will ultimately be. That said, within the constraints of our resources, we have attempted to provide estimates that are as accurate as possible by performing a comprehensive analysis that is data-driven and evidence-based.

Based on the analysis from Chapter 2 of this report, L&I estimates the total annual compliance cost of $13.65 million for these rules. The total probable benefit is estimated to be at least $18.33 million per year. In addition, there are many other benefits of these rules that are substantial but difficult to quantify. As indicated in Chapter 4, the rules will also result in a total transfer payment of $36.30 million from employers to employees in 2020 when the rules are scheduled to take effect, and up to $100.66 million in 2028 when the rules reach full implementation.

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APPENDIX

Table A1: Probability of exemption, and share of salaried workers by occupation

SOC	Occupation	Probability category[181]	Salaried workers[182]
11-1011	Chief executives	1	71.7%
11-1021	General and operations managers	1	71.7%
11-2011	Advertising and promotions managers	1	87.8%
11-2021	Marketing managers	1	87.8%
11-2022	Sales managers	1	87.8%
11-2031	Public relations managers	2	87.8%
11-3011	Administrative services managers	1	65.1%
11-3021	Computer and information systems managers	1	79.9%
11-3031	Financial managers	1	83.9%
11-3051	Industrial production managers	1	79.9%
11-3061	Purchasing managers	1	77.7%
11-3071	Transportation, storage, and distribution managers	1	79.9%
11-3121	Human resources managers	1	85.6%
11-9013	Farm, ranch, and other agricultural managers	3	79.9%
11-9021	Construction managers	1	79.9%
11-9041	Engineering managers	1	79.9%
11-9051	Food service managers	3	62.5%
11-9061	Funeral directors	2	75.7%
11-9071	Gaming managers	2	79.9%
11-9081	Lodging managers	3	62.5%
11-9111	Medical and health services managers	1	64.1%
11-9121	Natural sciences managers	1	79.9%
11-9141	Property, real estate, and community association managers	3	72.9%
11-9151	Social and community service managers	1	71.8%
11-9199	Managers, all other	1	79.9%
13-1011	Agents and business managers of artists, performers, and athletes	2	79.9%
13-1020	Buyers and Purchasing Agents	2	60.3%
13-1031	Claims Adjusters, Examiners, and Investigators	2	49.3%
13-1032	Insurance Appraisers, Auto Damage	2	49.3%
13-1041	Compliance Officers	3	62.9%

[181] Based on the information from Table A2 of 2016 USDOL rule analysis. The 2002 Census Code used in that report for each occupation was converted to the Standard Occupational Classification (SOC) Code.
[182] Based on the information from Table A-2 of 2004 USDOL rule analysis. The 1990 Census Code used in that report for each occupation was converted to the Standard Occupational Classification (SOC) Code.

SOC	Occupation	Probability category[181]	Salaried workers[182]
13-1051	Cost estimators	1	79.5%
13-1071	Human Resources Specialists	2	64.4%
13-1075	Labor Relations Specialists	2	64.4%
13-1081	Logisticians	1	77.7%
13-1111	Management analysts	2	79.5%
13-1121	Meeting and convention planners	2	73.8%
13-1141	Compensation, Benefits, and Job Analysis Specialists	2	64.4%
13-1151	Training and Development Specialists	2	64.4%
13-1161	Market Research Analysts and Marketing Specialists	2	86.4%
13-1199	Business Operations Specialists, All Other	2	86.4%
13-2011	Accountants and auditors	1	69.7%
13-2021	Appraisers and assessors of real estate	3	88.5%
13-2031	Budget analysts	2	69.7%
13-2041	Credit analysts	2	69.7%
13-2051	Financial analysts	2	78.3%
13-2052	Personal financial advisors	2	78.3%
13-2053	Insurance underwriters	1	62.3%
13-2061	Financial examiners	3	78.3%
13-2071	Credit Counselors	2	78.3%
13-2072	Loan Officers	2	78.3%
13-2081	Tax examiners, collectors, and revenue agents	1	78.3%
13-2082	Tax preparers	2	78.3%
13-2099	Financial specialists, all other	2	78.3%
15-1111	Computer and Information Research Scientists	1	79.7%
15-1121	Computer Systems Analysts	1	79.7%
15-1122	Information Security Analysts	1	79.7%
15-1131	Computer programmers	2	77.4%
15-1132	Software Developers, Applications	1	79.7%
15-1133	Software Developers, Systems Software	1	79.7%
15-1134	Web Developers	1	79.7%
15-1141	Database administrators	1	79.7%
15-1142	Network and computer systems administrators	1	79.7%
15-1143	Computer Network Architects	1	79.7%
15-1151	Computer User Support Specialists	1	79.7%
15-1152	Computer Network Support Specialists	1	79.7%
15-1199	Computer Occupations, All Other	1	79.7%
15-2011	Actuaries	1	100.0%

SOC	Occupation	Probability category[181]	Salaried workers[182]
15-2021	Mathematicians	1	100.0%
15-2031	Operations research analysts	1	68.6%
15-2041	Statisticians	1	80.5%
15-2090	Miscellaneous Mathematical Science Occupations	1	100.0%
17-1011	Architects, Except Landscape and Naval	1	78.2%
17-1012	Landscape Architects	1	64.6%
17-1021	Cartographers and Photogrammetrists	3	45.0%
17-1022	Surveyors	3	45.0%
17-2011	Aerospace engineers	1	75.9%
17-2021	Agricultural engineers	1	80.1%
17-2031	Biomedical engineers	1	87.1%
17-2041	Chemical engineers	1	87.1%
17-2051	Civil engineers	1	69.8%
17-2061	Computer hardware engineers	1	79.7%
17-2071	Electrical Engineers	1	81.2%
17-2072	Electronics Engineers, Except Computer	1	81.2%
17-2081	Environmental engineers	1	77.5%
17-2111	Health and Safety Engineers, Except Mining Safety Engineers and Inspectors	1	75.2%
17-2112	Industrial Engineers	1	75.2%
17-2121	Marine engineers and naval architects	1	64.6%
17-2131	Materials engineers	1	75.4%
17-2141	Mechanical engineers	1	80.8%
17-2151	Mining and geological engineers, including mining safety engineers	1	80.8%
17-2161	Nuclear engineers	1	34.0%
17-2171	Petroleum engineers	1	95.0%
17-2199	Engineers, all other	1	77.5%
17-3010	Drafters	4	33.8%
17-3020	Engineering technicians, except drafters	4	32.3%
17-3031	Surveying and mapping technicians	4	23.6%
19-1010	Agricultural and food scientists	1	67.0%
19-1020	Biological scientists	1	78.7%
19-1030	Conservation scientists and foresters	1	76.8%
19-1040	Medical scientists	1	74.4%
19-2010	Astronomers and physicists	1	87.2%
19-2021	Atmospheric and space scientists	1	63.9%
19-2030	Chemists and materials scientists	1	80.2%
19-2040	Environmental scientists and geoscientists	1	79.4%

SOC	Occupation	Probability category[181]	Salaried workers[182]
19-2099	Physical scientists, all other	3	67.4%
19-3011	Economists	2	75.0%
19-3022	Survey Researchers	2	56.2%
19-3030	Psychologists	1	66.3%
19-3041	Sociologists	2	100.0%
19-3051	Urban and regional planners	3	75.0%
19-3090	Miscellaneous social scientists and related workers	2	56.2%
19-4011	Agricultural and food science technicians	4	24.9%
19-4021	Biological technicians	4	29.4%
19-4031	Chemical technicians	4	20.7%
19-4041	Geological and petroleum technicians	4	24.9%
19-4051	Nuclear technicians	4	52.7%
19-4090	Other life, physical, and social science technicians	4	52.7%
21-1020	Social workers	3	57.7%
21-1090	Miscellaneous community and social service specialists	3	57.7%
23-2011	Paralegals and legal assistants	4	59.4%
23-2090	Miscellaneous legal support workers	3	59.4%
25-1000	Postsecondary teachers	1	82.7%
25-2010	Preschool and kindergarten teachers	2	25.1%
25-2020	Elementary and middle school teachers	1	82.7%
25-2030	Secondary school teachers	1	82.7%
25-2050	Special education teachers	1	61.1%
25-3000	Other teachers and instructors	1	48.4%
25-4010	Archivists, curators, and museum technicians	1	60.5%
25-4021	Librarians	1	57.4%
25-4031	Library technicians	4	15.6%
25-9041	Teacher assistants	4	32.1%
25-9099	Other education, training, and library workers	1	48.4%
27-1010	Artists and related workers	2	47.5%
27-1020	Designers	1	54.8%
27-2011	Actors	1	75.3%
27-2012	Producers and directors	1	75.3%
27-2020	Athletes, coaches, umpires, and related workers	2	63.6%
27-2030	Dancers and choreographers	1	62.7%
27-2040	Musicians, singers, and related workers	1	84.3%
27-2099	Entertainers and performers, sports and related workers, all other	1	47.5%
27-3010	Announcers	2	61.1%

SOC	Occupation	Probability category[181]	Salaried workers[182]
27-3020	News analysts, reporters and correspondents	3	64.4%
27-3031	Public relations specialists	3	73.8%
27-3041	Editors	3	64.4%
27-3042	Technical writers	3	65.4%
27-3043	Writers and authors	2	68.4%
27-3090	Miscellaneous media and communication workers	2	47.5%
27-4010	Broadcast and sound engineering technicians and radio operators	4	45.6%
27-4021	Photographers	1	36.0%
27-4030	Television, video, and motion picture camera operators and editors	2	25.6%
27-4099	Media and communication equipment workers, all other	4	25.6%
29-1011	Chiropractors	1	94.0%
29-1031	Dietitians and nutritionists	3	34.5%
29-1051	Pharmacists	1	39.0%
29-1071	Physician assistants	2	38.9%
29-1122	Occupational therapists	3	48.9%
29-1123	Physical therapists	2	47.2%
29-1124	Radiation therapists	3	48.1%
29-1125	Recreational therapists	2	48.1%
29-1126	Respiratory therapists	3	23.2%
29-1127	Speech-language pathologists	2	72.6%
29-1129	Therapists, all other	2	48.1%
29-1131	Veterinarians	1	94.0%
29-1141	Registered nurses	1	25.8%
29-1181	Audiologists	2	47.2%
29-1199	Health diagnosing and treating practitioners, all other	1	48.1%
29-2010	Clinical laboratory technologists and technicians	3	17.6%
29-2021	Dental hygienists	3	27.6%
29-2030	Diagnostic related technologists and technicians	3	17.6%
29-2041	Emergency medical technicians and paramedics	3	14.6%
29-2050	Health diagnosing and treating practitioner support technicians	4	14.6%
29-2061	Licensed practical and licensed vocational nurses	4	12.2%
29-2071	Medical records and health information technicians	4	18.2%
29-2090	Miscellaneous health technologists and technicians	2	14.6%
29-9000	Other healthcare practitioners and technical occupations	3	14.6%
31-9090	Medical assistants and other healthcare support occupations (excluding dental assistants)	4	14.6%
33-1011	First-line supervisors/managers of correctional officers	2	51.2%

SOC	Occupation	Probability category[181]	Salaried workers[182]
33-1012	First-line supervisors/managers of police and detectives	3	51.2%
33-1021	First-line supervisors/managers of firefighting and prevention workers	3	59.5%
33-1099	Supervisors, protective service workers, all other	3	37.3%
33-9021	Private detectives and investigators	4	31.5%
33-9093	Transportation Security Screeners	3	38.5%
35-1012	First-line supervisors/managers of food preparation and serving workers	3	15.4%
35-9031	Hosts and hostesses, restaurant, lounge, and coffee shop	4	12.0%
37-1011	First-line supervisors/managers of housekeeping and janitorial workers	4	31.5%
37-1012	First-line supervisors/managers of landscaping, lawn service, and groundskeeping workers	3	39.1%
39-1010	First-line supervisors/managers of gaming workers	1	39.1%
39-1021	First-line supervisors/managers of personal service workers	4	39.1%
39-2011	Animal trainers	4	20.6%
39-9030	Recreation and fitness workers	2	13.8%
41-1011	First-line supervisors/managers of retail sales workers	2	61.9%
41-1012	First-line supervisors/managers of non-retail sales workers	2	61.9%
41-2010	Cashiers	4	6.6%
41-2021	Counter and rental clerks	4	17.5%
41-2022	Parts salespersons	4	31.3%
41-2031	Retail salespersons	4	23.4%
41-3011	Advertising sales agents	2	74.7%
41-3021	Insurance sales agents	2	77.4%
41-3031	Securities, commodities, and financial services sales agents	2	86.6%
41-3041	Travel agents	4	18.0%
41-3099	Sales representatives, services, all other	3	18.0%
41-4000	Sales representatives, wholesale and manufacturing	3	78.9%
41-9010	Models, demonstrators, and product promoters	4	46.6%
41-9020	Real estate brokers and sales agents	3	88.5%
41-9031	Sales engineers	3	92.8%
41-9041	Telemarketers	4	16.4%
41-9099	Sales and related workers, all other	3	46.6%
43-1011	First-line supervisors/managers of office and administrative support workers	1	57.0%
43-2011	Switchboard operators, including answering service	4	16.4%
43-2021	Telephone operators	4	16.4%
43-2099	Communications equipment operators, all other	4	25.6%
43-3011	Bill and account collectors	4	22.8%
43-3021	Billing and posting clerks and machine operators	4	21.1%

SOC	Occupation	Probability category[181]	Salaried workers[182]
43-3031	Bookkeeping, accounting, and auditing clerks	4	35.0%
43-3041	Gaming cage workers	4	39.8%
43-3051	Payroll and timekeeping clerks	4	34.1%
43-3061	Procurement clerks	4	26.0%
43-3071	Tellers	4	15.9%
43-4011	Brokerage clerks	4	35.0%
43-4021	Correspondence clerks	4	40.0%
43-4031	Court, municipal, and license clerks	4	26.0%
43-4041	Credit authorizers, checkers, and clerks	3	35.0%
43-4051	Customer service representatives	3	26.0%
43-4061	Eligibility interviewers, government programs	3	34.0%
43-4071	File Clerks	4	17.1%
43-4081	Hotel, motel, and resort desk clerks	4	12.0%
43-4111	Interviewers, except eligibility and loan	4	25.7%
43-4121	Library assistants, clerical	4	15.6%
43-4131	Loan interviewers and clerks	3	25.7%
43-4141	New accounts clerks	4	15.9%
43-4151	Order clerks	4	24.3%
43-4161	Human resources assistants, except payroll and timekeeping	4	26.0%
43-4171	Receptionists and information clerks	4	17.2%
43-4181	Reservation and transportation ticket agents and travel clerks	4	38.5%
43-4199	Information and record clerks, all other	4	30.4%
43-5011	Cargo and freight agents	4	11.0%
43-5021	Couriers and messengers	4	20.5%
43-5030	Dispatchers	4	30.7%
43-5041	Meter readers, utilities	4	16.5%
43-5051	Postal service clerks	4	18.3%
43-5052	Postal service mail carriers	4	25.4%
43-5053	Postal service mail sorters, processors, and processing machine operators	4	30.6%
43-5061	Production, planning, and expediting clerks	4	45.1%
43-5071	Shipping, receiving, and traffic clerks	4	11.0%
43-5111	Weighers, measurers, checkers, and samplers, recordkeeping	4	6.5%
43-6000	Secretaries and administrative assistants	4	37.1%
43-9011	Computer operators	4	34.7%
43-9021	Data entry keyers	4	24.6%
43-9022	Word processors and typists	4	34.7%
43-9031	Desktop publishers	4	40.0%

SOC	Occupation	Probability category[181]	Salaried workers[182]
43-9041	Insurance claims and policy processing clerks	3	49.3%
43-9051	Mail clerks and mail machine operators, except postal service	4	14.3%
43-9061	Office clerks, general	4	26.0%
43-9071	Office machine operators, except computer	4	35.8%
43-9081	Proofreaders and copy markers	4	10.2%
43-9111	Statistical assistants	4	24.3%
43-9199	Office and administrative support workers, all other	4	39.8%
45-1011	First-line supervisors/managers of farming, fishing, and forestry workers	4	43.9%
45-2011	Agricultural inspectors	3	62.9%
47-1011	First-line supervisors/managers of construction trades and extraction workers	4	37.0%
47-4011	Construction and building inspectors	3	43.5%
49-1011	First-line supervisors/managers of mechanics, installers, and repairers	3	57.5%
49-9092	Commercial divers	4	11.0%
51-1011	First-line supervisors/managers of production and operating workers	3	44.3%
51-4010	Computer control programmers and operators	4	62.9%
53-1000	Supervisors, transportation and material moving workers	3	56.6%
53-2010	Aircraft pilots and flight engineers	4	67.9%
53-2020	Air traffic controllers and airfield operations specialists	3	69.8%
53-5031	Ship engineers	4	64.6%

Table A2: Washington Average Annual Wage, 2009-2017[183]

Year	Average annual wage	y-o-y % change
2009	$47,153	1.9%
2010	$48,162	2.1%
2011	$49,894	3.6%
2012	$51,595	3.4%
2013	$52,635	2.0%
2014	$54,829	4.2%
2015	$56,273	2.6%
2016	$58,923	4.8%
2017	$61,887	5.0%
Annual average growth rate		**3.46%**

[183] Data source: ESD, WA. These are the average wages announced by ESD in June of each year as the basis for unemployment and workers' compensation benefit adjustments.

***Table A3: Industry Employment Projections, WA*[184]**

Sector	**Average annual growth rate 2016-2021**	**Average annual growth rate 2021-2026**
Agriculture, forestry, fishing, and hunting	1.90%	1.28%
Mining	0.79%	0.00%
Utilities	1.25%	0.00%
Construction	2.75%	0.81%
Manufacturing	-0.07%	0.13%
Wholesale trade	1.00%	0.40%
Retail trade	2.11%	0.76%
Transportation & warehousing	1.35%	0.56%
Information	4.07%	3.05%
Finance and insurance	0.85%	0.35%
Real estate, rental and leasing	1.71%	0.48%
Professional, scientific, and technical services	2.99%	2.60%
Management of companies and enterprises	2.09%	2.24%
Administrative and waste management svs.	2.66%	2.05%
Educational services	2.39%	2.02%
Healthcare and social assistance	2.19%	1.62%
Arts, entertainment, and recreation	1.91%	1.44%
Accommodation and food services	2.46%	1.95%
Other services (except public administration)	1.60%	1.15%
Government	1.49%	1.12%

[184] Data source: ESD, WA. June 2018.

Table A4: Reported establishment counts in Washington, 2008-2017[185]

Year	Total Establishments
2008	218,979
2009	216,288
2010	225,989
2011	235,230
2012	235,779
2013	240,728
2014	240,728
2015	241,038
2016	241,532
2017	243,084
Annual average growth rate	**1.17%**

[185] Data source: Annual establishment size data, ESD, WA. October 2018.

Table A5: CPI-Urban Wage Earners and Clerical Workers, 1999-2018[186]

Year	**August Reading**
1999	163.8
2000	169.3
2001	173.8
2002	176.6
2003	180.3
2004	185.0
2005	192.1
2006	199.6
2007	203.199
2008	215.247
2009	211.156
2010	214.205
2011	223.326
2012	227.056
2013	230.359
2014	234.03
2015	233.366
2016	234.904
2017	239.448
2018	246.336
Annual Average	**2.17%**

[186] Data source: BLS. Current as of February 6, 2019.

Table A6: Washington Employment by Firm Size and Sector, 2017-2018 average[187]

2-digit NAICS	Industry sectors	Small Business (<50 FTEs) Employment Share	Large Business (50 or more FTEs) Employment Share
Total	Total	38.4%	61.6%
11	Agriculture, forestry, fishing and hunting	40.0%	60.0%
21	Mining	55.5%	44.5%
22	Utilities	26.6%	73.4%
23	Construction	60.7%	39.3%
31	Manufacturing	20.3%	79.7%
42	Wholesale trade	55.5%	44.5%
44	Retail trade	41.2%	58.8%
48	Transportation and warehousing	28.4%	71.6%
51	Information	19.1%	80.9%
52	Finance and insurance	51.0%	49.0%
53	Real estate and rental and leasing	66.0%	34.0%
54	Professional and technical services	50.8%	49.2%
55	Management of companies and enterprises	13.7%	86.3%
56	Administrative and waste services	36.9%	63.1%
61	Educational services	8.9%	91.1%
62	Healthcare and social assistance	36.8%	63.2%
71	Arts, entertainment and recreation	33.0%	67.0%
72	Accommodation and food services	69.0%	31.0%
81	Other services, except public administration	76.2%	23.8%
99	Public administration	10.8%	89.2%

[187] Data source: Establishment size data series, ESD. Data current as of May 2019.