

## ADMINISTRATIVE POLICY



### STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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| <b>TITLE:</b>   | <b>PAYMENT OF WAGES LESS THAN<br/>MINIMUM WAGE—EMPLOYER'S LIABILITY</b> | <b>NUMBER:</b>   | <b>ES.A.5</b>   |
| <b>CHAPTER:</b> | <b><a href="#">RCW 49.46.090</a></b>                                    | <b>REPLACES:</b> | <b>ES-010</b>   |
|                 |   | <b>ISSUED:</b>   | <b>1/2/2002</b> |

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#### ADMINISTRATIVE POLICY DISCLAIMER

This policy is designed to provide general information in regard to the current opinions of the Department of Labor & Industries on the subject matter covered. This policy is intended as a guide in the interpretation and application of the relevant statutes, regulations, and policies, and may not be applicable to all situations. This policy does not replace applicable RCW or WAC standards. If additional clarification is required, the Program Manager for Employment Standards should be consulted.

This document is effective as of the date of print and supersedes all previous interpretations and guidelines. Changes may occur after the date of print due to subsequent legislation, administrative rule, or judicial proceedings. The user is encouraged to notify the Program Manager to provide or receive updated information. This document will remain in effect until rescinded, modified, or withdrawn by the Director or his or her designee.

**An employer must pay minimum wage, regardless of any employee agreements to work for less.** [RCW 49.46.020](#) is a minimum guarantee to all employees covered by the Washington Minimum Wage Act (MWA) for each hour of employment, and [RCW 49.46.130](#) is the guarantee of overtime pay equal to one and one-half the regular rate of pay for hours worked in excess of 40 per week.

[RCW 49.46.090](#) prohibits agreements entered into, individually or collectively, between an employee and an employer that result in the employee being paid less than the applicable minimum wage pursuant to the MWA. If such agreements are entered into, the agreement does not relieve an employer of the legal responsibility to pay minimum wage, and the employer cannot use the agreement as a defense to legal action to recover unpaid wages.

Deductions from wages may be allowed in certain situations under [RCW 49.48.010](#) and [RCW 49.52.060](#). Deductions that meet the criteria of [RCW 49.52.060](#) are permissible, even when the result is a net pay of less than the minimum hourly rate, such as when required by state or federal law, for medical insurance, or for voluntary deductions accruing to the benefit of the employee. Examples of voluntary deductions include employee agreement for repayment of loans, personal purchases, and savings accounts or bonds. Because the employee has agreed to use his or her paycheck as a mechanism for spending money that would have been spent regardless, there is no violation even if

the employee's *net* pay is less than the minimum wage. Regardless of deductions, an employee's *gross* pay must always be at least the minimum rate per hour.

**Any employee who is paid less than minimum wage, or less than the agreed wage rate, may file a complaint with the department.** [RCW 49.46.090\(2\)](#) states that any employee paid less "than the wages to which he [or she] is entitled under or by virtue" of the MWA, may file a wage claim with the Department of Labor and Industries pursuant to [RCW 49.48.040](#). This means that an employee is entitled to at least the minimum wage. If a higher hourly wage has been negotiated, the employee is entitled to payment at the rate for all hours worked subject to the agreement. The authority to make such a claim is not the MWA but rather is [RCW 49.52.050](#), unless the claim is for overtime, which falls under [RCW 49.46.130](#).

According to the Washington State Supreme Court, in *Seattle Professional Engineering Employees Association (SPEEA) v. Boeing*, 139 Wn.2d 824 (2000), the MWA can be used only to claim unpaid wages of up to the statutory minimum hourly rate. If the agreed rate of wage is higher than the minimum wage and the employer fails to pay that rate of wage, the action to recover unpaid wages, above the minimum wage, by the employee or by the department on the employee's behalf, must be brought under [RCW 49.52.050](#) (and [RCW 49.52.070](#) to seek double damages and attorney fees). However, according to the Court in *SPEEA v. Boeing*, unpaid overtime, in any amount, can be claimed under the MWA.

The department is not required to take a formal assignment in order to bring an action to recover unpaid wages on behalf of the employee. A written wage claim is sufficient to initiate legal action on the employee's behalf. The authority for this can be found in *Department of Labor and Industries v. Overnite Transportation*, 67 Wn.App.23 (1992).