



L&I has updated the job duties tests required for workers to be considered exempt from overtime and other protections under the State Minimum Wage Act. The updates reduce the number of duties tests for each exemption category from two to one, and align the tests more closely with federal standards. These updated job duties tests will go into effect July 1, 2020.

For an employer to determine if a worker is exempt from Minimum Wage Act requirements, the employer must make sure the worker meets each element of the job duties test. Below is an overview of the outside salesperson duties test and key terms employers should know.

### The duties test

This test can help determine whether an employee is exempt from overtime pay, paid sick leave, and other requirements. In general, when an employee does outside sales work and does **all** of the following, then overtime and paid sick leave aren't required. The employee:

- Must be told that they are an outside salesperson.
- Must have a **primary duty** that involves either:
  - a. Making sales (including sales, exchanges, contract sales, consignment sales, shipment sales, or other similar sales).
  - b. Taking orders or contracts for services or facilities that the client or customer will pay for.
- Must **customarily and regularly** do their work away from their employer's place of business.
- Is paid on a guaranteed salary, commission or fee basis. There is no minimum salary level requirement for outside sales employees.

**Note:** An employee's actual job duties, not job title or job description, determines if they meet the outside salesperson exemption requirements.

The full outside salesperson duties test requirements can be found in [WAC 296-128-540](#).

### Key terms

**Primary duty:** The main, major, or most important duty an employee performs. An employee's primary duty might be the biggest or most consequential responsibility, or it could be the duty the employee spends the most time on.

**Customarily and regularly:** Work that is performed repeatedly, for instance work regularly done each workweek, as opposed to occasional or one-time tasks.

### For more info

You can call Employment Standards at 360-902-5316 or 1-886-219-7321.

**L&I overtime rule change webpage:** [Lni.wa.gov/OvertimeRulemaking](https://lni.wa.gov/OvertimeRulemaking)

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