



## ADMINISTRATIVE POLICY

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

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**TITLE:** EXEMPTION FROM MINIMUM  
WAGE ACT REQUIREMENTS  
FOR EXECUTIVE EMPLOYEES

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**CHAPTER:** [RCW.49.46.010\(3\)\(c\)](#),  
[RCW 49.46.130\(2\)\(a\)](#),  
[WAC 296-128-510](#)

**SEE ALSO:** [ES.A.8.1](#),  
[ES.A.8.2](#), [ES.A.9.1- 9](#),  
[ES.A.10.1](#), [ES.A.10.2](#),  
and [ES.A.10.3](#)

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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.

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#### **EXECUTIVE (WAC 296-128-510)**

This policy provides information on the executive exemption from minimum wage, overtime pay, and other employment protections under the Minimum Wage Act. Most workers in Washington are required by law to be paid at least minimum wage, earn overtime pay, receive paid sick leave, receive earned tips and service charges, and be protected from retaliation. However, state regulations provide an exemption from these requirements for workers employed as bona fide executive, administrative, professional, computer professional, and outside sales employees. This policy describes the specific executive exemption requirements. To qualify for an exemption, employees generally must meet certain tests regarding their job duties and be paid on a salary basis at a minimum specified salary level. Job titles and job descriptions do not determine exempt status. In order for an exemption to apply, an employee's actual job duties and salary level must meet all of the requirements of the state regulations. Employees are not exempt if they perform a combination of some duties from one exemption and some from another, but do not meet all the qualifications for any one, specific exemption.

There are also federal rules pertaining to minimum wage and overtime pay exemptions for bona fide executive, administrative, professional, computer professional, and outside sales employees. Employers must comply with both state and federal regulations. Where differences exist between Washington State and federal regulations, an employer must follow the regulation that is most favorable to the worker.

The following information is designed to provide a summary of the requirements of both state and federal regulations for the executive exemption. For more specific information on federal regulations, see CFR Title 29. Check with the U.S. Department of Labor at their toll free # 1-866-487-9243 or on their [website](#), or with a qualified consultant, to determine how federal overtime requirements apply in specific circumstances.

**1. Executive Job Duties Requirements.** To qualify for the executive exemption, all of the following tests must be met:

- 1) The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
- 2) The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent;
- 3) 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 must be given particular weight; and
- 4) The employee must be paid on a salary basis equal to or greater than the required salary threshold.

**2. Salary Threshold Requirements.**

To meet the state exemption requirements, the employee must meet the duties test requirements and must be compensated on a salary basis equal to or greater than 2.5 times the state minimum wage for a 40-hour workweek (after an eight-year phase-in concluding in 2028). See Administrative Policy [ES.A.9.9](#), "Salary Thresholds," for more information about the salary threshold phase-in schedule. "Salary basis" is explained further in Administrative Policy [ES.A.9.1](#).

To meet federal requirements, the employee must meet the duties test requirements and must be compensated on a salary basis at a rate not less than that specified in the federal regulations, which is currently \$684 per week.

When the state and federal thresholds are different, workers who meet the federal exemption may not qualify as exempt under state law, or vice versa. Employers should carefully consider both sets of requirements when analyzing worker exemptions.

**3. Executive Business Owner Exemption.**

Employees can also meet the executive exemption if they own at least a bona fide 20-percent equity interest in the enterprise in which they are employed and if they are actively engaged in the business's management. These employees can meet the executive exemption without meeting any salary requirements. The business does not need to be incorporated in any specific form for the ownership exemption to apply.

An individual who is not actively engaged in the management of the business does not qualify for the ownership exemption. For instance, if the employee is required to work long hours, makes no management decisions, has no real authority over personnel, and cannot bind the business to major contracts or decisions, the employee does not qualify for the executive exemption regardless of whether they own any interest in the business.

#### **4. Differences Between State and Federal Regulations.**

The Department intends to rely on the interpretations of the 2019 federal regulations where the regulations are identical to the Department's rules. However, there are some areas where state and federal requirements differ.

Federal regulations provide that executive, administrative, or professional workers can also be exempt from overtime pay if they earn more than \$107,432 per year and they perform at least one executive, administrative, or professional duty. These employees are often referred to as "highly compensated employees." State regulations do not contain this provision. Executive workers must meet all of the duties requirements for the state exemption to apply.

Federal regulations also allow an employer to impose *unpaid* disciplinary suspensions of *one or more full days* for workplace-conduct rule infractions for exempt workers, without affecting the exemption. Washington State allows an *unpaid* disciplinary suspension of exempt employees in increments of less than one week *only* for violations of safety rules of major significance. If an unpaid disciplinary suspension is for a non-major safety violation, it may only be in a full-week increment or it will destroy the employee's state exemption for that period. Employers can impose *paid* disciplinary suspensions in any increment without affecting the employee's exemption. See [WAC 296-128-532](#) for more information about deductions for salaried, exempt employees.

#### **5. How to Determine Whether Management Is the Worker's Primary Duty.**

"Primary duty" means the principal, main, major, or most important duty that the employee performs. A determination of whether management is a worker's primary duty must be based on all the facts in a particular case. It is the employer's burden to demonstrate that an employee meets the primary duty requirements.

The amount of time spent performing managerial duties can be a useful guide in determining whether management is the primary duty of an employee. A good rule of thumb is that management is probably the employee's primary duty if the employee spends more than 50 percent of the employee's time performing management duties.

Time alone, however, is not the sole test. An employee may still have management as a primary duty even if the employee does not regularly spend over 50 percent of the employee's time performing managerial duties, if other relevant factors support that conclusion. Some of these other factors include the relative importance of the managerial duties, compared to the other types of duties performed, the frequency with which the employee exercises discretionary (decision-making) powers, the employee's relative freedom from supervision, and the relationship between the employee's salary and the wages paid to other employees who perform the same kind of nonexempt work as the potentially-exempt employee in question.

For example, an employee might have broad responsibilities similar to those of the owner or manager of the establishment, but generally spends more than 50 percent of the employee's actual time doing production or sales work. While the employee is doing this non-exempt work,

the employee is also supervising other employees, directing the work of warehouse and delivery employees, approving advertising, ordering merchandise, handling customer complaints, authorizing payment of bills, or performing other management duties as the day-to-day operations require. The individual in this example would be considered to have management as the employee's primary duty.

In contrast, an employee who is an assistant manager in a retail establishment, but spends most of the day performing the same duties as the nonexempt employees and earns little more than the nonexempt employees, generally will not satisfy the primary duty requirement even if the employee spends some time directing the work of others, setting schedules, or handling customer complaints.

## **6. True Emergencies Are Not Considered When Determining the Primary Duty.**

Under emergency conditions, work that is normally performed by nonexempt employees and is nonexempt in nature can be considered directly and closely related to the performance of the exempt functions of management and supervision, and will therefore be exempt work. This means that a bona fide executive who performs work of a normally nonexempt nature on rare occasions because of the existence of a real emergency will not lose the exemption because of the performance of such emergency work.

Bona fide executives include among their responsibilities ensuring the safety of the employees under their supervision; preserving and protecting the merchandise, machinery or other property of the department or subdivision they are in charge of from damage due to unforeseen circumstances; and preventing widespread breakdowns in production, sales, or service operations. Consequently, when conditions beyond their control arise that threaten the safety of the employees, or an operations stoppage, or serious damage to the employer's property, any manual or other normally nonexempt work performed in an effort to prevent such results is considered exempt work.

This is not applicable, however, to nonexempt work arising out of occurrences that are within the manager's control or that can be reasonably anticipated in the normal course of business. Recurring breakdowns of equipment or disarrays requiring frequent attention, such as constantly straightening merchandise that has been disarranged, is not exempt work. Examples include a manager of a retail store who performs non-exempt work while waiting on a special or impatient customer for fear of loss of sales or the customer's goodwill, or who works behind the sales counter during a sale or special holidays, or a production manager who relieves nonexempt workers during the workers' vacation periods.

## **7. How to Determine Whether Work Is Management.**

Management includes the exercise of control, direction, and authority over workflow and/or the workforce. These duties may include, but are not limited to, selecting and training employees; setting and adjusting pay rates and work hours; and assigning, directing and evaluating work. In most cases it is not difficult to determine if an employee's work is management. In the vast majority of cases the bona fide executive employee performs managerial and supervisory functions that are easily recognized as within the scope of the exemption.

For example, when an employee is managing a department or subdivision and is performing work similar to the following examples, the employee is likely performing exempt work:

- Interviewing, selecting, and training employees;
- Setting and adjusting employees' rates of pay and hours of work;
- Directing employees' work;
- Maintaining production or sales records for use in supervision or control;
- Appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in their status;
- Handling complaints and grievances and disciplining employees when necessary;
- Planning the work;
- Determining the techniques to be used;
- Distributing the work among the workers;
- Determining the type of materials, supplies, machinery or tools to be used or merchandise to be bought, stocked and sold;
- Controlling the flow and distribution of materials or merchandise and supplies; or
- Providing for the safety of the employees and the property.

## **8. How to Identify a Department or Subdivision.**

An exempt executive employee's managerial duties must be related to the enterprise in which the employee is employed or a customarily recognized department or subdivision of that business. The phrase "customarily recognized department or subdivision" is intended to distinguish between a mere collection of workers assigned from time to time to a job or series of jobs and a unit with permanent status and function. Merely supervising two employees or participating in management of a unit is not sufficient for a worker to be an exempt executive. The executive must have an ongoing, significant function in the management a unit with permanent status or in management of the functions performed by the employees in that unit.

In most cases, a customarily recognized department or subdivision of a department is easy to recognize. For example, where an enterprise is comprised of more than one establishment, the employee in charge of each establishment may be considered in charge of a subdivision of the enterprise. As another example, when a large business has separate production and research and development divisions with separate personnel and lines of business, the employee in charge of each division may be considered in charge of a department or subdivision of the enterprise.

Questions about recognizable departments and subdivisions most commonly arise in cases where supervisors work outside the employer's establishment, move from place to place, or have different subordinates at different times.

In ordinary cases, a fixed location and continuity of personnel are both helpful in determining if a department or subdivision is a recognized unit of the business. However, the unit being supervised does not always need to be physically within the employer's establishment, may move from place to place, and may lack continuity of subordinate personnel if there are other indicators that the unit is a traditionally recognized unit with a unified, continuing function. The following examples will help illustrate these points.

An individual may be in charge of a certain type of construction work at different locations, and may even hire most of the unit's workforce at these locations. The mere fact that the executive moves locations would not invalidate the exemption if there were other factors that show that the employee is actually in charge of a recognized unit with a continuing function in the organization.

Similarly, an otherwise exempt employee also will not lose the exemption merely because the employee supervises workers drawn from a shared pool, if other factors are present which indicate that the employee is in charge of a recognized unit with a continuing function. For instance, if this employee is in charge of a unit which has the continuing responsibility of performing all installations for the employer, or all installations in a particular city or a designated portion of a city, the employee may be considered in charge of a department or subdivision despite the fact that the subordinates are drawn from a pool of available employees.

However, a supervisor would not be considered exempt if the supervisor is drawn from a pool of supervisors, who each supervise a changeable list of employees assigned or drawn from a pool based on a series of jobs or functions that change from day to day or week to week. A floating retail store supervisor who is assigned to oversee different departments depending on need and manages employees who also float between departments would not be exempt. Such an employee is not in charge of a recognized unit with a continuing function.

## **9. How to Determine Whether the Executive Directs Two or More Other Employees.**

An employee will qualify as an exempt executive only if the employee customarily and regularly supervises at least two full-time employees or the equivalent of two full-time employees. Customarily and regularly supervising does not mean the employee must constantly be engaged in supervising employees, but the supervision must be regular and more than occasional.

If an executive customarily supervises one full-time and two part-time employees (one of whom works mornings and the other, afternoons); or four part-time employees, two of whom work mornings and two afternoons, this requirement would be met. The employees supervised must be employed in the department or subdivision that the executive is managing.

An exempt executive may themselves be supervised by other exempt executives. As an example, a retail store might have a general manager and two assistant managers. The general manager consistently supervises two employees and meets the other duties tests, and would therefore be considered exempt. If each of the assistant managers also manages two or more of their subordinates and meets the other duties test criteria, the assistant managers could also therefore be considered exempt. An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence, however, does not meet this requirement.

Likewise, a shared responsibility for the supervision of the same two or more employees within a department does not satisfy the requirement that the employee "customarily and regularly directs the work of two or more employees therein." [WAC 296-128-510\(2\)](#). For example, small departments in a plant or office are usually supervised by one person. Giving two employees in the small unit a title such as "assistant supervisor" will almost inevitably not qualify the employees for the exemption because there will not be sufficient true supervisory or other managerial work to keep both supervisors occupied in management duties. Where, for instance, there are two supervisors and less than four full-time subordinates, the supervisors will not qualify as exempt executives because the same hours cannot be credited to the two different supervisors and the employees do not add up to four or more total.

On the other hand, in a large department, it is possible for supervision to be distributed among two or three employees (or more), where each of those supervisors is responsible for at least two full-time equivalent employees. For example, in a large shoe department in a retail store with two supervisors and ten subordinate employees, each of the supervisors may be

responsible for customarily directing two or more of the employees and they may each qualify as exempt executives if they meet the other requirements of the exemption.

#### **10. How to Determine If a Working Supervisor Is an Executive.**

Whether a “working supervisor” qualifies for the executive exemption depends on how the supervisor performs the kind of work that is similar to or alongside the work of the supervisor’s subordinates. Other terms for “working supervisors” include crew leaders, shift leaders, or team leaders. Such employees perform the same kind of work as their subordinates, while also performing some supervisory functions. The work performed by the working supervisor that is similar to the work performed by the working supervisor’s subordinates must be counted as nonexempt work. For example, if a crew leader spends substantially more time and effort performing the same work as the rest of the crew than performing supervisory functions, the exemption would likely not apply.

Another type of working supervisor who cannot be classified as a bona fide executive is one who regularly spends a substantial amount of time performing work which, although not performed by the supervisor’s subordinates, consists of ordinary production work or other routine, recurrent, or repetitive tasks. An employee like this is in effect holding a dual job, because the nonsupervisory duties are unrelated to the tasks needed to supervise employees or manage the department. In many instances, this work consists of fill-in tasks performed because the job does not involve sufficient executive duties to occupy an employee's full time. Similarly, a working supervisor will not be exempt where the nonsupervisory and nonmanagerial duties are the employee’s primary duties, and the supervisory or managerial duties are less important and are assigned to the particular employee because it is more convenient to rest the responsibility for the first line of supervision in the hands of the person who performs these other duties.

Typical examples of employees in dual jobs that may involve a substantial amount of nonexempt work are working supervisors who perform clerical work unrelated to the management of their subordinates. Examples include a shipping team lead in a shipping room who makes out bills of lading and other shipping records; a warehouse supervisor who also acts as inventory clerk; a head shipper who also is in charge of a finished goods stock room and assists in placing goods on shelves and keeping perpetual inventory records; or an office manager, head bookkeeper, or chief clerk who performs routine bookkeeping of the same general nature as the organization’s non-exempt bookkeepers.

#### **11. Concurrent Performance of Exempt and Nonexempt Duties.**

Concurrently (or simultaneously) performing both exempt and nonexempt duties does not automatically disqualify an otherwise exempt employee from the executive exemption if all the requirements for the exemption are met. For example, if the primary duty of a manager of a retail food service establishment is the management of that establishment, performing work such as serving customers or cooking food during peak customer periods would not preclude the employee from being considered exempt. Generally, exempt executives make the decision regarding when to perform nonexempt duties, and remain responsible for the success or failure of business operations under their management while performing such nonexempt tasks. Exempt executives can choose to both supervise subordinate employees and serve customers at the same time, without being disqualified from the exemption.

In contrast, a nonexempt employee performing both exempt-type and non-exempt-type work is usually directed by a supervisor when or how to perform the exempt-type work, or performs the

exempt-type work only for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent, or repetitive tasks does not qualify for exemption as an executive even if the employee also has some supervisory responsibilities. For example, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when the exempt supervisor is not available. Nonexempt employees do not become exempt executives simply because they direct the work of other employees upon occasion or provide input on performance issues from time to time; such employees typically would not meet the other requirements of the executive exemption. Whether an employee is exempt as an executive while performing concurrent duties must be determined on a case-by-case basis.

## **12. Exempt Executives Have the Authority to Hire or Fire, or Their Recommendations Must Be Given Particular Weight.**

To qualify as an exempt executive, an employee must have the authority to hire or fire other employees, or otherwise change other employees' status, or the employee's organization must give the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees particular weight. Determining whether an employee's recommendations are "given particular weight" can include factors such as whether it is part of the employee's job duties to make such recommendations and the frequency with which such recommendations are made, requested, and relied upon. Generally, the recommendations must relate to the employees whom the executive customarily and regularly directs or supervises. This criteria does not include occasional suggestions, or suggestions regarding co-workers or workers in separate units.

An employee's recommendations may still be deemed to have particular weight even if a higher-level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status. A frequent example of this situation is where a higher-level manager or a personnel board is required to make the final hiring, promotion, or termination decision, but the supervisor's recommendation is strongly considered.

"Other change of status" means tangible employment actions that represent significant changes in employment status, such as demoting, failing to promote, reassignment with significantly different responsibilities, or other decisions causing a significant change in benefits. A supervisor need not make recommendations on all of these types of changes in employment status to meet the "particular weight" exemption requirements.

## **13. Trainees Are Not Executives.**

The exemption does not include employees training to become executives and not actually performing the duties of an exempt executive. However, a bona fide executive employee does not lose the employee's exempt status merely by undergoing further training for the job performed.