



Compliance Checklist – 2021 Exempt Salary Level Threshold

Determine Who's (Still) Exempt

- ✓ ___ Make a list of currently exempt jobs
- ✓ ___ Review each job description in the list
- ✓ ___ Identify changes to the job duties since the last review
- ✓ ___ When was the last legal review of FLSA classification?

About Those Job Descriptions

- ✓ ___ Revise identified job descriptions if needed
- ✓ ___ Identify jobs that manage employees
- ✓ ___ Determine what percent of the time is spent managing employees
- ✓ ___ Compare job descriptions to the State of Washington updated fact sheets

For Jobs Paid Less Than \$42,712 (1-50 employees) or \$49,831 (51+ employees)

- ✓ ___ Identify employees who work more than 40 hours per week
- ✓ ___ Determine how many additional hours (and how often)
- ✓ ___ Calculate the potential cost of overtime
- ✓ ___ Who will work those hours if they don't?
- ✓ ___ Can you decrease the amount of overtime in the future? How?

Formulas for Decisions

1. $\text{Salary} \div 52 \text{ weeks} = \text{weekly pay}$
2. $\text{Weekly pay} \div \text{total hours} = \text{regular hourly rate (approximate)}$
3. $(\text{Regular hourly rate} \times 2,080) + (\text{Regular hourly rate} \times 1.5 \times \text{OT hours per week} \times 52 \text{ weeks}) = \text{Employee Annual Pay If Non-Exempt}$

Run the Numbers

- ✓ ___ Calculate the Non-Exempt cost for each employee on your list
- ✓ ___ Reclassify jobs as Non-Exempt if needed
- ✓ ___ Calculate the cost to hire additional people
- ✓ ___ Check that all employees and jobs have been completed
- ✓ ___ Calculate the salary budget increase



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More Considerations

- ✓ ___ Which employees can be reclassified to hourly?
- ✓ ___ How will reclassified employees track hours?
- ✓ ___ How will you control overtime hours?
- ✓ ___ How to manage overtime hours worked by newly reclassified employees?
- ✓ ___ Should you hire more people? If so, which jobs/when/for how many hours?
- ✓ ___ What policies should be added or revised?

Ready, Set, GO

- ✓ ___ Make decisions on compliance strategy
- ✓ ___ Develop your communication plan
- ✓ ___ Decide on a start date for any changes
- ✓ ___ Meet with managers to answer their questions
- ✓ ___ Meet with employees to answer their questions

Quick Reference List

1. Start now!
2. Make a list of the affected jobs
3. Complete necessary revisions to job duties
4. Review job duties and salary threshold against regulations
5. Determine which jobs and staff will be affected
6. Complete calculations for all employees in reclassified jobs
7. Determine number and cost of new hires
8. Assess the overall impact on the salary budget
9. Make final decisions on compliance strategies
10. Develop a communication plan and tell everyone
11. Deal with the questions and/or concerns of managers and employees
12. Repeat yearly through 1/1/2028 using the appropriate salary threshold

Salary threshold implementation schedule

Salary thresholds for overtime exempt workers are a multiplier of state minimum wage for a 40-hour workweek



2021 Salary thresholds

- Small businesses: \$821.40/week (\$42,712.80/year)
- Large businesses: \$958.30/week (\$49,831.60/year)

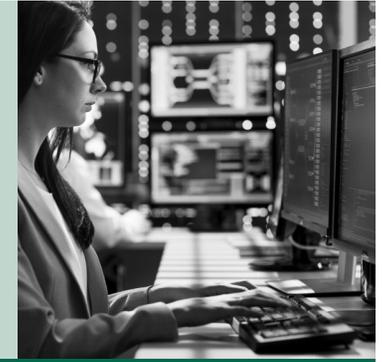
When the rule takes effect		July 1, 2020	Jan. 1, 2021	Jan. 1, 2022	Jan. 1, 2023	Jan. 1, 2024	Jan. 1, 2025	Jan. 1, 2026	Jan. 1, 2027	Jan. 1, 2028
For employers with 1-50 employees	Multiply minimum wage by ...	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$821.40 (\$42,712)	\$975* (\$50,700)	\$987* (\$51,324)	\$1,137* (\$59,124)	\$1,152* (\$59,904)	\$1,308* (\$68,016)	\$1,334* (\$69,368)	\$1,512* (\$78,624)
For employers with 51 or more employees	Multiply minimum wage by ...	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x
	Projected salary threshold Weekly (Annual)	\$675 (\$35,100)	\$958.30 (\$49,831)	\$975* (\$50,700)	\$1,128* (\$58,656)	\$1,137* (\$59,124)	\$1,296* (\$67,392)	\$1,308* (\$68,016)	\$1,482* (\$77,064)	\$1,512* (\$78,624)

Note 1: Salary thresholds after 2021 are projections be based on the Consumer Price Index for all Urban Consumers (CPI-U).

Note 2: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers.

Hourly computer professional phase-in schedule

This is the pay rate phase-in schedule for exempt computer professionals who are paid by the hour. The threshold is a multiplier of the state minimum wage. Computer professionals paid on a salary basis have a different phase-in schedule.



Employer size	July 1, 2020	Jan. 1, 2021	Jan. 1, 2022
1-50 employees	No change (Stays at \$27.63/hour)	2.75x (\$37.65/hour*)	3.5x (TBD)
51 or more employees	2.75x (\$37.13/hour)	3.5x (\$47.92/hour*)	3.5x (TBD)

* The state minimum wage for 2021 is \$13.69/hour.

L&I has updated the job duties tests required for workers to be considered exempt from overtime, paid sick leave, 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 take 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 administrative 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 administrative work and does **all** of the following, then overtime and paid sick leave aren't required. The employee:

- Has a **primary duty** that is non-manual work related to managing or operating the employer's business or the business of the employer's customers. This might include helping run the business by setting policies, assisting a high-level executive, acting as an expert advisor to management, or performing special assignments.
- Has **discretion and independent judgement** (for example, has authority to make decisions) on important matters while performing the employee's **primary duty**.
- Is paid on a **salary or fee basis**, and the amount of the salary or fee is equal to or greater than the required salary threshold.

Typical examples may include executive assistants to business owners or senior executives (if they make decisions regarding significant matters without specific instructions or procedures), advisory specialists (such as tax, insurance, or sales research experts), employees in charge of functional departments (such as credit managers, or labor relations directors), and employees who perform special assignments (such as special organization planners, account executives or team leaders for major corporate projects).

An employee can also meet the administrative exemption if the **primary duty** is administrative work related to academic instruction or training in an **educational establishment**. Typical examples include superintendents or other heads of schools systems, administrators responsible for curriculum or standards, academic counselors, or collegiate academic department heads. These employees must be paid on a salary basis that is equal to the required salary threshold or to the entrance salary for teachers in the educational establishment they work for.

Note: An employee's job duties, not job title or job description, determines if the employee qualifies for the administrative exemption.

The full administrative duties test requirements can be found in [WAC 296-128-520](#).

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.

Salary or fee basis: A predetermined, fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed, or a set fee for a unique job or project regardless of the time required to complete the job.

Discretion and independent judgement: Decision-making authority.

Educational establishment: An elementary or secondary (such as a middle school, junior high, or high school) school, an institution of higher education (such as a college or university), or other, similar educational institutions.

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://lmi.wa.gov/OvertimeRulemaking)

Sign up for email updates: [Lni.wa.gov/wagenews](https://lmi.wa.gov/wagenews)

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 take 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 computer professional 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 computer professional work and does **all** of the following, then overtime and paid sick leave aren't required. The employee:

- Works as a computer system analyst, computer programmer, software engineer, or similar worker.
- Has a **primary duty** that includes one of the following:
 - a. Applying systems analysis procedures, including consulting with users, to determine hardware, software, or system-functional specifications.
 - b. 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.
 - c. The design, documentation, testing, creation or modification of computer programs related to machine operation systems.
 - d. A combination of these.
- Is paid on a **salary or fee basis**, and the amount of the salary is equal to or greater than the required salary threshold. Alternatively, a computer professional can also be paid on an **hourly basis** at a rate equal to or greater than the required hourly threshold.

The computer professional exemption does **not** include:

- Employees who manufacture, repair, or maintain computer hardware and related equipment.
- Employees whose work relies on the use of computers and computer software programs (such as engineers, drafters, and other employees skilled in computer-aided design software), but who are not usually doing computer systems analysis and programming.

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

The full computer professional duties tests requirements can be found in [WAC 296-128-535](#).

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.

Salary or fee basis: A predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed, or a set fee for a unique job or project regardless of the time required to complete the job.

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For an employer to determine if a worker is exempt from overtime and other 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 executive 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 executive or management work and does **all** of the following, then overtime and paid sick leave aren't required. The employee:

- Has the **primary duty** of managing the business, or a distinct department or subdivision of the business.
- **Customarily and regularly** directs the work of two or more other employees. This could mean supervising two full-time employees, four half-time employees, or some combination that equals two.
- Has the authority to hire or fire employees, or whose recommendations on hiring, firing, or promoting employees are usually followed.
- Is paid on a **salary basis**, and the amount of that salary is equal to or greater than the required salary threshold.

A business owner can also meet the executive exemption if that person owns at least 20 percent equity interest in the business, and is actively involved in managing the business. These employees can meet the executive exemption without meeting the salary requirements.

Note: An employee's actual job duties, not job title or job description, determine if the employee meets the executive exemption requirements.

The full executive duties test requirements can be found in [WAC 296-128-510](#).

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.

Salary basis: A predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed.

For more info

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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

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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 professional 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 professional work and does all of the following, then overtime and paid sick leave aren't required. The employee:

- Has a **primary duty** that either:
 - a. Requires advanced knowledge in an intellectual field such as science, law, medicine, theology, accounting, or math, that the employee gets from lengthy specialized instruction (such as a graduate degree, or a specialized certification like a certified public accountant). The work must regularly require the worker to use their discretion and judgment, and cannot be routine or physical. (Typical examples may include registered nurses, accountants, actuaries, engineers, architects, pharmacists, or registered or certified medical technologists who completed AMA- or CME-approved professional coursework).
 - b. Involves doing creative or artistic work that requires invention, imagination, originality, or talent. (Examples may include work in fields such as music, writing, acting and graphic arts).
- Is paid on a **salary or fee basis**, and the amount of the salary or fee is equal to or greater than the required threshold.

An employee can also meet the professional exemption if the employee works as a teacher in an **educational establishment**, and is paid on a salary or fee basis (there is no minimum salary threshold for teachers). Examples of teachers who may be exempt include regular academic teachers, teachers of kindergarten or nursery school pupils, teachers of skilled and semiskilled trades, aircraft flight instructors, home economics teachers, and vocal or instrumental music instructors. Teachers paid on an hourly basis, such as some paraeducators, are not exempt.

An employee can also meet the professional exemption if the employee is a practicing lawyer, doctor, or medical resident. The minimum salary threshold doesn't apply to law or medicine professionals.

Note: An employee's actual job duties, not job title or job description, determine if the employee meets the professional exemption requirements.

The full professional duties test requirements can be found in [WAC 296-128-530](#).

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.

Educational establishment: An elementary or secondary (such as a middle school, junior high, or high school) school, an institution of higher education (such as a college or university), or other similar educational institutions.

Salary or fee basis: A predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed, or a set fee for a unique job or project regardless of the time required to complete the job.

For more info

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

L&I overtime rule change webpage: [Lmi.wa.gov/OvertimeRulemaking](https://lmi.wa.gov/OvertimeRulemaking)

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APPENDIX A:

Overtime Exemptions – Federal/State Duties Tests Comparison Chart

Executive Duties Test	
Similarities	
<p>An exempt executive employee’s primary duty must be:</p> <ol style="list-style-type: none"> 1. Management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and 2. Who customarily and regularly directs the work of two or more other employees; and 3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion, or any other change of status of other employees are given particular weight. <p>The term “individual employed in a bona fide executive capacity” also includes any employee who owns at least a bona fide twenty percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management.</p>	
Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule
Executive employees must be compensated on a salary basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Executive employees must be compensated on a salary basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.103 gives additional detail and examples of possible departments or subdivisions related to customarily recognized departments or subdivisions thereof.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.104 gives additional detail and examples related to the definition of “two or more other employees.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

§541.105 gives guidance on “particular weight.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.106 gives guidance on “concurrent duties.”	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.606 gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Administrative Duties Test	
Similarities	
An exempt administrative employee’s primary duty must be:	
<ol style="list-style-type: none"> 1. 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; and 2. Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 	
Administrative exemption for employees in an academic setting also include:	
<ol style="list-style-type: none"> 1. An employee performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof; and 2. Who is compensated on a salary or fee basis at a rate not less than the amount specified in the respective rules or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed. 	
Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule
Administrative employees must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Administrative employees must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.201 gives additional detail and examples of possible functional areas directly related to management or general business operations.	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

§541.202 gives additional detail and examples related to discretion and independent judgement.	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.203 gives examples of likely exempt administrative workers and likely non-exempt workers.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.204(2)(b) defines “educational establishment.”	Additional language in this definition is not included in the text of the adopted state rules. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.204(c) gives examples of possible administrative functions directly related to academic instruction or training and functions not directly related to academic instruction or training.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.606 gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Professional Duties Test
Similarities
<p>An exempt professional employee’s primary duty must:</p> <ol style="list-style-type: none"> 1. Require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or 2. Require invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. <p>The professional exemption also includes teachers with:</p> <ol style="list-style-type: none"> 1. A primary duty of 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 education establishment by which the employee is employed. <p>The professional exemption also includes employees working in law and medicine who:</p> <ol style="list-style-type: none"> 1. Hold a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; or 2. Hold the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession. Employees engaged in internship or resident programs, whether or not licensed to

practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.

3. In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term "physicians" includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).
4. Salary threshold requirements do not apply to these exempt professional employees.

Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule
Splits professional exemption requirements into separate learned and creative subdivisions.	Both learned and creative professionals are included in the same rule for greater ease of reference. There is no intended difference in application.
§541.700 gives additional guidance and examples relating to the definition of "primary duty."	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
The current federal rule does not apply salary basis or salary threshold requirements to the exemption for teachers.	Teachers must be compensated on a salary or fee basis but there is no salary threshold.
Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Professional employees (other than teachers) must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
§541.204(2)(b) gives additional guidance relating to the definition of "educational establishment."	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.301(e) gives specific guidance on registered or certified medical technologists, nurses, dental hygienists, physician assistants, accountants, chefs, paralegals, athletic trainers, and funeral directors or embalmers.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.301(f) gives guidance on advanced specialized degrees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

§541.302(c)-(d) gives additional guidance on types of creative professionals that may or may not be exempt.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.303(b) gives examples of possible types of exempt teachers.	These examples are not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.303(c) gives guidance regarding teaching certificates or certifications.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.606 gives additional guidance on “Board, lodging or other facilities.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Computer Professional Duties Test	
Similarities	
<p>Exempt computer professionals must be employed as computer systems analyst, computer programmer, software engineer, or other similarly skilled worker whose primary duty consists of one the following:</p> <ol style="list-style-type: none"> 1. The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; or 2. 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 3. The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or 4. A combination of the aforementioned duties, the performance of which requires the same level of skills. <p>The exemption for employees in computer occupations does not include:</p> <ol style="list-style-type: none"> 1. Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or 2. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations. 	
Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule

Computer professionals compensated on a salary or fee basis must be compensated at a rate of at least \$455 per week (exclusive of board, lodging, or other facilities).	Computer professionals compensated on a salary or fee basis must be compensated on a salary or fee basis at a rate of at least 2.5 times the state minimum wage (exclusive of board, lodging, or other facilities) after the phase-in schedule specified in WAC 296-128-545.
Computer professionals compensated on an hourly basis must be compensated at a rate of at least \$27.63 per hour.	Computer professionals compensated on an hourly basis must be compensated at a rate of at least 3.5 times the state minimum wage after the phase-in schedule specified in WAC 296-128-535(1)(c).
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.
§541.402 gives guidance and examples on executive and administrative computer employees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Outside Sales Duties Test	
Similarities	
An outside sales employee’s primary duty must be:	
<ol style="list-style-type: none"> 1. Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or 2. Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and 3. Who is customarily and regularly engaged away from the employer’s place or places of business in performing such primary duty. 	
There are no salary threshold requirements for outside salespeople under the federal or adopted state rules.	
Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule
Current federal rules do not have any requirements regarding compensation of outside sales employees on a guaranteed salary, commission, or fee basis.	Outside sales employees must be compensated on a guaranteed salary, commission, or fee basis.
§541.700 gives additional guidance and examples relating to the definition of “primary duty.”	This additional guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Current federal rules do not require employers to advise employees of their status as outside salespersons.	Employers must advise employees of their status as outside salespersons.
§§541.501-504 give additional guidance on outside sales employees.	This guidance is not included in the text of the adopted state rule. The department intends to rely on the interpretations of the current federal regulations, where terms are identical.

Highly Compensated Employees	
Similarities	
N/A: The adopted Washington rules do not include an exemption for highly compensated employees.	
Differences	
Current DOL rule (2004 Rule)	Adopted Washington rule
§541.601 provides an additional exemption for employees with a total annual compensation of at least \$100,000 (including at least \$455 per week paid on a salary or fee basis) who customarily and regularly perform any one or more of the exempt duties or responsibilities of an executive, administrative, or professional employee.	The adopted Washington rules do not include an exemption for highly compensated employees.