



Employment Law Note

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Washington's New Overtime Rules for the New Decade



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The Current Landscape

To be exempt from overtime pay, an employee must (1) perform certain defined job duties ("the duties test") and (2) be paid a fixed salary that meets or exceeds the state or federal salary threshold ("the salary basis" test). Most Washington workers are covered by state and federal laws, which offer different versions of the duties test, and different thresholds for the salary basis test, creating a confusing web of sometimes conflicting laws. But change is here, and with it comes at least some clarity.

The New Landscape

Recently, the Washington State Department of Labor & Industries (L&I) announced significant revisions to the State's overtime exemption rules. These revisions – the first of their kind since 1976 – will be implemented on July 1, 2020 and will be incrementally phased in through January 2028. The new rules will affect Washington's exempt employees working in a management or professional capacity (i.e., so-called "white-collar" employees) who are paid on a salary basis. These new rules will revamp the job duties tests and will increase the State's salary threshold used to determine whether a worker must be paid overtime.

Raising the Salary Threshold

The new rules will ultimately triple the salary threshold under which Washington employers must

pay overtime to their workers. The new approach will tie minimum salary thresholds to multiples of the state minimum wage, which will increase over time and will depend on the employer's size. Starting on July 1, 2020, the state minimum salary threshold will increase to 1.25 times the minimum wage for all employers. This equates to \$675 per week. Because this threshold is still below the new federal minimum of \$684 per week, which took effect January 1, 2020, most employers will need to meet the higher federal minimum. By January 1, 2021, however, the State's threshold will exceed the federal minimum (unless it, too, is raised). Washington employers with 1-50 employees will then have to pay at least 1.5 times the minimum wage (estimated at \$827/week) and larger employers will have to pay at least 1.75 times the minimum wage (estimated at \$965/week) to an employee before meeting the exemption salary threshold. The law builds in gradual annual increases through 2028 until all employers, regardless of size, are paying at least 2.5 times minimum wage (estimated at \$1,638/week) before meeting the threshold.

The New Primary Duty Test

The new rules will eliminate the old "short" and "long" job duties tests, replacing them with a primary duty test that closely resembles the federal job duties test. The State's new primary duty test will help employers determine whether an employee is performing executive, administrative, professional, outside sales, or computer professional duties.

Under the new primary duty test, the factors to consider include: (1) the relative importance of the exempt duties as compared with other types of duties; (2) the amount of time spent performing exempt work; (3) the employee's relative freedom from direct supervision; and (4) the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee. Additionally, the amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. If an employee spends more than fifty percent of their time performing exempt work, this will generally satisfy the primary duty requirement. If the employee does not spend more than fifty percent of their time performing exempt duties, they may still meet the primary duty requirement if the other factors support such a conclusion.

The Net Effect

Under the new rules, the number of exempt employees is intended to decrease, resulting in higher wages for employees and higher labor costs for employers. L&I estimates that 260,000 workers in Washington will become eligible for overtime pay by 2028 under the new rules, and 235,000 will have their "overtime protections strengthened" as a result of the new primary duty test.

Employers should review their exempt employee compensation amounts to see what, if any, changes

they need to make sure to comply with the new higher federal threshold and coming higher state thresholds. The bright spot with the new rules is that the new primary duty test now aligns with federal law, making it easier to evaluate compliance. Employers may want to take this opportunity to review whether employees classified as exempt still meet the duties test.

If you have questions regarding these new changes or any other wage and hour matter, we would be happy to discuss them with you.

For more information about this month's Employment Law Note
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