

(Effective until July 1, 2020)

WAC 296-128-535 Are professional computer employees exempt from the Washington Minimum Wage Act? (1) Any employee who is a computer system analyst, computer programmer, software engineer, software developer or other similarly skilled worker will be considered a "professional employee" and will be exempt from the minimum wage and over-time provisions of the Washington Minimum Wage Act if:

(a) Their primary duty is of one of the following:

(i) Applying systems analysis techniques and procedures to determine hardware, software, or system functional specifications for any user of such services; or

(ii) Following user or system design specifications to design, develop, document, analyze, create, test or modify any computer system, application or program, including prototypes; or

(iii) Designing, documenting, testing, creating or modifying computer systems, applications or programs for machine operation systems; or

(iv) Any combination of the above primary duties whose performance requires the same skill level; and

(b) Their rate of pay is at least \$27.63 per hour.

(2) **This professional exemption only applies to** highly skilled employees who:

(a) Possess a high degree of theoretical knowledge and understanding of computer system analysis, programming and software engineering; and

(b) Have the ability to practically apply that theoretical knowledge and understanding to highly specialized computer fields; and

(c) Generally attain the necessary level of expertise and skill to qualify for an exemption through a combination of education and experience in the field; and

(d) Consistently exercise discretion and judgment in the application of their special knowledge as opposed to performing purely mechanical or routine tasks; and

(e) Engage in work that is predominantly intellectual and inherently varied in character as opposed to work that is routinely mental, manual, mechanical, or physical.

(3) While many employees who qualify for this exemption hold a bachelor's or higher degree, **no degree is required for this exemption.**

(4) This professional exemption **does not apply to:**

(a) Trainees or employees in entry level positions learning to become proficient in computer systems analysis, programming and software engineering; or

(b) Employees in computer systems analysis, programming and software engineering positions who have not attained a level of skill and expertise which allows them to generally work independently and without close supervision; or

(c) Employees engaged in the operation of computers; or

(d) Employees engaged in the manufacture, repair or maintenance of computer hardware and related equipment; or

(e) Employees covered by a collective bargaining agreement.

[Statutory Authority: RCW 49.46.010 (5)(c). WSR 98-02-027, § 296-128-535, filed 12/31/97, effective 2/1/98.]

(Effective July 1, 2020)

WAC 296-128-535 Computer professionals. (1) The term "individual employed in a bona fide ... professional capacity" in RCW 49.46.010 (3)(c) shall also mean any employee:

(a) Who is a computer system analyst, computer programmer, software engineer, or other similarly skilled worker; and

(b) Whose primary duty consists of one of the following:

(i) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(ii) 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;

(iii) The design, documentation, testing, creation or modification of computer programs related to machine operation systems; or

(iv) A combination of the aforementioned duties, the performance of which requires the same level of skills; and

(c) Who is compensated on a salary or fee basis, as provided in WAC 296-128-545, or on an hourly basis at a rate as follows:

(i) Beginning July 1, 2020, and through December 31, 2020:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than twenty-seven dollars and sixty-three cents per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour.

(ii) Beginning January 1, 2021, and through December 31, 2021:

(A) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.75 times the minimum wage prescribed in RCW 49.46.020 per hour; and

(B) When the employee works for an employer with more than fifty employees, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour.

(iii) Beginning January 1, 2022, and each following year, an amount not less than 3.5 times the minimum wage prescribed in RCW 49.46.020 per hour regardless of the size of the employer.

**Table 1
Illustration of Hourly Basis Rates
for Computer Professionals**

Employer Size	July 1, 2020	January 1, 2021	January 1, 2022
1-50 Employees	\$27.63 per hour	Minimum wage x 2.75	Minimum wage x 3.5
51+ Employees	Minimum wage x 2.75	Minimum wage x 3.5	Minimum wage x 3.5

Table 1 is provided for illustrative purposes only.

(iv) For the purposes of this section, the size of the employer is based solely on the number of Washington-based employees it employs at the time of the effective date for each subsection. Each Washington-based employee counts as an employee for the purposes of determining the size of the employer regardless of whether that employee works full-time or part-time. An employer classified as employing fewer than fifty employees under RCW 50A.10.030 (8)(c) may rely on that classifi-

cation for purposes of determining the size of the employer under this section for the following calendar year.

(2) The exemption for employees in computer occupations does not include:

(a) Employees engaged in the manufacture, repair, or maintenance of computer hardware and related equipment; or

(b) 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 identified in WAC 296-128-535 (1)(a).

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-535, filed 12/10/19, effective 7/1/20. Statutory Authority: RCW 49.46.010 (5)(c). WSR 98-02-027, § 296-128-535, filed 12/31/97, effective 2/1/98.]