

**(Effective until July 1, 2020)**

**WAC 296-128-540 Outside salesman.** The term "individual employed in the capacity of outside salesman" in RCW 49.46.010 (5)(c) shall mean any employee:

(1) Who is employed for the purpose of and who is customarily and regularly engaged away from his employer's place or places of business, as well as on the premises (where the employee regulates his own hours and the employer has no control over the total number of hours worked) in the following alternative activities:

(a) In making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or

(b) In obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; or

(c) In demonstrating products or equipment for sale; or

(d) In the sale of services and performance of the service sold when the compensation to the employee is computed on a commission basis; and

(2) Whose hours of work of a nature other than that described in (1)(a), (b), (c) and (d) of this section do not exceed 20 percent of the hours worked in the work week by nonexempt employees of the employer: Provided, That work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work; and

(3) Who is compensated by the employer on a guaranteed salary, commission or fee basis and who is advised of his status as "outside salesman."

[Order 76-5, § 296-128-540, filed 2/24/76.]

**(Effective July 1, 2020)**

**WAC 296-128-540 Outside salesperson.** The term "individual employed in the capacity of outside salesperson" in RCW 49.46.010 (3)(c) shall mean any employee:

(1) Whose primary duty is:

(a) Making sales; including any sale, exchange, contract to sell, consignment for sale, shipment for sale or other disposition; or

(b) Obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; or

(c) In demonstrating products or equipment for sale; or

(d) In the sale of services and performance of the service sold when the compensation to the employee is computed on a commission basis; and

(2) Whose hours of work of a nature other than that described in subsection (1)(a), (b), (c) and (d) of this section do not exceed 20 percent of the hours worked in the work week by nonexempt employees of the employer: Provided, that work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall not be regarded as nonexempt work;

(3) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty; and

(4) Who is compensated by the employer on a guaranteed salary, commission or fee basis and who is advised of the employee status as "outside salesperson." The requirements of WAC 296-128-545 do not apply to the outside salespersons described in this section.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-540, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-540, filed 2/24/76.]