

(Effective until July 1, 2020)

WAC 296-128-510 Executive. The term "individual employed in a bona fide executive . . . capacity" in RCW 49.46.010 (5)(c) shall mean any employee:

(1) Whose primary duty consists of the management of the enterprise in which he 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 therein; and

(3) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

(4) Who customarily and regularly exercises discretionary powers; and

(5) Who does not devote more than 20 percent, or, in the case of an employee of a retail or service establishment who does not devote as much as 40 percent, of his hours worked in the work week to activities which are not directly and closely related to the performance of the work described in paragraphs (1) through (4) of this section: Provided, That this paragraph (5) shall not apply in the case of an employee who is in sole charge of an independent establishment or a physically separated branch establishment, or who owns at least a 20 percent interest in the enterprise in which he is employed; and

(6) Who is compensated for his services on a salary basis at a rate of not less than \$155 per week exclusive of board, lodging, and other facilities: Provided, That an employee who is compensated on a salary rate of not less \$250 per week (exclusive of board, lodging, or other facilities), and whose primary duty consists of the management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof, and includes the customary and regular direction of the work of two or more other employees therein, shall be deemed to meet all of the requirements of this section.

[Order 76-5, § 296-128-510, filed 2/24/76.]

(Effective July 1, 2020)

WAC 296-128-510 Executive. (1) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 (3)(c) shall mean any employee:

(a) Whose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof; and

(b) Who customarily and regularly directs the work of two or more other employees; and

(c) 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; and

(d) Who is compensated on a salary basis at a rate of not less than the amount specified in WAC 296-128-545, exclusive of board, lodging, or other facilities.

(2) The term "individual employed in a bona fide executive ... capacity" in RCW 49.46.010 (3)(c) shall also include any employee:

(a) 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; and

(b) The requirements of WAC 296-128-545 do not apply to the executive employees described in this subsection.

(3) For the purposes of this section:

(a) A "customarily recognized department or subdivision" must have a permanent status and a continuing function.

(i) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place.

(ii) When an enterprise has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized department or subdivision of the enterprise.

(iii) Continuity of the same subordinate personnel is not essential to the existence of a recognized department or subdivision with a continuing function.

(b) "Management" includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; 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 status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

(c) "Two or more other employees" means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. Hours worked by an employee cannot be credited more than once for different executives.

[Statutory Authority: RCW 49.46.010 (3)(c). WSR 20-01-063, § 296-128-510, filed 12/10/19, effective 7/1/20; Order 76-5, § 296-128-510, filed 2/24/76.]