

**WSR 20-04-078**  
**EXPEDITED RULES**  
**DEPARTMENT OF**  
**LABOR AND INDUSTRIES**

[Filed February 4, 2020, 9:59 a.m.]

Title of Rule and Other Identifying Information: Chapter 296-128 WAC, Minimum wages, corrections to updated executive, administrative, professional, and outside salespersons exemptions.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: On December 10, 2019, the department adopted rules updating the Minimum Wage Act (MWA) exemptions for executive, administrative, professional, and outside salespersons (WSR 20-01-063). These adopted rules, in part, redefined the duties test for outside salespersons and established new salary thresholds for all applicable exemptions, implemented over an eight-year phase-in period. The purpose of this proposal is to correct inadvertent errors contained in the adopted language. These changes are not substantive in nature:

- WAC 296-128-540 Outside salesperson, under the proposed rules (WSR 19-12-102), the outside salesperson duties test was intended to be amended to substantially align with the federal duties test. Consistent with the proposed rules, the notice in the rule adoption CR-103 form, the concise explanatory statement, and the final cost-benefit analysis, the department intended to adopt the proposed rule language for the outside salesperson duties test as the final adopted rule. Due to an inadvertent error, the adopted rule included unintended language from the previous rule that the department intended to remove and correction is necessary. Additional corrections are needed to align the section numbering and to fix a related typographical error to ensure clarity.
- WAC 296-128-545 Salary thresholds, the December 10, 2019, adopted rule language implements the salary threshold requirement over an eight-year phase-in period. This rule making proposes to correct a typographical error in WAC 296-128-545(9) to correctly identify January 1, 2028, as the final phase-in date when the salary threshold is in effect for all employers regardless of the size. This change is needed to ensure clarity and consistency with the other subsections under WAC 296-128-545.

Reasons Supporting Proposal: These inadvertent errors in the filing language have been recognized by stakeholders and needed for accuracy, clarity, and consistency.

Statutory Authority for Adoption: RCW 49.46.010 (3)(c).

Statute Being Implemented: RCW 49.46.010.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting: Ellen Saline, Tumwater, Washington, 360-902-4597; Implementation and Enforcement: Christopher Bowe, Tumwater, Washington, 360-902-6639.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, make address or name changes, or clarify language of a rule without changing its effect.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: The rules contained in WSR 20-01-063 will take effect on July 1, 2020. These updates correct or clarify language and are being made using the expedited rule-making process to ensure adoption to correspond with the effective date of the final rules contained in WSR 20-01-063.

**NOTICE**

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ellen Saline, Department of Labor and Industries, P.O. Box 44510, Olympia, WA 98504-4510, phone 360-902-4597, fax 360-902-5300, email EAPRules@Lni.wa.gov, AND RECEIVED BY April 6, 2020.

February 4, 2020  
 Joel Sacks  
 Director

AMENDATORY SECTION (Amending WSR 20-01-063, filed 12/10/19, effective 7/1/20)

**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)); and~~

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

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

**AMENDATORY SECTION** (Amending WSR 20-01-063, filed 12/10/19, effective 7/1/20)

**WAC 296-128-545 Salary thresholds.** To qualify as an exempt employee under this section, an employee must be compensated on a salary or fee basis, exclusive of board, lodging, or other facilities, as follows:

(1) Beginning July 1, 2020, and through December 31, 2020, an amount not less than 1.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(2) 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 1.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(3) Beginning January 1, 2022, and through December 31, 2022, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer;

(4) Beginning January 1, 2023, and through December 31, 2023:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 1.75 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(5) Beginning January 1, 2024, and through December 31, 2024, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer(-);

(6) Beginning January 1, 2025, and through December 31, 2025:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.0 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(7) Beginning January 1, 2026, and through December 31, 2026, an amount not less than 2.25 times the minimum

wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer(-);

(8) Beginning January 1, 2027, and through December 31, 2027:

(a) When the employee works for an employer with fifty or fewer employees, an amount not less than 2.25 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek; and

(b) When the employee works for an employer with more than fifty employees, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek.

(9) Beginning January 1, ((2026)) 2028, and each following year, an amount not less than 2.5 times the minimum wage prescribed in RCW 49.46.020 for a forty-hour workweek regardless of the size of the employer(-);

**Table 2**  
**Illustration of Salary Threshold As Multipliers of Minimum Wage**

Effective Date	Employer Size	
	1-50 Employees	51+ Employees
July 1, 2020	1.25x	1.25x
January 1, 2021	1.5x	1.75x
January 1, 2022	1.75x	1.75x
January 1, 2023	1.75x	2.0x
January 1, 2024	2.0x	2.0x
January 1, 2025	2.0x	2.25x
January 1, 2026	2.25x	2.25x
January 1, 2027	2.25x	2.5x
January 1, 2028	2.5x	2.5x

Table 2 is provided for illustrative purposes only.

(10) 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 classification for purposes of determining the size of the employer under this section for the following calendar year.