



UNIVERSITY of WASHINGTON

Ana Mari Cauce
Professor of Psychology
PRESIDENT

March 31, 2023

Joel Sacks, Director
Washington State Department of Labor & Industries
7273 Linderson Way SW
Tumwater, WA 98501-5414

Dear Director Sacks,

As a result of rulemaking finalized in 2019, the Washington Minimum Wage Act (WMWA) linked the state salary threshold for overtime to the state minimum wage and set the overtime threshold salary at a multiple of minimum wage. The threshold increases incrementally from 1.25 times the state minimum wage in 2020 to 2.5 times the minimum by 2027 for employers with more than 50 employees.

Prior to and during rulemaking, the University of Washington (UW) attended public hearings, testified, and provided formal feedback and comments. Specifically, we expressed significant concern on how minimum overtime threshold salary requirements under WAC 296-128-545 might be applied to a small and unique group of advanced trainees called postdoctoral scholars (otherwise known as postdocs). Postdocs are individuals who have received doctoral degrees (PhD or equivalent) and who are engaged in a temporary and defined period of advanced training to hone their research skills and develop their research independence under the direction of faculty mentors, positioning them for research careers. At UW, as at many other research intensive (R1) universities, postdocs are appointed for a period generally not to exceed 5 years, including postdoctoral experiences at other institutions.

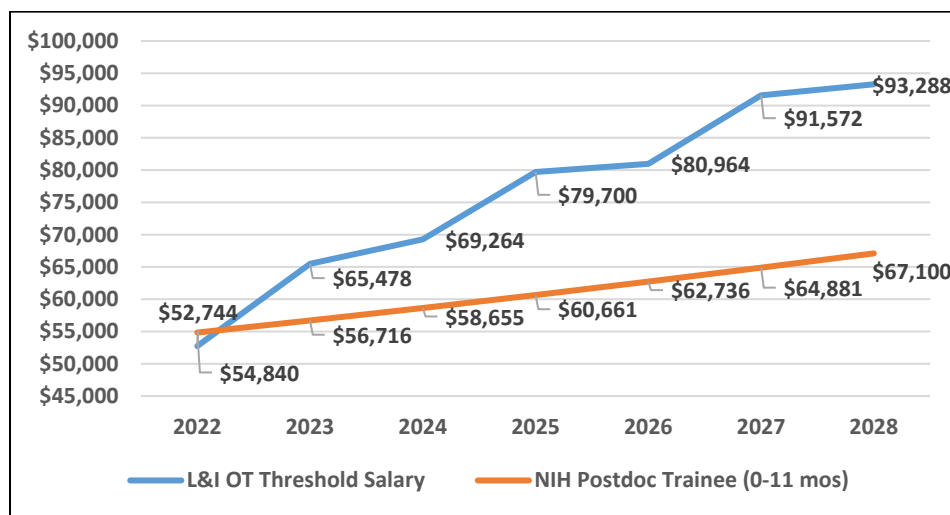
Washington State as Outlier

The UW has a profound impact on the research enterprise of the region, state, and the world. Since 1972, the UW has received more federal research funding than any other UW public university, with awards totaling more than \$1.6B in FY22. While this external funding is a significant contributor to economic prosperity across Washington state, obtaining extramural research funding is highly competitive and the revenues brought in rarely fully cover the costs it

requires to administer our research programs. Furthermore, federal funding policies add constraints and complexity to managing and supporting our research enterprise.

We are concerned that the possible application of the WMWA and, more specifically, the salary threshold requirements under WAC 296-128-545 for postdocs will render the UW as a startling outlier among America’s leading research universities and hurt research competitiveness. In many states, postdocs who receive salaries are subject to applicable Fair Labor Standard Act (FLSA) overtime exempt thresholds, rather than state-specific thresholds. Importantly, universities in the University of California (UC) system (e.g., UC Berkeley, UCLA, UC San Francisco, UC San Diego, UC Davis, UC Irvine, etc.), which are among our most significant competitors for top postdocs, adhere to applicable FLSA thresholds, and not state minimums. Given that the National Institutes of Health (NIH) and other grantor agencies often aspire to align salaries with the federal FLSA overtime thresholds, application of the federal salary thresholds to individuals who are paid with those grant dollars is a logical approach.

The possible application of the WMWA and salary threshold requirements under WAC 296-128-545 are not financially feasible. Federal agencies and foundations alike have funding programs explicitly for postdocs, and many research funders use the salary levels outlined by federal agencies, particularly the NIH, to cap compensation levels reserved for postdocs in their grants. Projected salary levels based on NIH training grant caps is shown below,¹ together with projected WMWA overtime exempt minimum salaries. In 2025, the starting postdoc salary will be 31% below the overtime threshold, and senior postdocs with 4 years of experience will be 24% below. For the many postdocs supported on grants that have explicit salary limits, there simply is no funding available to increase the salary or pay overtime, since federal rules do not allow supplementation of salaries above the caps with federal funds of any kind.



¹ Projections based on an 8-year average of 3.42% annual NIH increases for postdocs with 0-11 months experience, and an 8-year average annual increase of 2.67% for postdocs at all experience levels.

Any impediment to the ability to recruit the most talented and ambitious postdocs would severely damage our ability to support the careers of the next generation of scientific researchers and, with it, maintain Washington's position as a research and economic engine. Postdocs would be extremely limited in the types of funding programs to which they could apply. Our faculty would not be able to accept many of the postdocs who wish to train with them, including the most promising postdocs who have successfully competed for their own independent fellowships. Ultimately, any application of the salary threshold requirements under WAC 296-128-545 to postdocs would impede our ability to recruit and retain faculty and postdocs who are the heart of our research and educational enterprise.

Similarly Situated Individuals Exempted from Salary Requirements under WAC 296-128-545

The postdoc experience involves the special combination of mentored training with unstructured time for research discovery, driven by such unpredictable goals as obtaining a research result and/or publishing scholarly works. It is a steppingstone to research independence that cannot be structured around a 40-hour work week. Postdoctoral work hours depend on factors such as the demands of experiments they are running or field site visits, which can be difficult to control, as well as compressed and time-sensitive deadlines associated with grants, publications, and presentations. The fluctuating demands of postdoc training experiences are inconsistent with the application and feasibility of predicting and paying overtime, since eligibility for overtime is assessed on a weekly basis and averaging hours over two or more weeks is not permitted. To make the most of their immersive learning environments, postdocs require the flexibility to pursue opportunities as they present themselves, unconstrained by time limits, and to follow their passion for answering research questions in a manner inspired by mission, not by time of day or hours invested. Postdocs are self-motivated to make the most of this unique transitional, once-in-a-career period of mentored training to build a research portfolio that best positions them to compete for extremely competitive academic or industry positions.

Under WAC 296-128-530(3)(b), employees who are the holders of the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession are professionals who are considered overtime exempt if they otherwise meet the provisions of WAC 296-128-530. Like postdocs, medical residents and fellows are also engaged in a temporary and defined period of advanced postdoctoral training. Their work as clinicians is supervised and mentored by attending physicians, just as postdocs are mentored in their research pursuits by faculty mentors. Similar to postdocs, the work hours of medical residents and fellows are also somewhat unpredictable, as it is driven by patient care. Like medical residents and fellows, postdocs also need flexibility to respond to unanticipated demands of their research. **Importantly, under WAC 296-128-530(3)(d), the requirements of WAC 296-128-545 specifically outline that the minimum overtime salary thresholds do not apply to medical residents and fellows while they are engaged in their own period of postdoctoral training.**

In consideration of all the above points and current lack of clarity in the regulations about how to treat professionals engaged in a period of postdoctoral training focused on honing research

skills and research independence, the University of Washington plans to treat postdocs as professionals exempt from the salary requirements of WAC 296-128-545, as they are similarly situated to others who are explicitly exempted from these provisions under WAC 296-128-530(3)(d). Based on the information provided in this letter, we would welcome a discussion or further clarity on the rules if you believe our interpretation is flawed or would like more information.

Sincerely,

A handwritten signature in black ink that reads "Ana Mari Cauce". The signature is written in a cursive, flowing style.

Ana Mari Cauce
President
Professor of Psychology

cc: Mindy Kornberg, Vice President for Human Resources, University of Washington
Joe Dacca, Director of State Relations, University of Washington
Tammy Fellin, Legislative Director, WA Department of Labor & Industries : felu235@lni.wa.gov
Jamila Thomas, Chief of Staff, Office of Governor Jay Inslee: Jamila.thomas@gov.wa.gov
Nick Streuli, Executive Director of Policy & Outreach, Office of Governor Jay Inslee: nick.streuli@gov.wa.gov
Drew Shirk, Legislative Director, Office of Governor Jay Inslee: drew.shirk@gov.wa.gov
Pat Sullivan, Senior Policy Advisor for Labor, Office of Governor Jay Inslee: pat.sullivan@gov.wa.gov
David Schumacher, Director, Office of Financial Management: David.schumacher@ofm.wa.gov