



UAW Local 4121

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April 25, 2023

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

Dear Director Sacks,

We represent approximately 900 Postdoctoral Scholars (Postdocs) at all three campuses of the University of Washington (UW). We write in response to UW President Ana Mari Cauce's March 31, 2023, letter regarding application of the Washington Minimum Wage Act (WMWA) salary threshold to Postdocs at UW. President Cauce's letter asserts that there is a lack of clarity regarding application of the WMWA salary threshold to UW Postdocs. In fact, we believe that the salary threshold requirements of WAC 296-128-545 unambiguously apply to UW Postdocs. Below we provide additional background about the work we've done with the University administration over many years to define our work and our terms and conditions of employment. We believe this eliminates any uncertainty about the applicability of the WMWA to Postdocs, although we would be happy to discuss further or provide more information upon your request.

Postdoc Contributions and Definition of Positions

Postdocs are a critical workforce in the University's research operations which, as President Cauce points out, helps bring \$1.6 billion to the state every year in grants and contracts. Postdocs do work in a vast array of research fields: conservation, clean energy, materials, aerospace, chemistry, botany, wildlife, ocean and atmospheric science, computer science, genome sciences, disease prevention and epidemiology, global health, physical and social sciences, psychology, and many more. We are proud to be helping UW become the leading public institution in the country, attracting federal investment to improve our quality of life, and investigating some of the most pressing and complex questions of our time through our work.

In our collective bargaining agreement the parties have defined Postdocs as individuals who: have received a doctoral degree (Ph.D. or equivalent); are appointed for a temporary and defined period; are engaged in full-time mentored advanced training to enhance professional skills and research independence; and perform primarily research and scholarship under the direction and supervision of University faculty mentors.

President Cauce's memo echoes this understanding, but also takes the position that for the purposes of salary/wage determination and overtime eligibility under WAC 296-128-545, Postdocs are exempt from the salary requirements and are "similarly situated" to medical residents and interns. This was a surprising

deviation from the shared understanding the Union has previously negotiated with the UW administration.¹

Postdocs Distinct from Medical Residents/Interns

Five years ago when the parties had extensive discussions about the definition of Postdocs and composition of our Postdoc bargaining unit, UW Administration argued strenuously to exclude any employees doing clinical work. UW medical interns and residents were already in their own separate bargaining unit, but UW wanted to ensure that there was a clear delineation in our bargaining unit description that would make clear that any other employees doing clinical work or enrolled in clinical training programs were not considered Postdocs. As such they proposed (and the Union agreed) to language which excluded from the bargaining unit “employees privileged as attending physicians within the context of their University responsibilities; employees enrolled in clinical residency and fellowship programs in health sciences; employees engaged in research related to their clinical training program.”²

WAC 296-128-530(3)(d), contains a very limited exemption to the salary threshold requirements of WAC 296-128-545 for medical residents and interns, but the exemption applies to physicians holding a valid license permitting the practice of medicine and who are engaged in the practice thereof. UW Postdocs are not licensed physicians engaged in the actual practice of that field. We receive extensive graduate level training in a particular field of research prior to defending and obtaining our doctoral degree. A Postdoc appointment is a voluntary career development tool for those who want to work with a more senior scientist to gain additional experience before seeking a faculty job, setting up our own independent research lab or otherwise continuing our careers. It is certainly possible and not uncommon for those of us who have completed extensive graduate level training not to take positions as Postdocs and still work in our fields as advanced scientists.

In contrast, UW medical residents and interns provide medical care and services to patients, while also obtaining requisite clinical experience. The training residents and interns receive is required for board certification. They cannot pursue a career in medicine until they receive that accredited postgraduate training.

Postdoc researchers at UW all meet the learned professional overtime exemption because (1) their primary duties are the performance of research that definitionally requires advanced knowledge that is intellectual in character and requires the consistent exercise of discretion and judgment; (2) their advanced knowledge is in a field of science or learning and is (3) acquired by a prolonged course of specialized intellectual instruction; and (4) are paid a salary greater than the 2023 salary threshold (due to UW’s late December 2022 salary increase).

Importantly, WAC 296-128-530 reflects FLSA regulations that also exempt medical residents and interns, but do not exempt Postdocs, from overtime eligibility. The minimum salary threshold requirements in WAC 296-128-545 are clearly applicable to UW Postdocs.

Neither the WMWA nor Postdoc duties have changed since the rulemaking period in 2018. L&I made the correct decision in not excluding Postdocs from the salary threshold requirements in WAC 296-128-545.

¹ *Collective Bargaining Agreement by and Between Board of Regents of the University of Washington and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL-CIO 2021-2023* (Article 25 “Titles and Classifications”): <https://www.uaw4121.org/postdoc-contract-full/>

² PERC Decision 12838-D (PECB, 2019) <https://decisions.perc.wa.gov/waperc/decisions/en/item/357026/index.do>

Previous Agreement in CBA around Postdoc Overtime Eligibility

It has been surprising to us to learn that UW Admin now believes that Postdocs are not subject to WMWA in light of our history of bargaining compensation, overtime, and hours reporting provisions based on a shared understanding of the applicability of the law. Since the creation of the UW Postdoctoral Scholar bargaining unit in 2018 and its first CBA with UW in 2019, it has reflected the parties' understanding that all UW Postdocs have been full-time overtime-exempt professional employees. During negotiations for the 2021-2023 CBA, UW and the Union had extensive discussions regarding their shared understanding that the WMWA salary threshold applies to UW Postdocs and that the salary threshold in Washington was likely to rise above the minimum salary of UW Postdocs during the term of the CBA. In recognition of this condition, we reached an agreement in that CBA stating that "should changes to the federal or state overtime eligibility regulations alter the overtime exempt status of any Postdoctoral Scholar covered by this agreement" either party could reopen the CBA article that stated that UW Postdocs were not eligible for overtime.³

On October 15, 2022, UW notified the Union that the WMWA salary threshold effective January 1, 2023 (\$65,484 annually), would be higher than the minimum salary of bargaining unit Postdocs and as a result, UW would be moving these Postdocs into overtime eligible classifications that required UW to track Postdoc hours for the first time. Specifically, UW stated that bargaining unit Postdocs "are... subject to these new minimum thresholds" and used application of the salary threshold to Postdocs as a trigger to reopen the parties' CBA to negotiate pursuant to the agreement described above. During the parties' first negotiating session in October of 2022, UW Admin stated that converting Postdocs to overtime eligible positions "is a matter of legal compliance with Washington State law." UW and the Union could not reach agreement regarding issues related to the salary threshold prior to January 1, 2023. In the absence of final agreement with us, UW increased the wages of Postdocs that would have fallen below the new salary threshold to \$65,508 effective January 1, 2023, during the last week of December 2022 (we had encouraged this in bargaining).

On January 9, 2023, UW made a compensation proposal that included proposed salaries for 2024 and 2025 that would fall below L&I's projected salary threshold for those years, without any proposals regarding overtime or hours tracking that the proposed salaries would necessitate. When the Union inquired as to absence of any overtime provision in UW's proposal, UW Vice President for Human Resources Mindy Kornberg stated for the first time that UW did not "believe the L&I minimums apply to this group of Postdocs," and that UW had been seeking clarification from L&I "for the past two and a half years" regarding application of the salary threshold to Postdocs. When the Union asked UW to provide its requests for clarification to L&I, Kornberg responded that all conversations with L&I had been communicated orally, that UW was working on a written request to L&I, and that it would share that written request with the Union once it was sent to L&I. UW provided the Union with President Cauce's letter almost three months later on April 4, 2023.

On February 14, 2023, the Union filed an Unfair Labor Practice charge with PERC alleging that UW was bargaining in bad faith regarding application of the salary threshold to UW Postdocs.⁴ On March 16, 2023, PERC issued a Cause of Action Statement finding that the Union's complaint states a cause of action against UW that requires further processing for "breaching its good faith bargaining obligations

³UW-UAW CBA 2021-2023 (MOU - "Time Reporting"): <https://www.uaw4121.org/postdoc-contract-full/>

⁴PERC Unfair Labor Practice Complaint (2/14/23)

https://www.uaw4121.org/wp-content/uploads/2023/04/UAW-Local-4121-Postdoc-ULP-Complaint_Statement-of-Facts_Remed-y-and-Certificate-of-Service_2.14.23.pdf

during negotiations with the Union concerning application of the [WMWA] to bargaining unit employees and overtime policies and procedures.”⁵

Litigation regarding these unfair labor practices is ongoing. While we continue to try and reach agreement in bargaining, our CBA has been expired since January 31, 2023.

Federal Research Funding and UC Postdoc Pay

President Cauce’s 3/31/23 letter notes that “federal rules do not allow supplementation of salaries above the caps with federal funds of any kind.” Yet federal funding agencies like the National Institute of Health (“NIH”) and the National Science Foundation (“NSF”) do allow UW to supplement Postdoc salary funding from federal grants with their own funding, as the University of California (“UC”) system has chosen to do.

Although the UC system does not have a separate state salary threshold, as of April 1, 2023 its collectively bargained wages for Postdocs are well above the NIH and National Research Service Award (“NRSA”) minimum stipend levels that are above the Federal salary thresholds.⁶

In 2016, the Department of Labor (“DOL”), the NIH and the NSF released comments and positions on the impact of DOL’s overtime salary thresholds on Postdoctoral researchers working at research institutions in the United States. All three entities commented that if the salary for Postdocs on federal grants fell below the federal salary thresholds, then the research institutions can either require their Postdocs to track their hours for overtime compensation, or supplement their salaries with non-federal funds.⁷ As the DOL wrote:

Once the Final Rule is effective, **higher education institutions may supplement any gap between current salaries and the new salary level in order to maintain the exemption for these (Postdoc scholars) employees** or will need to ensure that Postdoctoral research fellows who conduct research and earn below the new salary level either do not work overtime or are paid overtime for any hours worked over 40 per week. (emphasis added)⁸

Washington State as a Leader

Beyond these facts, we believe more fundamentally that the standards in the Washington Minimum Wage Act were intended to ensure living wages for as many employees as possible. Voters in Washington and elected lawmakers in many jurisdictions have made clear that our state is and should be a national leader in wage standards. As Governor Inslee wrote in his statement supporting L&I’s 2019 rulemaking: “We know a strong economy goes hand-in-hand with a strong and well-supported workforce.” We therefore

⁵PERC Cause of Action statement (3/16/23) <https://www.uaw4121.org/wp-content/uploads/2023/04/136218-U-COAS.pdf>

⁶ The UC system minimum salary/stipend minimum for Postdoctoral Scholars at Level 1 is \$60,000 where the NIH 2023 annual salary/stipend minimum for FY 2023 for a Postdoctoral trainee at Level 1 is \$56,484. On 10/1/23 the UC minimum will increase to \$64,480. *Collective Bargaining Agreement by and between the Board of Regents of the University of California and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL-CIO and Its Local Union 5810*, “Article 4(A)(3) – Compensation” (11/9/2022 – 9/30/2027) <https://uaw5810.org/postdoc-contract/>. See also NIH, “Ruth L. Kirschstein National Research Service Award (NRSA) Stipends, Tuition/Fees and Other Budgetary Levels Effective for Fiscal Year 2023” <https://grants.nih.gov/grants/guide/notice-files/NOT-OD-23-076.html> (Feb. 3, 2023)

⁷ NIH Grants Policy Statement 11.3.10.1 – Stipend https://grants.nih.gov/grants/policy/nihgps/html5/section_11/11.3.10_stipend_supplementation_compensation_and_other_income.htm Supplementation (Revised Dec. 2022)

⁸ DOL “Guidance of Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act” (page 6) https://www.uwyo.edu/hr/_files/docs/classification-compensation/dol-guidance-higher-educ.pdf (May 2016)

embrace the “Outlier” title attributed to us by President Cauce, and hope we can organize together to invest in Postdocs and all workers while challenging the rest of the country to follow our lead. We can and should support efforts at the state and federal levels to support reasonable increases to the minimum wage and salary thresholds. The last thing we should be doing is seeking loopholes to keep wages low.

Our position regarding the letter and the spirit of the WMWA could not be more clear: that Postdocs are unambiguously covered by the law and should receive pay and overtime rights as provided in the Act. We would be happy to continue discussions, learn of any additional information you might provide, or offer more information.

Sincerely,

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