



STATE OF WASHINGTON
DEPARTMENT OF LABOR AND INDUSTRIES

P.O. Box 44000 • Olympia, Washington 98504-4000

May 16, 2023

Ana Marie Cauce, President
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Dear President Cauce,

Thank you for reaching out to the Washington State Department of Labor and Industries (L&I) in your March 31, 2023 letter. We understand you are seeking guidance about how L&I might apply the professional exemption from the state Minimum Wage Act (WAC 296-128-530) and the salary threshold that applies to that exemption (WAC 296-128-545) to the Postdoctoral Scholars (postdocs) employed by the University of Washington. After receiving your correspondence, we also received a letter from UAW Local 4121's Postdoc Unit Leadership. We do not anticipate providing a separate response to that letter because both letters address the same general concepts, but we are open to further discussions about this topic with anyone that feels further conversations are needed given L&I's perspective provided here.

We open this letter with the caveat that L&I typically provides determinations of wage & hour issues through appealable orders because issues related to the Minimum Wage Act and its exemptions are very fact-specific. That said, L&I does attempt to provide as much guidance as possible to stakeholders given the facts provided. We also understand that there are other peripheral labor issues between the parties here as indicated in the correspondence, but we want to make it clear that L&I has no role in that process and we are limiting our guidance to the application of how we might address state law questions if presented with them squarely.

As you know, under Washington's Minimum Wage Act, most employees are entitled to overtime compensation of one and one-half times their regular rate of pay for hours worked in excess of forty per week. RCW 49.46.130. This overtime requirement cannot be waived by any agreement between an employee and employer regardless of whether it is included in a collective bargaining agreement or individual employer-employee agreement. However, as you have recognized, some executive-administrative-professional (EAP) workers are exempt from overtime and other provisions of the Minimum Wage Act. RCW 49.46.010(3)(c). To be classified as exempt, both the state and federal exemption rules have generally required that employers show that workers meet a three-part test: the worker must be paid a predetermined and fixed salary, the salary must meet a minimum threshold, and the job duties must primarily involve executive, administrative, or professional duties as defined by the regulations. The job duties test, not an employee's job title or description, determines whether a job primarily

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involves executive, administrative, and professional duties as defined in the rules. Employers are responsible for determining whether a worker's job duties meet the requirements to be exempt. For purposes of this letter, L&I will focus on the salary questions in the professional exemption related to postdocs, because based on our understanding from the correspondence on this issue, you are asking about postdocs at UW who would almost certainly meet the duties test in the exemption.¹ These workers have PhDs and are working in types of roles that require advanced knowledge in the sciences like that described in WAC 296-128-530(4)(b); *see also* Administrative Policy [ESA.9.5](#) at 4.

As you point out, WAC 296-128-530(3)(d) provides a narrow exemption from the salary threshold requirements in RCW 296-128-545 for those “law and medicine professionals” in subsection (3). But subsection (3) only applies to someone who “is the holder of the requisite academic degree for the *general practice of medicine* and is engaged in an internship or resident program pursuant to the practice of the profession” and is further limited to “physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners.” (emphasis added). It further provides a list of who the “physician” exemption applies to and all of listed professions are limited to those that provide direct patient care. L&I does not believe there is room for interpretation to expand this definition outside individuals who are directly providing patient care. Accordingly, in order to be exempt from the MWA, postdocs would need to meet both the salary basis and the salary threshold tests as other professional employees do.

This interpretation is also consistent with how L&I implemented the rulemaking process in 2019. When updating the EAP exemptions, L&I looked to the history of exemptions under state and federal law, whether similarly situated employees were treated similarly, and whether any proposed changes would reduce protections to employees, among other goals. L&I is not aware of any historical basis in state or federal law for waiving a salary threshold for postdocs. We recognize that the public universities in California apply the FLSA standard, but unlike Washington and most other states their postdocs fall under California’s state wage and hour law exemption for public workers. However, California’s state overtime salary basis threshold does apply to postdocs at private universities in California. Washington law does not provide an exemption for public workers. In Washington, current law applies the same rules to postdocs whether they work for public or private employers, ensuring that similarly situated postdocs are treated the same. Lastly, removal or waiver of the salary threshold for postdocs would reduce protections to those workers compared to both the historical status quo and similarly situated professional workers.

As of January 1, 2023, employers in Washington must pay their workers at least \$1,259.20 a week, \$65,478.40 a year in order to claim an exemption for those workers. We recognize that this amount is higher than the threshold that applies to other jurisdictions, but Washington State also has some of the highest median incomes and cost-of-living standards in the Country. And employers have choices about how to comply. Employers of postdocs may meet the

¹ This response is not intended to address Postdoctoral Scholars who are medical doctors or qualifying medical residents, to whom distinct, separate exemption rules apply.

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requirements of the MWA by either qualifying postdocs for exemption by paying salaries that meet or exceed the salary threshold or meeting the requirements for nonexempt employees: paying overtime for hours worked in excess of forty or limiting the number of hours the employees work to below the overtime threshold.

L&I expects its next update to the salary threshold for EAP exemptions, setting the salary threshold applicable starting January 1, 2024, will be available by October 2023.

Please do not hesitate to contact us through Celeste Monahan, Assistant Director of the Fraud Prevention and Labor Standard Division, at (360) 902-6724, Celeste.Monahan@lni.wa.gov if you have further questions.

Sincerely,



Joel Sacks
Director

cc: Max Friedfeld, Recording Secretary, UAW Local 4121 on behalf of the
UAW Local 4121's Postdoc Unit Leadership and Bargaining Committee
Jamila Thomas, Chief of Staff, Office of Governor Jay Inslee
Nick Streuli, Executive Director of Policy & Outreach, Office of Governor Jay Inslee
Drew Shirk, Legislative Director, Office of Governor Jay Inslee
Pat Sullivan, Senior Policy Advisor for Labor, Office of Governor Jay Inslee
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