

Update on L&I Rule Making regarding Exempt/Non-exempt workers and Overtime pay July 2019

Background Story

The U.S. Department of Labor last updated the Executive, Administrative, and Professional (EAP) salary wages and language in the 1970's. Just before President Obama left office, he directed the Secretary of Labor to update the overtime regulations and increase the current minimum salary of \$23,600 to a minimum salary threshold of \$47,476 per year. That rule was declared invalid by the United States District Court for the Eastern District of Texas, and the Fifth Circuit dismissed the Department of Labor's appeal in September 2017.

Washington State last updated its rules in 1976. At that time, their effort reflected the federal updates – mirroring the amounts, details, and requirements. This spring the US Department of Labor announced they plan to update federal wage minimums and will likely increase the base salary to \$35,308 per year at that time.

Proposal Information:

At first glance, Washington State L&I's update doesn't appear to be too great of a leap, with businesses of less than 50 employees only facing an increase of minimum salary to \$35,100. That \$35,100 is just the first step towards 2.5 multiplier of the minimum hourly wage by 2026 for all employers regardless of how many workers they employ. This equates to a minimum annual salary of \$79,872 for workers statewide based on the minimum hourly wage.

Hearings begin now - What can you do?

L&I will hold public hearings on the proposal beginning next Monday. The hearing in Vancouver will be at the CTC campus of Clark College on Thursday August 15. An informational session will be conducted from 9:00 – 10:00 AM with the hearing from 10:00 AM to Noon. If you are unable to attend the Vancouver hearing you may submit your remarks in person on any of the following remaining dates: Monday, August 5 in Ellensburg; Tuesday, August 6 in Kennewick; and Wednesday, August 7 in Spokane Valley. To view hearing details, including Vancouver, visit LNI.wa.gov

How to prepare for a hearing:

To prepare for the hearings, simply gather your thoughts and make a few notes. From an employer's point of view, explain what the proposed changes will mean for your mission, services, costs, staffing plans, and employee benefits, and any other impacts relevant to your organization.

Here is a guide to organize your thoughts from Washington Nonprofits that you may find helpful.

For these hearings, I don't believe that employer hardship will persuade L&I to make a change or consider revising the proposed thresholds. What will make a difference is employee hardship. If you or your employees prefer being on overtime exempt salary instead of an hourly worker, share why. Some of the things that my staff and I have discussed are how this rulemaking would affect employees by causing:

- *Inflexibility and decreased morale*: the ability to work 50 hours one week and take a day off the following week is something that most salaried employees appreciate. It provides a sense of tenure in the professional world that is earned. This flexibility isn't something that a first time employee is generally allowed; it is something that you work your way up to as you expand your responsibility and role within the workforce.
- *Uncertainty*: salaried employees have the same paycheck every period, whether they work 10 hours or 80. This creates stability for all salaried employees and especially those who have a fluctuating schedule (nurses and teachers for instance).
- *Insecurity*: not knowing what your paycheck will be because one pay period has different hours than the next.
- *Additional burden*: salaried employees are not required to clock in and out. They are paid to do the job, not for the time it takes. Should this 2.5x multiplier be approved, many of the current salaried employees will be moved to hourly unless they are paid more than the required minimum.

Another point considered and testified about is the gap between rural areas' cost of living as it relates to salary. Most Counties are not King County where the average was \$1,625 per week in 2017. Some rural counties such as Mason County was less than half that at \$782 per week. This correlates to \$84,500 annually for King County and \$40,644 for Mason. Moving to a minimum salary wage that is more than double will likely require businesses and non-profits in our community to move most employees to an hourly wage or could result in fewer positions being created and/or maintained.

Can't attend a hearing? Comment in writing by September 6

If you are unable to attend a hearing, you can still comment in writing. To comment, all you have to do is submit a letter about the proposal's impact on your organization or on your employment status. To submit comments, email EAPrules@lni.wa.gov or fax the document to 360-902-5300 by September 6, 2019. Please let me know if I can provide assistance or if you have questions about the process.

Next steps:

Please mark down September 6 as the deadline to comment on the proposal. Between now and then, the Chamber will share any new information we learn. If you would like to discuss this issue further, please reply to this email. The time is now to make your voice heard.