



ADMINISTRATIVE POLICY

STATE OF WASHINGTON DEPARTMENT OF LABOR AND INDUSTRIES EMPLOYMENT STANDARDS

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 ABOUT SALARY BASIS**

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**CHAPTER: [RCW 49.46.010\(5\)\(c\)](#)
 [RCW 49.46.130\(2\)\(a\)](#)
 [WAC 296-128-500 – 545](#)**

**SEE ALSO: [ES.A.9.2](#)
 [ES.A.9.3](#), [ES.A.9.4](#),
 [ES.A.9.5](#), [ES.A.9.6](#),
 and [ES.A.9.7](#)**

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Question and Answer Fact Sheet

This document addresses questions on the salary basis requirements for bona fide executive, administrative, professional, and computer professional workers exempt from the Washington State Minimum Wage Act (MWA) under [RCW 49.46.010\(3\)\(c\)](#) and [RCW 49.46.130\(2\)\(a\)](#). The definitions for each of these exemptions are in [WAC 296-128-510](#), [WAC 296-128-520](#), [WAC 296-128-530](#), and [WAC 296-128-535](#).

In addition to meeting the applicable duties tests and salary thresholds, executive employees must be paid on a salary basis to be exempt. Administrative, professional, and non-hourly computer professional employees may be paid on either a salary or fee basis. The salary basis rule does not apply to employees who are paid on a salary basis but do not meet the definition of an executive, administrative, or professional employee. The salary basis rule also does not apply to outside salespersons.

The salary basis requirement for exemption applies to employees of both public and private employers. There are some differences in how the salary basis is evaluated when the employee

works in the public sector, which are outlined in [WAC 296-128-533](#) and addressed in questions 20 through 23, below.

Salary basis

1. What does salary basis mean?

A salary is a method of paying an employee where the employee regularly receives a preset amount of money (the salary) for each pay period (which may be one week or longer, up to one month). See [WAC 296-128-532](#). Being paid on a salary basis means that the salary is not subject to deductions because of variations in the quantity or quality of the work performed. Except as provided in the salary basis rules issued by the Department, an exempt employee must receive the full salary for any week in which the employee performs any work, regardless of the number of days or hours worked. Unauthorized reductions in a salary destroy the salary basis, which means the affected employee does not meet the tests required to be exempt from the MWA.

For an employee to be exempt from the MWA, there is also a separate requirement that the salary amount cannot be less than the amount required by [WAC 296-128-545](#). See Administrative Policy [ES.A.9.9](#), "Salary Thresholds," for more information about what types of payments are part of an employee's salary.

Effect of additional compensation on salary basis

2. Are employers required to pay additional compensation to exempt employees for overtime hours worked?

No. The overtime laws do not require additional pay or compensatory time for exempt employees. However, employees and employers may negotiate agreements for additional pay, compensatory time, or other compensation in addition to the employee's salary. See [RCW 49.46.130\(2\)\(a\)](#).

3. If exempt employees receive a bonus for working over 40 hours in a workweek, does this affect the salary basis?

No. The overtime laws specify that paying extra compensation or providing compensatory time off *in addition to a base salary* does not destroy the salary basis. See [RCW 49.46.130\(2\)\(a\)](#).

Effect of pay corrections on salary basis

4. Does a mistaken deduction still destroy the salary basis if it is promptly corrected?

No. A mistaken deduction will not destroy the salary basis so long as the deduction is infrequent and inadvertent and it is promptly corrected. See [WAC 296-128-532\(5\)](#). A limited window of correction is permitted if the employer immediately begins taking corrective steps to promptly resolve the improper deduction when brought to the employer's attention. This is only allowed if the deduction is not due to lack of work or part of a pattern of similar deductions. See [WAC 296-128-532\(5\)](#).

Effects of partial-week payments for first and final paychecks on salary basis

5. May an employer prorate a salary for the first and final weeks of employment?

Yes. A salary may be prorated for the actual days worked in the first and final weeks of employment. See [WAC 296-128-532\(3\)\(e\)](#).

Effects of deductions as penalties for major safety violations on salary basis

6. Are deductions permitted from pay for major safety violations or disciplinary absences?

Yes. Deductions are allowed for penalties imposed for violations of safety rules of major significance. See [WAC 296-128-532\(3\)\(f\)](#). Major significance means only those safety rules relating to prevention of serious danger to the plant/workplace, the public, or other employees. An example might be violating rules prohibiting smoking around highly flammable materials.

Effect of absences, leave, and business closures on salary basis

The effect on the salary basis of deductions for absences, leave, furloughs, and other time off work varies depending on the reason for the time away from work, the duration of the absence for which the deduction is made, whether there is a bona fide leave bank or other form of guaranteed leave, and whether the employer is a private or public entity. Common scenarios are addressed below.

Full week business closures

7. If a company shuts down for one week due to lack of work and none of the salaried employees receive payment, does this destroy the salary basis?

No. Payment of salary is not required in particular weeks in which an employee or employees perform no work, regardless of the circumstances. See [WAC 296-128-532\(3\)](#). This includes weeks in which holiday or vacation days occur and the company shuts down for the remaining days in that week.

Partial-week absences, leave, or business closures

8. If a company shuts down for a partial week without paying the salaried exempt workers for the full week, does this destroy the salary basis?

Yes. If the company shuts down for a partial week, exempt employees must be paid their full salaries for that week if they have worked any part of that week. See [WAC 296-128-532\(4\)](#). If they are not paid their full salaries for that partial week, the salary basis is destroyed and they do not qualify for the Executive, Administrative, Professional, or Computer Professional exemptions.

9. May an employer make deductions from pay for absences of less than a whole week in duration due to jury duty, testimony, or military duty?

No. If the employee performs any work during a workweek, the employer cannot deduct any pay for time during that week the employee participates in jury duty, testifies in a legal proceeding as a witness, or participates in temporary military leave. The employer may offset any amounts received by the employee for services as a juror, witness, or due to military leave. Payment is not required for weeks in which the employee performs no work in the entire workweek, unless provided by other applicable law or by agreement. *E.g.*, [RCW 38.40.060](#); [WAC 357-31-310](#).

Full day absences and leave

10. What is a bona fide leave bank?

A bona fide leave bank is a benefit plan provided to employees in the case of absence from work due to sickness or personal time off (PTO), including vacation time. See [WAC 296-128-532\(6\)\(b\)](#). The benefit plan must be in writing and be contained in a contract or an agreement, or in a written policy that is distributed to the employees. If the plan is used as a subterfuge to circumvent or evade the requirements of this regulation, it is not bona fide.

11. If an employee requests a day off work under a bona fide leave benefit plan, may the employer deduct leave from the leave bank for the whole day?

Yes. The employer can deduct from the leave bank in full-day increments provided there is a bona fide plan as described in question No. 10. See [WAC 296-128-532\(6\)\(b\)](#).

12. If an employee requests a day off work for a reason that does not qualify for leave, may the employer deduct the pay for the whole day from the employee's salary?

Yes. When the employee takes a full day off for personal reasons other than sickness, accident, or other legally-protected reasons, deductions are permitted in full-day increments. See [WAC 296-128-532\(3\)\(b\)](#).

13. If an employee has not yet qualified under the employer's plan, or has exhausted all of his or her leave bank, may the employer deduct the whole day from the employee's salary?

Yes. The employer's written plan, policy, or practice must include conditions under which the leave is granted. If the employee has not yet qualified under the plan or has exhausted all of his or her sick leave, the employer may then deduct pay in full-day increments from employees who have not yet qualified under the plan, or after an employee's sick leave bank is exhausted. See [WAC 296-128-532\(3\)\(c\)\(i\)](#).

- 14. If the employee takes a sick day off, but the employer does not provide bona fide sick leave benefits, may the employer deduct for the whole day?**

No. The employer cannot deduct for sickness, accident, or disability when there is no bona fide policy in effect. An employer's written policy that "there is no policy" is not a bona fide sick leave policy. See [WAC 296-128-532\(4\)\(d\)](#).

Partial day absences and leave

- 15. When an employee requests a half-day off work, may the employer deduct from a bona fide leave bank for the half-day?**

Yes. The employer can deduct from the leave bank for partial-day increments provided there is a bona fide written plan as described in question No. 10. See [WAC 296-128-532\(6\)\(b\)](#).

- 16. May an employer make leave bank deductions for less than one hour?**

For private sector employees, no. Leave bank deductions may not be made for less than one full hour. If the absence is for at least a full hour, it may then also be taken in additional increments of less than one hour thereafter. For example, an employer may not deduct 45 minutes from a leave bank, but could deduct 75 minutes if the employee took that amount of leave. Public sector employers may deduct from leave banks in any increment, as discussed in question No. 22 below. See [WAC 296-128-532\(6\)\(b\)](#).

- 17. If an employee takes a partial day off due to sickness, and the employee's sick leave bank is exhausted, may the employer deduct the partial day absence?**

For private sector employees, no. An employer cannot deduct from pay for a partial day's absence for use of sick leave even when the sick leave has been exhausted. Public sector employers may make deductions from salary for partial day absences under certain circumstances as discussed in question No. 21 below. See [WAC 296-128-532\(4\)\(d\)](#).

- 18. If an employee requests a half-day off without a bona fide leave plan may the employer deduct the pay for the half day from the employee's salary?**

For private sector employees, no. Deductions from pay for partial day absences are not permitted except for very limited circumstances allowed in the federal [Family and Medical Leave Act \(FMLA\)](#). Public sector employers may make deductions from salary for partial day absences under certain circumstances, as discussed in question No. 22 below. See [WAC 296-128-532\(3\)\(d\)](#).

- 19. Are partial day deductions from pay permitted by employers when the time off is taken under the federal [Family and Medical Leave Act](#)?**

Yes. Deductions can be made in partial day increments for leave that is taken under the federal FMLA. See [WAC 296-128-532\(3\)\(d\)](#). Employers are advised to seek advice from the U.S. Department of Labor (USDOL) to ensure compliance with FMLA requirements. The toll-free number to the USDOL is 1-866-487-9243.

Additional Considerations for Absences, Leave, and Furloughs for Public Employees

20. Who are public employees?

A public employee is defined in the salary basis regulation as “an employee directly employed by a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision or other public agency and includes any department, bureau, office, board, commission or institution of such public entities.” [WAC 296-128-533\(2\)](#). Most of the salary basis requirements for private employees apply to public employees. However, there are some differences, as addressed in the following questions.

21. May public employees take a partial day off without pay without destroying the salary basis?

Yes. A public employer may deduct for partial day absences in any increment if the pay system is established according to principles of public accountability. See [WAC 296-128-533\(1\)\(a\)](#). The pay system must allow the public employee to accrue sick or personal leave and must permit leave without pay for absences of less than one day for personal reasons or illness or injury. Partial day deductions are not permitted where no written pay system is established.

22. May a public employer deduct from leave banks in any increment?

Yes. Deductions may be made in any increment allowed by a statute, ordinance, or regulation, or by a pay policy or practice established according to principles of public accountability. See [WAC 296-128-533\(1\)\(b\)](#).

23. May public employees be furloughed for budget reasons without destroying the salary basis?

A public employer may deduct budget-required leaves of absence of less than one week, but will destroy the salary basis for that workweek if the employee performs any work. See [WAC 296-128-533\(1\)\(c\)](#). If the salary basis is destroyed, employees who perform any work that week would be entitled to all the protections of the Minimum Wage Act, including overtime. For full-week furloughs, payment is not required and the salary basis is not destroyed so long as the employee performs no work during the entire week.