

Washington Compensation Requirements—2021 Update

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In recent years, Washington has enacted various statutes relating to employee compensation that require annual automatic adjustments by the Department of Labor & Industries (DLI). The new adjustments discussed below will be effective January 1, 2021.

WASHINGTON MINIMUM SALARY LEVEL FOR EXEMPT EMPLOYEES

One of the biggest changes for employers in 2021 is the increase of the minimum salary level that must be paid for an employee to be exempt as an Executive, Administrative, Professional, or salaried Computer Professional employees (EAPC exemptions, also known as the white-collar exemptions). Such employees are exempt from payment of overtime, state paid sick leave requirements, and other mandates that apply only to nonexempt employees.

As of early 2020, the federal minimum salary level for EAPC exempt employees is \$684 per week (\$35,568 annually). For 2020, the state minimum salary level was less than the federal level and not an issue for most Washington employers.

Effective January 1, 2021, however, under Washington law the minimum salary level for the EAPC exemptions will exceed the federal minimum salary level, with different minimums depending on the size of the employer:

- For employers with 51 or more employees, to be EAPC exempt an employee must be paid at least \$958.30 per week. Annualized, this is a salary of \$49,831.60.
- For employers with 50 or fewer employees, to be EAPC exempt an employee must be paid at least \$821.40 per week. This results in an annual salary of \$42,712.80.

Employers need to carefully consider if employees whose current salary does not meet the new 2021 minimum levels should receive salary increases or instead be transitioned to nonexempt status. Additionally, in some limited cases, it may be possible to meet the exemption requirements paying something other than a salary.

As we mentioned in [an article published last year](#), there is also a special minimum hourly rate for those that meet the Computer Professional exemption, which allows for hourly pay, instead of salary only. For 2021, those minimums increase to:

- 2.75 times the minimum wage, which means at least \$37.65 per hour, for employers with 50 or fewer Washington-based employees, and
- 3.5 times the minimum wage, which means at least \$47.92 per hour, for employers with more than 50 Washington-based employees.

Of course, the decision to pay Computer Professionals on an hourly basis is optional, and employers can still elect to pay the minimum salary listed above instead, if they prefer to do so.

Remember also that the EAPC exemptions require not only that the employee receive the proper compensation, but also has duties that meet one of the EAPC tests.

Disclaimer: This article is not legal advice. It is provided solely for informational and educational purposes and does not fully address the complexity of the issues or steps business must take under applicable laws.

MINIMUM WAGE INCREASE – WASHINGTON AND SEATTLE

Effective January 1, 2021, the Washington state minimum wage will be \$13.69 per hour.

In Seattle, there are two possible minimum wages:

- For employers with 501 or more employees worldwide, and for employers with up to 500 employees worldwide whose employees do not receive at least \$1.69 per hour in tips or employer provided medical benefits, the minimum wage starting January 1, 2021, will be \$16.69 per hour.
- For employers with 500 or fewer employees worldwide who also provide at least \$1.69 per hour in medical benefits or whose employees make at least \$1.69 per hour in tips, the Seattle minimum wage beginning January 1, 2021 will be \$15 per hour.

SeaTac's minimum wage for transportation and hospitality workers will increase in 2021 to \$16.57 per hour.

2021 MINIMUM EARNINGS LEVEL TO ENFORCE NONCOMPETITION RESTRICTIONS

Washington's [new noncompetition statute](#) (RCW 49.62) went into effect January 1, 2020. Now, one of the requirements to have an enforceable noncompetition restriction is that an employee must meet a minimum earnings level at the earlier of (a) the time of enforcement or (b) the date of termination. In 2020, that earnings level for employees was \$100,000 and for independent contractors it was \$250,000, but those levels will increase each year.

To enforce noncompetition restrictions in 2021, an employee must meet the minimum earnings level of \$101,390 and an independent contractor must be paid \$253,475.

A note of caution: For employees the earnings level is based on taxable income as it appears in Box 1 of the Form W-2. Box 1 earnings do not include items such as 401k contributions.

We hope this brief summary of the upcoming changes is helpful, but recognize that there are many additional factors and details that must be considered in compensation planning and compliance. We at Miller Nash Graham & Dunn would be happy to assist you with considering any and all of these issues.

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