



Chapter 4

Employment Law

CHAPTER OUTLINE

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INTRODUCTION

An important part of getting on the road to compliance is making sure you are taking care of your people. People engaged in the work of an organization help move the mission forward. An organization's valuable workers may include paid employees, volunteers, interns, and independent contractors. Each type of worker has a role and legal compliance considerations.

1. MINIMUM WAGE & OVERTIME

A. Minimum wage

Most employees must be paid the minimum wage for all "hours worked." "Hours worked" means all time during which an employee performs work for the benefit of the employer. This includes time spent opening or closing a business and required meetings and training. Also included is time spent by an employee voluntarily continuing to work on an assigned task at the end of a shift or on a day off. All work time must be paid for by the employer.

For 2024, the Washington State Minimum Wage is \$16.28 per hour, higher than the federal minimum wage of \$7.25 per hour. Employers are required to pay employees the more favorable (i.e., higher) of the state and federal minimum wage. Several counties and cities throughout Washington State have enacted local minimum wage ordinances. Employers need to know what minimum wage applies to their employees.

Minimum Wages Around Washington

Cities can set minimum wages higher than the state. SeaTac, Seattle, and Tukwila have higher wages, and the hyperlinks below connect to resource pages for each city.

SeaTac: [Employment Standards Ordinance](#)

Seattle: [Minimum Wage Ordinance](#)

Tukwila: [Minimum Wage and Fair Access to Additional Hours of Work](#)

B. Overtime

Most employees who work more than 40 hours in a 7-day work week must be paid overtime compensation for all hours worked over 40 hours. For every overtime hour worked, the employee must be paid 1.5 times the employee's regular rate of pay. An employee's "regular rate" is not necessarily the same as an employee's fixed or straight time rate. The regular rate includes all compensation for employment paid to the employee divided by the number of hours worked in the week for which the compensation was intended. Payments such as commission payments, premium pay, and non-discretionary bonuses are included in the regular rate. Discretionary compensation, expense reimbursements, and pay for unworked time (e.g., holiday, vacation, sick pay) does not need to be included when calculating the regular rate.

C. Exempt

State and federal law provides exemption from overtime pay for employees employed as bona fide executive, administrative, professional, or outside sales employees. To qualify for the exemption, employees must meet certain tests regarding their job duties and be paid on a salary basis. Job titles do not determine exempt status. In order for an exemption to apply, an employee's specific job duties and salary must meet all of the requirements.

Paying an employee on a salary basis requires that the employee receive a predetermined amount of pay on a weekly basis, regardless of the quantity or quality of the hours worked. Current (as of October 2023) state law increases the minimum salary requirement incrementally until it reaches 2.5 times the state minimum wage in 2028. Effective January 1, 2024, the rule increases the minimum salary required for the executive, administrative, and professional exemptions under state law as follows:

- Employers with 50 or Fewer Employees: \$1302.40 per week
- Employers with 51 or More Employees: \$1302.40 per week

Please reference the Washington State Department of Labor & Industries [Salary Threshold Implementation Schedule](#) for the overtime exempt minimum salary threshold projections through the year 2028.

In addition to the salary basis requirements, exempt employees must also meet duties requirements. State and federal duties tests differ slightly, and employers must comply with both. The three most commonly applied exemptions are the executive, administrative, and professional exemption, which are outlined below in Chart A.

State and federal law also provide exemptions for certain other categories of employees. Employers should consult with legal counsel when making a decision whether to classify an employee as exempt from overtime.

Employers are not required to pay employees a higher rate of pay to work on holidays or weekends. Employers are not required to pay employees severance pay.

CHART A: COMMON EXEMPTIONS

Executive exemption	Administrative exemption	Professional exemption
<i>An employee must:</i>	<i>An employee's primary duty must:</i>	<i>An employee qualifies if the employee:</i>
<ul style="list-style-type: none"> <input type="checkbox"/> Have the primary duty of managing the enterprise in which the employee is employed or of a customarily recognized department or subdivision. <input type="checkbox"/> Customarily or regularly direct the work of two or more full time employees or their equivalent; and <input type="checkbox"/> Have the authority to hire, fire, promote, or demote other employees or have particular weight given to suggestions and recommendations as to such decisions. 	<ul style="list-style-type: none"> <input type="checkbox"/> Involve office or non-manual work directly related to the management or general business operations of the employer or its customers. Examples provided in the regulations include work in areas such as finance, accounting, budgeting, auditing, quality control, purchasing, marketing, personnel management, public relations, and database administration; and <input type="checkbox"/> Exercise discretion and independent judgment with respect to significant matters. 	<ul style="list-style-type: none"> <input type="checkbox"/> Has a primary duty of performing office or non-manual work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction, and whose duties require consistent exercise of discretion and judgment; or <input type="checkbox"/> Has a primary duty requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Job duties fact sheets and case studies are available on the [Washington Department of Labor & Industries Overtime Rules Resources page](#).

2. HIRING PROCESS

Nonprofits offer unique and meaningful work opportunities. There are many employer compliance requirements to complete when bringing a new worker onboard, so take the time to prepare for their arrival.

A. At-will employment

Washington State recognizes the doctrine of at-will employment. At-will employment means that employees can quit whenever they want and the employer may terminate employees whenever it wants, provided there is no contract or agreement to the contrary. All employees are at-will employees unless the employer has taken affirmative steps to change the status. The majority of employees should be employed on an at-will basis to provide the employer with flexibility and to minimize cost.

Employers should have a policy confirming at-will employment. Sample at-will employment policies are provided in the resources accompanying this guide.

B. Employment verification

Employers must have all employees hired complete the Form I-9. The Form I-9 is used to verify the identity and employment authorization of individuals hired for employment in the United States. Federal regulations require an employer to retain a Form I-9 for each employee hired for three years after the date of hire, or one year after the date employment ends, whichever is later. Additional information on the Form I-9 is available on the [U.S. Citizenship and Immigration Services webpage – I-9, Employment Eligibility Verification](#) – including blank forms and documents for download.

3. NON-EMPLOYEES: INTERNS, VOLUNTEERS, AND INDEPENDENT CONTRACTORS

As a nonprofit considers their workers, there may be questions about what qualifies as a volunteer, intern, employee, or independent contractor. It is important to properly identify the type of worker. For example, misclassifying employees as independent contractors can expose an employer to liabilities from unpaid minimum wages and overtime pay to federal, state, and local tax withholdings.

A. Unpaid interns

The law narrowly limits an employer's ability to use unpaid interns. The U.S. Department of Labor looks at seven factors for evaluating whether an unpaid intern's status is valid, and an employer should examine to what extent:

1. An understanding exists between the intern and employer that there is no expectation of compensation – any promise of compensation, stated expressly or implied, suggests the intern is an employee.

2. The internship provides training that would be similar to an educational environment.
3. The internship is tied to the intern's formal education program by integrating the experience with coursework or academic credits.
4. The internship accommodates the intern's academic commitments by corresponding to the academic calendar.
5. The duration of the internship is limited to the period in which the intern receives beneficial learning.
6. The intern's work complements, instead of displaces, the work of paid employees while providing significant educational benefits to the intern.
7. The intern and employer understand that the internship is conducted without entitlement to a paid job at the end of the internship.

Both the U.S. Department of Labor and Washington State Department of Labor & Industries have additional resources related to unpaid internships.

- U.S. Department of Labor: [Internship Programs Under the Fair Labor Standards Act](#)
- Washington State Department of Labor & Industries: [Unpaid Internships 101](#)

B. Volunteers

The Washington State Department of Labor & Industries defines a volunteer as someone who freely gives their time and talents without expectation of pay. In addition, a volunteer can only volunteer at an educational, charitable, religious, state or local government, or nonprofit organization. Each volunteer should sign a document confirming volunteer status, which includes an acknowledgement of no pay.

C. Independent contractors

An "independent contractor" is a person or business that performs services for an organization under a contract between the parties, with the terms spelled out such as duties, pay, the amount and type of work, and other matters. An independent contractor pays their own Social Security and taxes, and is not eligible for retirement or health benefits.

Individual workers hired to perform functions essential to your organization's primary purpose, who work full or part-time under the employer's control, and who do not provide similar services for other organizations are **not likely** to qualify as independent contractors. The U.S. Department of Labor evaluates independent contractor status based on the following factors. No single factor is regarded as more important than another.

1. Extent to which the worker's services are an integral part of the employer's business.
2. Permanency of the relationship.
3. Amount of the worker's investment in facilities and equipment.
4. Nature and degree of control by the principal.
5. Worker's opportunities for profit and loss.

6. Level of skill required in performing the job and the amount of initiative, judgment, or foresight in open market competition with others required for the success of the claimed independent enterprise.

Misclassifying employees as independent contractors can expose an employer to liability for unpaid minimum wage and overtime, sick and vacation pay, workers' compensation premiums, federal, state and local income tax withholdings, Social Security and Medicare contributions, unemployment, insurance, taxes, and benefits. There may be penalties under state and federal law for misclassification.

Note: The City of Seattle has issued new rules governing organizations hiring independent contractors called the [Independent Contractors Protections Ordinance](#) that will be effective on September 1, 2022. Communities Rise will have resources on the Independent Contractors Protections Ordinance on their [resources web page](#).



Staffagories – A nonprofit worker sorting activity

Instructions:

- Think about each member of your team and sort the individual workers into a specific Staff or Non-Staff category.

Write down the worker’s name and at least one reason why this person is properly categorized.

STAFF

Non-exempt	Exempt		
	Executive	Administrative	Professional

NON-STAFF

Interns	Volunteers	Independent Contractors

4. PAYROLL

An employer must establish regularly scheduled paydays at least once a month. When an employee has ceased working for an employer, the employer must pay the final wages due at the end of the established pay period. Payment must be made by midnight on the payday. If mailed, the paychecks must be postmarked on the payday. If payment is made using direct deposit, funds must be available on the established payday.

5. ANTI-DISCRIMINATION LAWS

Federal law prohibits employment discrimination based on the following covered bases: race, color, creed, religion, sex (including pregnancy-related discrimination), national origin, age, disability, genetic information, and military or veteran status. Washington's anti-discrimination laws protect the same characteristics as federal law and also extend protections based on veteran and marital status, sexual orientation, and political activities. Federal law ([Title VII of the Civil Rights Act of 1964](#)) applies to employers with 15 or more employees. [Washington's Law Against Discrimination](#) applies to employers with eight or more persons.

6. LEGAL CHECKLIST: EMPLOYMENT LAW

If YES, date sent or reviewed	NO	ITEM
EQUAL OPPORTUNITY		
		Our organization does not discriminate in employment on the basis of race, color, creed, religion, sex (including pregnancy-related discrimination), national origin, age, disability, genetic information, military or veteran status, marital status, sexual orientation, and political activities.
WORKERS COMPENSATION		
		Our organization has evaluated whether it wishes to provide workers compensation coverage for volunteers. If our organization elected to provide this coverage, it has timely notified the Director of the Washington State Department of Labor & industries of its intent to do so and is making the required contributions.
TYPES OF WORKERS		
		Our organization is confident that it has properly categorized volunteers, independent contractors, employees, and interns, and is treating workers appropriately for their category.
		Our organization is confident it has properly classified employees as either exempt or non-exempt and is treating them appropriately for their category.
ORGANIZATIONS WITH STAFF		
LABOR PRACTICE		
		If our organization's staff members work overtime or have unusual hours, we are complying with wage and hour standards that govern overtime.
		Our organization has considered whether it should adopt written personnel policies that include, for example, a description of employee benefits, a process for handling a harassment complaint or other grievances, termination procedures, the process for performance management or employee reviews, and other employment practices.

WORK ELIGIBILITY

		Our organization verifies that all employees are eligible to work in the United States by having all employees complete Form I-9, which the organization retains on file for three years after the date of hire or one year after the date employment ends, whichever is later.
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FEDERAL REQUIREMENTS

		Our organization withholds federal income and FICA taxes from employees' paychecks, deposits these withheld funds, along with the employer's share of FICA taxes, with the IRS on a regular basis, and files a Form 941 quarterly with the IRS.
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		Our organization prepares Form W-2 for employees and Form 1099 for any independent contractors.
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STATE REQUIREMENTS

		Our organization has registered with the Washington State Departments of Labor & Industries (L&I) and Employment Security Department (ESD). Our organization makes quarterly payments to ESD for unemployment insurance and makes quarterly payments to L&I for workers compensation insurance.
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1. Federal, state, and in some cases local law regulates employers’ pay practices and policies. Washington employers must comply with federal, state, and local law.
2. Employers should understand the basis for at-will employment. Employers must also verify the work eligibility of employees with a Form I-9.
3. Nonprofits need to make sure non-employees, such as interns, volunteers, and independent contractors, are treated consistent with the law to avoid incurring liability.
4. Employees must be paid at least once a month on a regularly scheduled payday. Payroll taxes must be withheld and paid to the IRS. The IRS is very strict on payroll taxes and will hold individual board members liable for unpaid payroll taxes.
5. Federal and state law prohibit discrimination across a wide array of characteristics.



Here are some questions to think about:

- Do the workers at your nonprofit reflect the people you serve or the people most affected by the issues your organization is working to address?
- Do you thoroughly review the job duties of worker opportunities to ensure they are properly classified? For current workers, do you reassess their job classifications when their job duties or wages change to verify they are still classified correctly?

Reflections



Next steps:

- ❑ Go deeper into nonprofit employment and lifecycle of workers with Nonprofit Association of Washington’s [Workers in Nonprofits](#) guide. Explore the guide and download useful resources and tools, including the Overtime Salary Threshold tool.
- ❑ Learn more about independent contractors through the following resources from the Washington State Department of Labor & Industries.
 - [Independent Contractor Guide: A Step-by-Step Guide to Hiring Independent Contractors in Washington State](#)
 - [Employer Services Independent Contractor e-Learning Resource](#)
 - [Independent Contractors: Workers’ Compensation, Personal Labor Test, & 6-Part and 7-Part Tests](#)