

September 17, 2019

Joshua Grice & Allison Drake, Rulemaking contacts
Washington State Department of Labor and Industries (L&I)

Via email EAPRules@Lni.wa.gov

WSHA Comments on Proposed Rule re Executive, Administrative, and Professional (“EAP”) and Outside Salesperson Exemptions (CR-102 Published at WSR 19-15-035; continuance of WSR 19-12-102)

Dear Mr. Grice and Ms. Drake,

On behalf of our 103 hospital and health system members, the Washington State Hospital Association appreciates the opportunity to comment on the proposed rule dated June 4 concerning Executive, Administrative, Professional (EAP) and Outsides Sales (WAC 296-128-500 through WAC 296-128-545).

We write to underscore the comments and concerns our members raised in feedback sessions. Our members employ tens of thousands of Washingtonians across a spectrum of settings, from large, multi-center facilities in urban areas to small, single-site locations in the most remote places in the state. Strong employment relationships fortify the communities our members operate in and are critical to delivering the best possible health care to patients.

We support the Department’s efforts to align the state’s “primary duty” tests with federal requirements. Operating in the exceedingly complex health care industry makes us acutely aware of the risks of confusing, if not potentially conflicting, obligations. We appreciate and support Washington EAP rules that encourage administrative efficiency and compliance, and which avoid creating confusion between the two sets of rules.

We have concerns regarding the establishment and levels of the proposed “salary threshold” criteria to qualify as an exempt employee. We support the comments and concerns submitted by the Association of Washington Business on this issue. In particular, we recommend the Department delay its setting of salary threshold criteria until the United States Department of Labor finalizes its rule addressing the minimum compensation levels required for the white-collar exemptions. The threshold levels in the proposed rule are significantly higher than existing federal levels and we believe if adopted, could create significant negative consequences for our state. Our specific concerns include:

- **Establishment of the proposed thresholds would financially harm and disadvantage our state’s hospitals compared to other states that follow the federal thresholds.** The majority of hospitals in this state are either not-for-profit hospitals or public entities, many of which already operate with financially unhealthy or even negative operating margins. The proposal would increase costs for hospitals, further complicating their ability to sustainably provide care in their communities. Rural hospitals would be particularly impacted by the thresholds as they do not reflect the lower costs and prevailing wages that exist in more rural areas. The

proposal would also impact our academic medical centers, making it more difficult for them to provide and compete with other states for positions based on grant funding.

- **The proposed rule may have unintended counter-productive effects on workforce development, employee satisfaction and employment relations.** Members have indicated they will need to reclassify some employees who currently meet the duty requirements to non-exempt status and manage overtime obligations because a salary increase to the prescribed threshold level is not feasible for the position. The affected employees will lose flexibility, autonomy and responsibility associated with exempt status. Elimination of this category of mid-level exempt positions would likely be perceived by employees as a demotion and may create an unintended barrier to what has been a valuable pathway to career advancement and tool for workforce development. While the Department has tried to quantify the benefit to employees of additional overtime payment in the cost-benefit analysis, we received no feedback from members to suggest exempt employees were being denied any benefits. Additionally, we do not believe the Department has adequately studied the potential loss in benefits to employees (including non-financial benefits such as flexibility and lifestyle) as a result of necessary reclassifications that would occur under the proposed rule.

If you have questions, please contact Andrew Busz, Policy Director, Finance.

Sincerely,



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