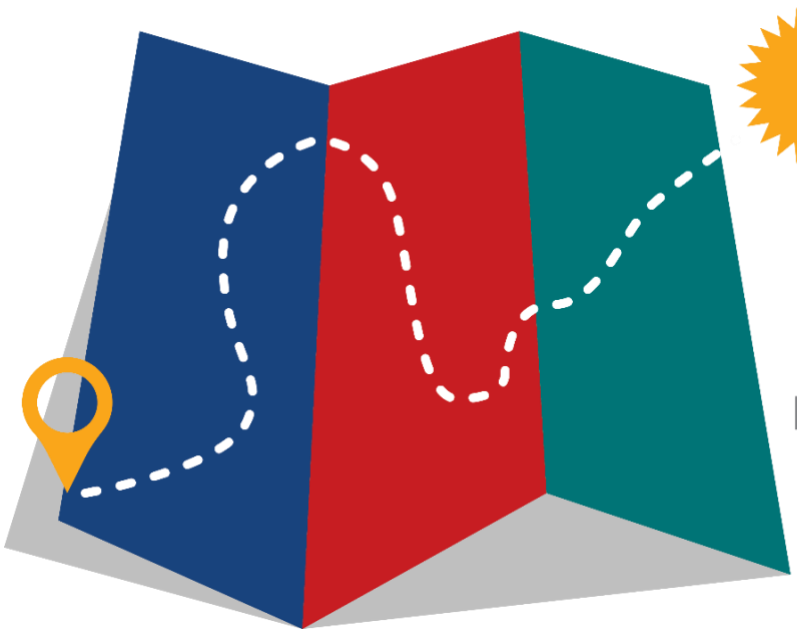

NONPROFIT LABOR & INDUSTRIES NAVIGATOR

Find your way through the worker-related rules to ensure the people delivering your mission are safe, healthy, and secure.

Nancy Bacon CONSULTING

revolutionizing the role that learning plays in the nonprofit sector

Washington State Department of Labor & Industries

In partnership with the Department of Labor & Industries for employer outreach and education.

The fine print: *Nonprofit Labor & Industries Navigator* resources are designed for educational purposes only. They center on nonprofit corporations that are 501(c)3s and are not intended to be inclusive of all laws related to all types of nonprofits. *Nonprofit L&I Navigator* covers high level information that relates to the core functions of most nonprofits, not their specific line of work. We have provided links throughout the guide to help you consult Washington State Department of Labor & Industries (L&I) about your specific situation. We strongly encourage you to access the information and services provided through L&I.

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About Nonprofit Labor & Industries Navigator

Who it is for

This resource is for nonprofits in Washington with staff and those which engage non-staff people to work on their behalf, such as independent contractors, volunteers, and interns. In some cases, the rules specify that they govern 501(c)3s; other nonprofits should seek additional information to clarify if those rules relate to them. *We encourage employers outside of the nonprofit sector to use other resources that may include additional topics relevant to them.*

At the top of each chapter, we tell you who that chapter applies to.

Employees (including paid interns)

Independent contractors

Volunteers & unpaid interns

If you are an all-volunteer organization, you can focus on Chapter 1 (overview of agencies), Chapter 3 (safety and health), and Chapter 4 to decide if you want to provide workers' compensation for your volunteers. **If you have staff or work with independent contractors**, you'll need to pay attention to topics throughout the resource. Remember, nonprofits change as they grow. You are on a journey through your organization's life cycle. *Make sure you check back regularly to ensure you are still following the right rules for your organization.*

How to use this resource

At the start of each chapter, we give you an overview that contains three types of information:

Know

This is a high level overview of what you need to know about this topic. **When you are done, return to this list to check for understanding.**

Do

This is a list of what you need to do to stay compliant in Washington State. **Use this list to check that you are doing the right thing. Add key steps to your workflow or calendar.**

Pay attention!

This is a list where many nonprofits get into trouble. **Make sure you know what you need to do… and are doing what you need to do to avoid these pitfalls!**

Chapter 1: Washington State agencies

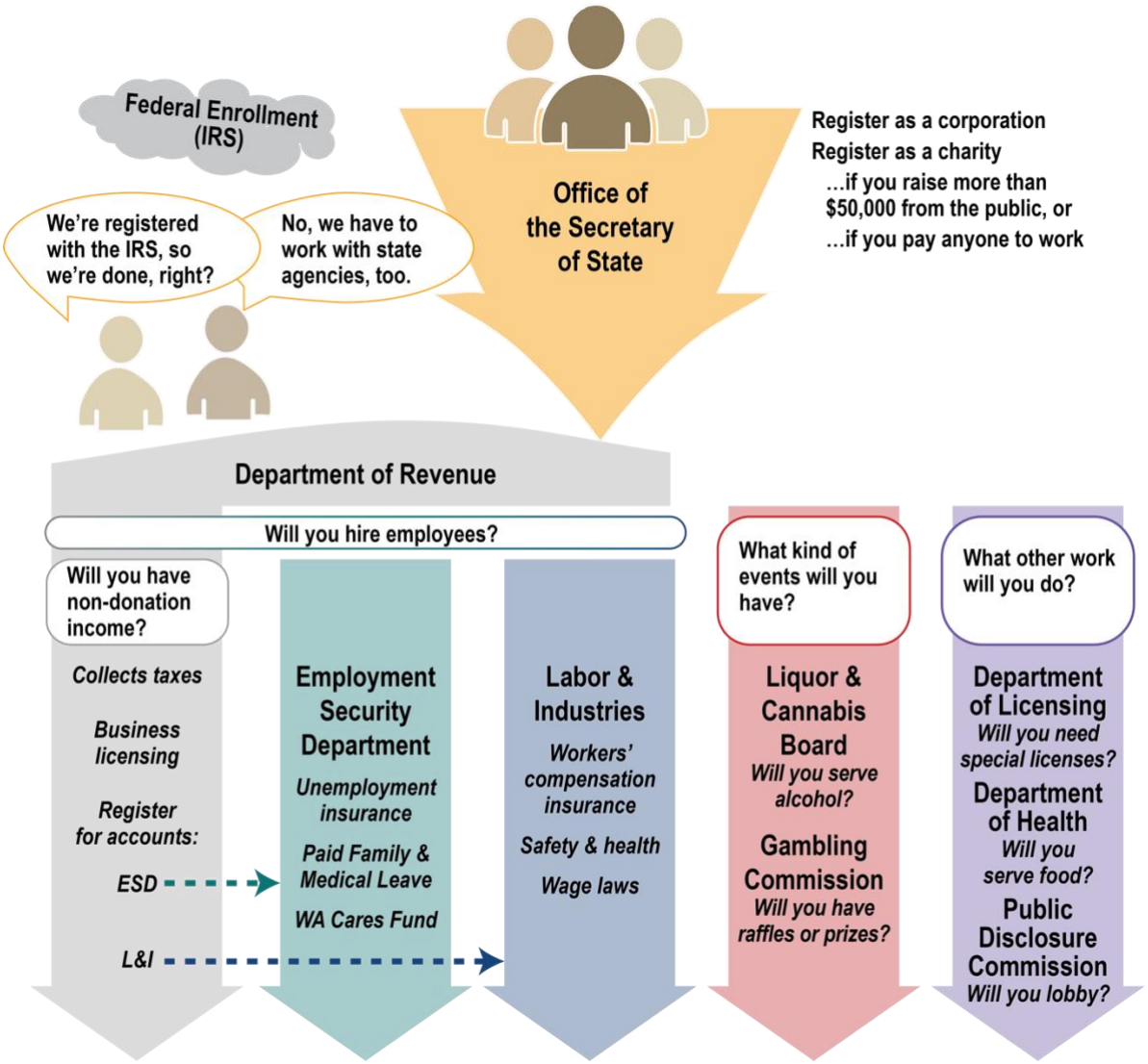
We know that it can be hard to decipher how to stay compliant with the various Washington State agencies that govern the work of nonprofit organizations. Let's be clear from the start:

Most state laws regulating businesses apply to nonprofits. Your state nonprofit corporation status or your federal IRS 501(c)3 status do not exempt you from state taxes, labor laws, or other laws.

A nonprofit's Washington State agency map

Let's explore some of the state agencies that your organization might be working with.

A short video that explains this diagram is available on the Nonprofit Navigator website. Go to https://nonprofitlearning.center/LNI and look for ***A Tour of State Agencies***.



Washington State Department of Labor & Industries

Washington State Department of Labor & Industries | *In partnership with the Department of Labor & Industries for employer outreach and education.*

Nonprofit Labor & Industries Navigator is focused on the laws and practice of the Washington State Department of Labor & Industries (L&I). We will focus on L&I for the rest of this guide.

About L&I

The Washington State Department of Labor & Industries (L&I) protects workers. It ensures workers have appropriate work conditions and do not experience harmful situations. It sets standards related to safety and health. Because the best-intended work conditions can still result in accidents, L&I serves as a public insurance provider, covering medical costs and lost wages. Think of L&I as a worker advocate, safety patrol, and insurance agent all in one agency.

How to contact L&I

www.Lni.wa.gov
19 regional offices
(360) 902-5800
(800) 833-6388

State small business (and nonprofits) guidance
business.wa.gov/guide
(800) 917-0043
help@business.wa.gov

L&I small business (and nonprofits) liaisons
Lni.wa.gov/SmallBusiness
smallbusiness@Lni.wa.gov
(800) 987-0145

Glossary

We will be using these words throughout this guide. It is important that we are clear on their definitions. *Note that these terms are not necessarily legal definitions, but they are an attempt to make them universally understandable.*

Employee/worker: A worker is anyone you employ to perform work for your organization. These individuals must be paid at least minimum wage and receive all the protections under the Minimum Wage Act (defined below).

> **Temporary worker:** A worker who is hired to fill a position on a non-permanent basis. Usually the duration of employment is for a fixed period of time. A temporary worker is often hired to cover for an absent employee or for a specific project. Temporary workers are generally covered by labor laws regarding minimum wage, workplace safety, and workers compensation.

Caution: Temporary Workers

Be careful that you classify temporary workers correctly. It is tempting to pay short-term workers a stipend as you might an independent contractor. Don't do that. For people hired for a limited period of time, the accounting requirements are the same as a long-term employee in Washington State, including all protections other full-time, regular employees are entitled to.

Examples of misclassified temporary workers:

- Nonprofit client who is paid a stipend to clean (but doesn't work as a cleaner elsewhere)
- Nonprofit volunteer who is paid a stipend to fill in once for a staff member out sick

Both of these people should have been paid an hourly wage as a temporary worker.

> **Part-time worker:** A worker who works less than 40 hours per week per agreement with the employer. This person can either be salaried or hourly. It is important to know that worker-related rules are shaped around a 40 hour work week. There is no pro-rating of threshold amounts or workers' comp requirements in cases of part-time work.

Consider this example: An Executive Director is contracted to work 20 hours. They are paid $40,000 to do this, an amount under the exempt threshold. They are considered not-exempt from overtime. What do you need to know?

- Overtime is only over 40 hours of work in a work week. Technically the Executive Director, if paid by salary, does not need to be paid for extra hours worked if it falls under the 40 hours.
- Wages must at least cover minimum wage.
- Workers' comp is paid for actual hours worked or at an estimated hours level of 160 hours per month.

Independent contractor: A person who is: (1) engaged in independent, self-employment (as in their own business), (2) contracted to do a piece of work according to their own methods, (3) free from direction and control, AND (4) properly registered and operating as an independent business. An Independent Contractor is not one simply because they say they are.

In Washington, independent contractors must pass a six-point test (saying yes to all points):

1. Are they free from your supervision, direction, or control?
2. Is the individual's business different and separate from your own?
3. Does the individual have an established independent business that existed before you brought them on—or—does the individual have a principle place of business that qualifies for an IRS business deduction?
4. Is the individual responsible for filing a schedule of expenses with the IRS, such as would be part of a business tax return?
5. Does the individual have all required registrations and licenses for their business?
6. Does the individual maintain his/her own set of book and records that reflect all income and expenses of the business?

A short video that explains the 6-point test is available on the Nonprofit Navigator website. Go to https://nonprofitlearning.center/LNI and look for ***What is an independent contractor?***

In what ways are employees and independent contractors different?

https://Lni.wa.gov/insurance/insurance-requirements/independent-contractors/

L&I provides a 20-page guide that outlines the differences between employees and independent contractors. Here are key differences:

- You can direct how work happens with an employee—you can't with independent contractors.
- An independent contractor is a separate business. It may hire people or bring in special equipment based on what the work requires. It has all its required business licenses and pays state and federal business taxes. It has multiple clients, not just your organization.

You are responsible for making sure an individual entity that calls itself an independent contractor is actually one based on the law. Misclassifications are typically discovered through injuries, wage claims, DOSH site visits, general public referrals, and unemployment and other filings. You don't want to owe penalties and back taxes because of an incorrect categorization.

Intern: A person who engages in work-related learning for a limited period of time to gain hands-on work experience. Interns are often involved with a formal educational program, receiving credit toward a degree or certificate. Nonprofits are encouraged to document the intern's learning plan to ensure clear communication.

The nonprofit sector has both paid and unpaid interns.

Paid intern: An individual who receives regular wages for their intern work. The intern must receive at least minimum wage and all applicable employment laws would apply. A paid intern is an employee from the perspective of L&I.

Unpaid intern: An individual who does not receive regular wages for their intern work. The intern is not considered an employee in terms of employment law. Working for credit towards completing a school program, certification, or degree in return for their services allows them to be unpaid.
Please note: Compensation not intended to be a wage such as a stipend or reimbursement for expenses may be acceptable.

1. Make sure you have a clear paper trail, such as a intern position description, written description of educational purpose, and signed statement that they understand that they are offering their services without compensation, or volunteering. You want to protect your organization should an unpaid intern file for unemployment or file a wage complaint.

2. Be careful that the intern's work is distinct from a staff member doing the same work. You may not let go of a paid staff member and replace that individual with an unpaid intern.

Minimum Wage Act (RCW 49.46): Establishes a minimum wage for Washington State workers. It also requires employers to pay overtime for hours worked over 40 per workweek, provide paid sick leave, and pay tips and service charges to workers. The Minimum Wage Act also prohibits employers from retaliating against a worker for exercising any of their rights under this law. Lni.wa.gov/minimum-wage

Volunteer: A person who freely gives their time and talents without expectation of pay. Volunteers may be provided a stipend or nominal fee. However, if they are paid for their services beyond reimbursement for expenses, reasonable benefits or a nominal fee, they are employees and not volunteers. The value of anything given must be evaluated against the labor provided to make sure minimum wage laws were met. See page 7 for more information on stipends and gifts.

Number of hours worked: Used in pay, overtime, leave and workers' compensation calculations, the number of hours worked is based on actual hours worked. For workers' compensation, employers have the option to report 160 hours/month for salaried workers.

Hourly workers	Salaried workers
Actual hours worked (regular and overtime) Does not include vacation, sick, holiday hours Most be supported by daily time records	Actual hours worked OR assumed 160 hours/month **The same method must be applied to all salaried workers.**

Exercise

Which terms listed in this glossary relate to your organization? Circle them.

Do you have questions about any of these words that you hope to have answered by the end of this guide? Write them below.

Caution: Interns who receive stipends or gifts

Nonprofits often have a fixed amount of money to spend on a project. An organization might consider engaging an intern and providing them a stipend, such as giving an intern $1,500 to complete a research project. In another case, a nonprofit may want to acknowledge the work of an intern and decide at the end of a project to give that intern a $500 gift card.

BEWARE!

Stipends given to volunteers to cover expenses, as modest honorariums, or as token gifts, are acceptable in most cases. However, if the stipend resembles payment in consideration of the work provided, like a wage, the stipend may lead to the volunteer being considered an employee. Generally, employees are entitled to workers' compensation insurance, minimum wage and overtime, paid sick leave, and other worker benefits.

There is no definitive threshold for when a stipend would be viewed as employee compensation; the facts are considered on a case-by-case basis to account for the realities of the situation. If the individual (a) views the engagement as a paid work opportunity, (b) receives a stipend amount that represent a wage to them, or (c) receives stipends at regular intervals like paychecks, the arrangement may well have moved the individual from "volunteer" to "employee" status.

A gift is treated much like a stipend. It has monetary value. If is resembles a payment or is in anyway determined to reflect the amount of work expended, it may be considered compensation, thus making the intern entitled to workers' compensation.

If you're unsure about a particular situation, you can email L&I for a determination **regarding whether workers' compensation coverage would be required. Write to** determinations@lni.wa.gov**.**

Chapter 2: Work Standards

Labor & Industries administers state law, providing a foundation of work standards that serve workers and guide employers. These standards fall into three general categories: pay, non-working time, and work conditions.

This chapter is for:

- ☐ Nonprofits with employees (including paid interns)
- ☐ Nonprofits with independent contractors

WORK STANDARDS OVERVIEW

Know	Do	Pay attention!

There are three main categories of standards set by Labor & Industries:
 	
1. **Pay standards**, which includes minimum wage and overtime.
 	
2. **Non-wage time standards**, which includes comp time, breaks, and paid leave.
 	
3. **Work condition standards**, which includes protections for isolated workers and work restrictions.
	☐ Categorize the people doing the work appropriately.
	  ○ Employees (hourly vs. salary)
	  ○ Non-employees (independent contractors, unpaid interns, and volunteers)
	If employees:
	☐ Pay at least the **minimum wage**.
	☐ Pay **overtime** to non-exempt employees.
	☐ Provide **breaks**, as defined by the law.
	☐ Provide **leave**, as defined by the law.
	☐ **Pay employees** on a regular schedule.
	☐ Keep accurate **records**.
		• Independent contractor status is NOT a path to saving your nonprofit money. Pay close attention to the definitions!
		• Make sure you are staying current on overtime exemption rules and rates.
		• Classification of people working for your organization is important. You have two high level categories: staff and non-staff. Staff is then broken down into exempt and non-exempt.

1. Pay standards

Labor & Industries sets minimum pay standards. They do this in two ways:

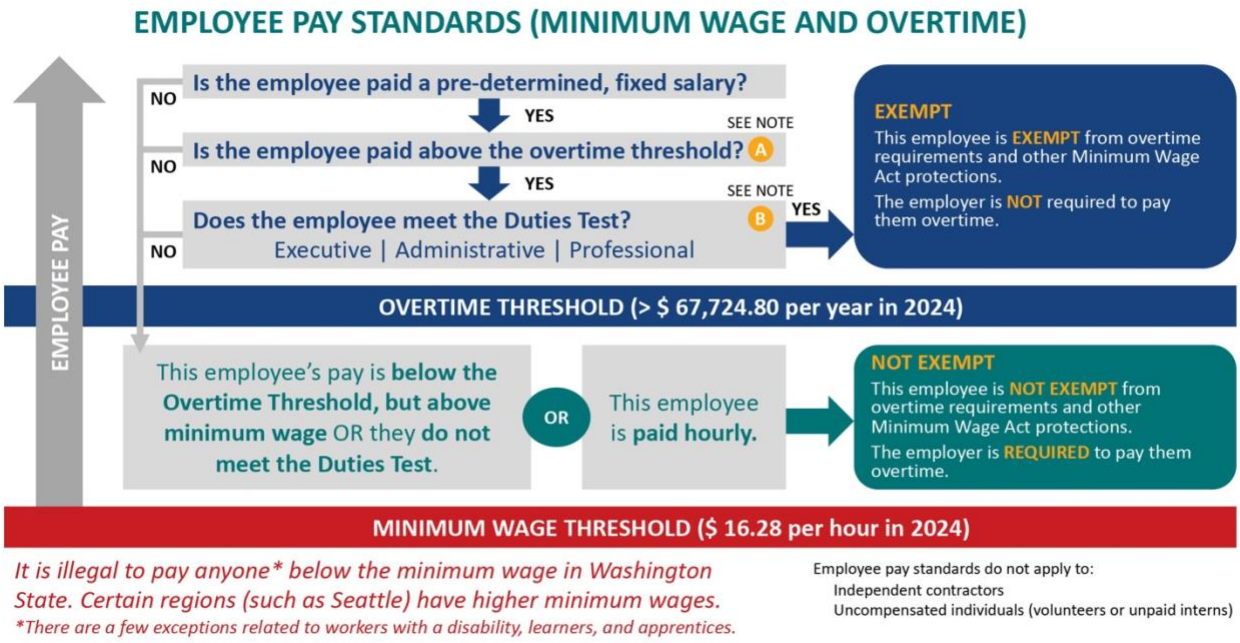
(1) setting an **hourly minimum wage**, and

(2) creating a threshold below which a worker must earn **overtime** pay if working more than 40 hours, regardless of their job duties.

Your job as an employer is to meet these standards. The diagram below gives you an overview of what these standards are.

A short video that explains this diagram is available on the Nonprofit Navigator website. Go to https://nonprofitlearning.center/LNI and look for ***Understanding Pay Thresholds***.

EMPLOYEE PAY STANDARDS (MINIMUM WAGE & OVERTIME)



A. Pay thresholds

The "Salary threshold implementation schedule" on the following page shows how the minimum salary has increased since 2020. The minimum salary for overtime is based on a multiple of the minimum wage. That multiple is being phased in over time until 2028, when it will be set at 2.5 of that year's minimum wage. The minimum salary for overtime for the following year will be announced by L&I each September 30, at the same time it announces the new minimum wage.

Benefits, bonuses, and commissions don't count towards salary thresholds.

Salary threshold implementation schedule

Original L&I PDF available at this link: https://lni.wa.gov/forms-publications/F700-207-000.pdf

		2020	2021	2022	2023	2024	2025	2026	2027	2028
For small employers with 1-50 employees	Multiply minimum wage by...	1.25x	1.5x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x
	Projected salary Weekly threshold (Annual)	$675 ($35,100.00)	$821.40 ($42,712.00)	$1,014.30 ($52,743.60)	$1,101.80 ($57,293.60)	$1,302.40 ($67,724.80)	$1,337.60* ($69,555.20)	$1,538.10* ($79,981.20)	$1,568.70* ($81,572.40)	$1,780.00* ($92,560.00)
For large employers with 51 or more employees	Multiply minimum wage by...	1.25x	1.75x	1.75x	2x	2x	2.25x	2.25x	2.5x	2.5x
	Projected salary Weekly threshold (Annual)	$675.00 ($35,100.00)	$958.30 ($49,831.00)	$1,014.30 ($52,743.60)	$1,259.20 ($65,478.40)	$1,302.40 ($67,724.80)	$1,504.80* ($78,249.60)	$1,538.10* ($79,981.20)	$1,743.00* ($90,636.00)	$1,780.00* ($92,560.00)

Note 1: The asterisks on the salary thresholds after 2024 are projections based on forecasted changes in the Consumer Price Index. These projections have been updated from previous versions.

Note 2: This table does not apply to computer professionals paid by the hour who have higher minimum wage multipliers.

B. Duties test

While there are five categories of white collar workers who can be exempt from overtime and other Minimum Wage Act protections if they meet the duties test, we left out computer professionals and outside salespeople below to focus on jobs more common in nonprofits.

Executive exemption	**Administrative exemptions**	**Professional exemptions**
Example: Executive Director, Program director	Example: Finance, accounting, insurance, quality control, procurement, marketing, safety and health, HR	Example: Lawyer, doctor, religious leader, scientist, actor, musicians, writers
All of these must be true: ☐ Compensated on a salary basis not less than the state's minimum exempt salary for that year. ☐ Primary duty is managing the organization or managing a recognized department or subdivision. ☐ Direct the work of at least two or more other full-time employees or their equivalent; and	All of these must be true: ☐ Compensated on a salary basis not less than the state's minimum exempt salary for that year. ☐ Primary duty must be the performance of office or non-manual work directly related to the management or general business operations of the organization.	All of these must be true: ☐ Compensated on a salary basis not less than the state's minimum exempt salary for that year. ☐ Primary duty must be the performance of work requiring advanced knowledge, defined as work which is predominantly intellectual in character, and which includes work requiring the consistent exercise of discretion and judgement.

Executive exemption	Administrative exemptions	Professional exemptions
☐ Have the authority to hire, fire, advance, promote, or otherwise change the status of other employees, or have particular weight in someone else's such actions.	☐ Primary duty includes the exercise of discretion and independent judgement on matters of significance.	☐ Advanced knowledge must be in a field of science or learning and involve a prolonged course of specialized intellectual instruction *A creative exemption exists for duties requiring the performance of work requiring invention, imagination, originality of talent in a recognized artistic field.*

Caution: It is tempting to rush to judgement that people earning more than the annual threshold fall into one of these exemptions. They often do not with careful reading of the duties test rules.

You can find the L&I policies with the exact wording of the duties tests on their website: https://lni.wa.gov/workers-rights/workplace-policies/administrative-policies
For each exemption, they've provided several examples and interpretations.

Other pay-related rules

- Employees must be paid regularly, at least monthly, on a schedule that they know.
- Employers can't mandate wage/salary secrecy.
- Employers can't ask for salary history from applicants.
- There are no state rules related to how nonprofit employers schedule employees for work shifts.

Communicating Salary Information

Washington law sets a standard for communicating salary ranges: All employers with 15 or more employees must include in a job posting, the wage scale or salary range, a general description of all benefits, and a general description of other compensation. In the nonprofit sector, good practice is to **state a salary range in any job posting, no matter the size of your organization.** This ensures that people know what they are applying for.

Volunteering for the organization you work for

Nonprofits have paid and unpaid (volunteer) workers, so it can happen that one person wants to be both a worker and a volunteer. This is dangerous territory for a nonprofit because of the general idea that all hours worked must be paid. If an employee who also volunteered becomes disgruntled, they might argue that they were encouraged to volunteer and that those hours should be compensated.

Conditions related to workers volunteering for the nonprofit that employs them:

- **Voluntary Basis**: The work must be offered freely and without pressure or coercion from the employer.
- **Different Services**: Employees may not volunteer to do the same type of work for which they are employed. For example, a paid administrative assistant at a nonprofit should not volunteer additional hours to perform administrative tasks.
- **No Expectation of Compensation**: Volunteers should not expect to be paid for their services, except for reimbursement for expenses.

Scenario 1: A non-exempt staff member works a full schedule within a 40 hour cap of time. There is no budget for overtime work. This staff member wants to attend evening board meetings to talk about their program and listen to board conversation. Given the budget cap, they are willing to be paid only for their presentation. They will consider the rest of the time at the board meeting as volunteer service. What should the Executive Director do?

The work is the same type of work for which this worker will be paid. They should be paid for whole board meeting or leave after their presentation.

Scenario 2: A non-exempt staff member works within an animal shelter processing the paperwork for dogs and cats as they arrive into the shelter. They love this work because they get to be a part of the system that results in animals finding their forever home. They decide to volunteer after work exercising and socializing the shelter animals, something the shelter needs help with.

The work is different. Admin work is different from caring for dogs and cats. It is acceptable that this person volunteers in this way, as long as they continue to be doing it voluntarily and without expectation of compensation.

Best Practices for Nonprofits

- **Documentation**: Keep clear records distinguishing between hours worked as an employee and time volunteered.
- **Policies**: Implement volunteer policies that outline the nature of volunteer work, ensuring it is distinct from employment duties.
- **Compliance**: Regularly review documentation, policies, and practices to ensure that your organization is compliant with worker-related laws.

Exercise: Classifying the people who deliver your mission

You now know how to classify the people working with and for you. Use the chart below to test your knowledge. (1) Write the rule that pertains to that category. (2) Write down the names of people who fit into that rule.

	EMPLOYEES			
	Non-exempt	**Exempt**		
		Executive	Administrative	Professional
1	Rule:	Rule:	Rule:	Rule:
2	Names:	Names:	Names:	Names:

	NON-EMPLOYEES		
	Unpaid interns	**Volunteers**	**Independent contractors**
1	Rule:	Rule:	Rule:
2	Names:	Names:	Names:

2. Non-wage time standards

There are three types of non-wage time standards to know about:

A. Compensatory time ("comp time")
B. Breaks
C. Leaves

A. Comp time

It is common in nonprofits to work long hours to get through a deadline or an event and then take time off once it is over. The time you take to compensate for overworking is called “comp time.” First, “comp time” as an exchange for extra hours worked only relates to exempt staff. **Non-exempt employees must be paid for their extra hours worked.** If you choose to give non-exempt employees time off, it must be an addition to their overtime hours being compensated.

Comp time for exempt employees is a different matter. These individuals aren’t (typically) paid for extra hours worked, so they may want to bank these hours for a time outside the current pay period. This is legal. However, employers have been sued when employees aren’t given what they believe was promised. *Employers are encouraged to keep the use of comp time within the pay period.*

B. Breaks

Employees have a right to breaks from work. In general, these include rest, meal, and bathroom breaks.

- Employees must get 10 minutes paid rest break, free from duties, for every four (4) hours worked. Breaks must happen as close to the midpoint of the four hours as possible, not within the last hour. Employees cannot waive their rest breaks.
- Employees cannot be required to work more than 3 hours without a rest break.
- Employees must be provided “reasonable access” to bathrooms and toilet facilities, unrestricted to any time schedule.
- Employees must receive a meal period of at least 30 minutes for every 5 hours worked. Meal periods are unpaid *as long as the break is duty free*. Employees must be paid for meal breaks if they are required to remain on duty, remain on the premises, or if their break is interrupted.

https://Lni.wa.gov/workers-rights/workplace-policies/rest-breaks-meal-periods-and-schedules

C. Leave

Employees in Washington have access to many kinds of leave. Some of these leaves are governed by L&I. Others are governed by other agencies, such as Employment Security Department or the Office of the Attorney General. Some are federal laws. Some are leave policies set at the employer level, such as vacation and holiday leave, which are not enforced by L&I.

Leave rules reference the number of hours worked. Remember to revisit the “Number of hours worked” definition on page 6 if you need to refresh your memory on this calculation.

Common leaves taken in Washington

Leave	What it is	How it works
Paid sick leave (L&I)	Paid sick leave for employees to care for the health of themselves and their families. It can be used for: • For a mental or physical illness, injury, or health condition or if you need a medical diagnosis or preventative medical care. • If a family member (see below) needs care for a mental or physical illness, injury, or health condition, or needs a medical diagnosis or preventative medical care. • If your workplace or your child's school or place of care has been closed for any health-related reason by order of a public official. • If you are absent from work for reasons that qualify for leave under the state's Domestic Violence Leave Act (DVLA).	All employees accrue one hour of sick leave for every 40 hours worked. It does not need to be cashed out or paid when employment ends. Employers must: • Provide notice to your employees of their sick leave rights by their first day of employment. • Include part-time and temporary employees. • Allow employees to carry forward no fewer than 40 hours of unused accrued time to the next year. • Reinstate unused accrued sick leave if the employee leaves *and returns* to the same employer within 12 months. *While accrual starts on the first day, employers can require 90 calendar days to have passed before paid sick leave is available to use.*
Family care act leave (L&I)	Paid leave for care of a qualifying sick family member.	Employee can use their choice of earned paid leaves (vacation, PTO, PSL, etc.) to care for qualifying family members. Must have paid leave benefit.
Paid family and medical leave (Employment Security Dept.)	Family and medical leave insurance program to provide paid family leave for the birth/placement of a child, care of a family member who has a serious health condition, and for a qualifying exigency under the federal family and medical leave act. Also provides paid medical leave for an employee's own serious health condition.	Employee must have worked 820 hours in approximately the last 12 months for a Washington-based employer. Employees pay for the program through payroll deduction. Employers with 50+ employees also contribute.
Domestic violence leave (L&I)	Ability to use paid leave, if available, or unpaid leave for domestic violence, sexual assault or stalking, for self or family member.	
Pregnancy leave (WA Human Rights Commission)	Unpaid leave in the case of a woman being affected by pregnancy and its related conditions (deliveries, miscarriages, abortions, etc.), treating such cases in the same manner as any other temporary disability for insurance and other employee benefit purpose.	Leave is granted per recommendation of a health provider. An employer cannot discriminate in hiring based on pregnancy status.

Leave	What it is	How it works
Disability leave (WA Human Rights Commission)	Leave resulting from a physical or mental impairment that substantially limits one of more major life activities	Employee provides medical certification. Employers must attempt to accommodate the disability.
Military leave (Office of the Attorney General)	Unpaid leave for deployment, training, or any other absence due to a military order	Leave is granted with advance notice of service. An employer cannot discriminate in hiring based on military status.
Military spouse leave	Unpaid leave for spouse or state registered domestic partner to spend time with a spouse/partner on active duty call or order	Up to 15 days

More information about these and other leaves: https://Lni.wa.gov/workers-rights/workplace-complaints/protected-leave-complaints

https://www.wanonprofitinstitute.org/wp-content/uploads/2021/07/WIN-leave_reference_guide-2021.pdf

Exercise

We just reviewed three non-working time standards: comp time, breaks, and leave. Which of these should you spend more time with to ensure you are following the law?

Name your next steps.

3. Work condition standards

Washington has other worker standard rules and restrictions. Three that relate to many nonprofits are:

A. Uniforms
B. Employment/competition restrictions
C. Isolated worker protections

A. Uniforms

There are two kinds of dress code related to employment: uniforms and general dress codes. Uniforms typically identify the employee with a specific employer or have the employer's logo on them. General dress code isn't as specific, such as a white top and dark pants. **Employers are required to pay for uniforms.** Employers are not required to pay for general dress code clothing.

B. Employment/competition restrictions

Nonprofit staff sometimes take a second job or do consulting outside of their nonprofit employment. **Employers can't restrict these types of activities unless they are paying the employee more than 2x minimum wage, or $32.56/hour or $67,725/year (2024).**

There are rules that govern non-complete agreements. More information can be found here: https://Lni.wa.gov/workers-rights/workplace-policies/non-compete-agreements

C. Isolated worker protections

While isolated worker protections are not *regulated* in the kind of work most nonprofits do, it is good practice to follow the regulations for other industries if you have individuals who work in exposed situations. This might include a front desk receptionist working outside the line of sight of others or a workshop instructor who teaches a night class and is alone in the space after hours.

- Adopt a sexual harassment policy
- Provide anti-harassment and assault prevention training
- Provide information about available resources and protections for reporting violations
- Provide a panic button to isolated workers

4. Recordkeeping

There are three kinds of employee-related records to pay attention to:

A. Personnel records
B. Payroll records
C. Pay stubs

A. Personnel records

Personnel records detail an employee's performance, knowledge, skills, abilities, and behavior as they relate to their job. Federal law requires employers to keep employees' personnel files for at least three years plus year to date. Personnel records are kept for business or legal purposes.

Personnel records include:

- Worker qualifications (hiring records, past experience, academic information, etc.)
- Verification of training completed
- Job descriptions
- Supervisor's files
- Performance evaluations (including disciplinary actions, corrective action plans, etc.)
- Records subject to reference for information given to persons outside the business

Two important notes:

- The Americans with Disabilities Act (ADA) prohibits employers from keeping medical information in an employee's personnel record.
- Employees and former employees have a right to access their own personnel files at least once a year. Employers must allow access to any or all of an employee's records within 10 business days at the employee's usual place of employment, or a mutually agreed upon location. Employees under criminal investigation do not have the right to access their personnel record.

Independent Contractor Records

Make sure you are keeping documentation related to how your independent contractors qualify as such. Should you be audited up to three years from now, you may need to show proof on how a contractor passes the six-part test listed on page 5.

B. Payroll records

Payroll records include:

- Full name
- Home address
- Occupation
- Date of birth (for employees under 18)
- Employment start date
- Time of day and day of week the employee's workweek begins

- Actual hours worked on a daily and weekly basis
- Rate(s) of pay
- Total wages earned (including straight time*, overtime, piece work units earned, and bonuses)
- Addition to or deductions from wages
- Paid sick leave (1 hour per 40 hours worked)
    - Amount accrued
    - Amount used
    - Balance remaining

You must keep additional records if you have employees under 18. Follow this link to see the rules: https://Lni.wa.gov/workers-rights/youth-employment/how-to-hire-minors

How long do you need to keep personnel records?

Three years plus year to date. Employees have the right to request copies of these records at any reasonable time. The employer can keep the records in either an electronic and/or written format.

C. Itemized pay statement ("Pay stubs")

Itemized pay statements, commonly known as "pay stubs," are a record of a worker's earnings in a pay period. Pay stubs must be provided either electronically or on paper each payday. If an employee cannot receive an electronic pay statement, then the employer must provide a written one.

Employers must include the following details on each pay stub:

- The pay basis (e.g., hours or days worked, piece rate basis, or salary).
- Rate or rates of pay.
- Gross wages.
- All deductions for that pay period.
- Paid sick leave
    - Amount accrued
    - Amount used
    - Balance remaining

Exercise

We just reviewed three work condition standards: uniforms, restrictions, and isolated worker protections. Which of these should you spend more time with to ensure you are following the law?

Name your next steps.

* Hours paid at the regular, non-overtime wage.

Chapter 3: Safety and health

Safety and health standards administered by Labor & Industries are another way that we uphold a high level of worker standards and keep people ready and able to achieve our mission. There are many reasons why a nonprofit should pay attention to these rules. One financial reason? When you prioritize safety and health, you help keep claim costs down by minimizing incidents and illnesses.

This chapter is for all nonprofit workers, paid or not.

SAFETY AND HEALTH OVERVIEW

Know	Do	Pay attention!
There are four safety and health topics to know. 1. Having a **safety and health culture** is the cornerstone to a safe and healthy workplace. 2. There are actions that your organization must take to **follow the law**. 3. An **Accident Prevention Program** is your written plan. All nonprofits are required to have one. 4. Labor & Industries' Division of Safety and Health (DOSH) conducts **inspections** and provides **consultations** to support an effective safety and health system among nonprofits and businesses.	☐ Determine whether your organization must have a safety committee or can discuss safety during existing meetings. Make sure your safety committee or general safety meetings are at least once a month. ☐ Write an Accident Prevention Program for your organization and keep it up to date. ☐ Make sure your board talks about safety and health regularly. We recommend at least twice a year on your board agenda. ☐ Request a consultation from DOSH.	• Accident Prevention Program is required by law. If you are inspected and do not have one, you may be fined.

A short video that explains these concepts is available on the Nonprofit Navigator website. Go to https://nonprofitlearning.center/LNI and look for **5 Safety Rules You Should Know**.

1. Safety and health culture

Culture is the way a group of people does things. It includes the systems of knowledge shared by this group, as well as the values, beliefs, attitudes, and roles individuals take within the group. Your organization has a culture. You work within a larger culture that impacts your ability to do your work.

Key culture questions:

- ☐ How does your organization's leadership (board and executive director) show their commitment to safety and health?
- ☐ What evidence of a commitment (papers, signage, equipment, etc.) would an inspector find while looking around your space?
- ☐ How do people behave related to safety and health? Do they talk about it? Follow the rules?
- ☐ What underlying values, beliefs, or assumptions guide safety and health behavior? How does it show up?

2. Safety and health law

The Core Safety and Health Rules cover (but are not limited to) these actions:

1. Talk about safety regularly through a **safety committee or in safety meetings** on at least a monthly basis.

   Safety committee: Required for employers with 11 employees or more.

   Safety meeting: An option for employers with 10 or fewer employees or employers with 11 employees or more who are segregated on different shifts or work in dispersed locations

   Keep minutes from your past 12 meetings.

   We know that many nonprofits are run by volunteers. Talking about safety and health matters no matter who is doing the work. While Safety and Health rules refer to "employees," you are encouraged to apply these rules whether your operation is run by employees or volunteers.

2. Have a current **Accident Prevention Program (APP)**. This is a written document, required by state law, that describes your prevention and response plan related to accidents. We describe this more in the next section (page 24).

Work-from-home APP rules

The necessity for an APP applies to all work environments, including work-from-home arrangements. The underlying principle remains that employers are responsible for ensuring a safe and healthy work environment, even when that environment is a remote or home office. This means that the APP should be adaptable to cover work-from-home scenarios.

3. Have a **safety bulletin board**. This is where you make public your key documents and resources.
   - ☐ Accident Prevention Program
   - ☐ Safety meeting agenda/minutes

- ☐ List of Safety Committee members (if applicable)
- ☐ WISHA Job Safety and Health Law poster
- ☐ Emergency contact person's name, phone, and email
- ☐ Emergency phone numbers
- ☐ Location of first aid kit
- ☐ Accident, Incident & Injury reporting forms

4. Provide **first aid materials**, which includes regular training.
   - ☐ Document your nearest clinic or hospital. If Emergency Medical Technicians (EMT) services can't reach your organization within four minutes, provide adequate first-aid training for someone to provide on-site first aid. NOTE: Having trained personnel on site could be the difference between life and death in the event of an on-site medical emergency. You are encouraged to have at least one person onsite trained in first aid.
   - ☐ OSHA requires that emergency personnel can reach a site with high injury likelihood within 3 to 4 minutes. If your worksite is an office (or similar) with a low emergency likelihood, EMT services must be able to reach you within 15 minutes.
   - ☐ Stock first aid supplies in a readily accessible place.
   - ☐ Find a list of First Aid kit contents here: https://app.leg.wa.gov/wac/default.aspx?cite=296-307-03920.

5. Provide **fire extinguishers** appropriate to the kinds of fires that you are likely to face:
   - ☐ Class A: Paper & wood
   - ☐ Class B: Flammable and combustible liquids (gas, diesel, paint thinners)
   - ☐ Class C: Electrical fire
   - ☐ Class K: Kitchen greases

   Fire extinguisher training: If you intend for your employees or volunteers to use a fire extinguisher (as opposed to evacuating the premises in the case of a fire), train them how to use them. Otherwise, awareness training suffices. Fire departments usually conduct fire extinguisher training.

For a complete list of Core Safety and Health Rules: https://Lni.wa.gov/safety-health/safety-rules/rules-by-chapter/?chapter=800

Exercise

We just listed five practices for you to follow: safety committee/meetings, Accident Prevention Program, safety bulletin board, first aid materials, and fire extinguishers. **Which of these do you need to implement or improve upon?**

3. Accident Prevention Program (APP)

An Accident Prevention Program is a written document that outlines your plan to avoid and respond to accidents. It is customized to your organization and situation. It is communicated to staff regularly at the time of hire and through regular meetings. It informs the work of your safety committee/meeting agenda. It should be regularly updated.

Elements to include in your Accident Prevention Program

- ☐ Name of the nonprofit organization
- ☐ Address covered by this Accident Prevention Program (you may need more than one APP if you have different facilities)
- ☐ Name of the person responsible for conducting safety orientations
- ☐ Phone and email of the person responsible for conducting safety orientations
- ☐ Name of the person to whom an injury or illness on the job should be reported
- ☐ Location of the first aid kit
- ☐ Name of person/people who are trained in first aid or CPR
- ☐ Location of the emergency phone number list
- ☐ Location of the building evacuation map
- ☐ What to do in a fire emergency
- ☐ Location of fire extinguishers
- ☐ Who is trained in the use of fire extinguishers
- ☐ What to do in an earthquake
- ☐ Where the emergency shutoffs are located
- ☐ Where to gather after an earthquake
- ☐ What to do in the event of violence or an active shooter
- ☐ Name of person responsible for drills or preparation in case of violence or an active shooter
- ☐ Name of person to whom hazards or unsafe practices should be reported
- ☐ Safety meeting policy (if you have 10 or fewer employees)
- ☐ Safety committee policy (if you have 11 or more employees)
- ☐ Additional areas of safety concern that apply to your facility and organization
    - ☐ Personal Protective Equipment (PPE)
    - ☐ Food Safety
    - ☐ Driving/Vehicle Operation
    - ☐ Burns and Scalds
    - ☐ Medications or Hazardous Substances
    - ☐ Safe Lifting
    - ☐ Slips and Falls
    - ☐ Electrical Hazards
    - ☐ Cut Prevention/Knife Safety
    - ☐ Heavy Equipment Use

See examples of Accident Prevention Programs: https://Lni.wa.gov/safety-health/preventing-injuries-illnesses/create-a-safety-program/accident-prevention-program.

4. DOSH consultations and inspections

There are two main reasons why you would interact with DOSH, L&I's Division of Occupational Safety and Health: consultations and inspections.

1. Consultations

DOSH offers three kinds of consultations to help organizations be pro-active in getting feedback and support. Consultants are available to you to help you understand and comply with workplace safety and health rules.

Three free and confidential consultation services are available to you:

- Safety & Health
- Ergonomics
- Risk management

For more information or to schedule a consultation, go here: https://Lni.wa.gov/Consultation.

In addition to being free and confidential, **no fines or penalties will result from issues uncovered during a consultation**.

2. Inspections

DOSH regularly inspects nonprofits and businesses to ensure the effectiveness of the safety and health system in Washington State. These inspections can occur as a general review of organizations or when prompted by a complaint or injury and are **unannounced**. It is good practice for your organization to be ready.

Ways to be ready:

- ☐ Be prepared to show how your organization is following Core Safety and Health Rules as listed on page 22.
- ☐ Be prepared to show your organization's Accident Prevention Program.
- ☐ Ensure that your employees know about the APP, have received safety training, and operate in compliance with the requirements.

Exercise

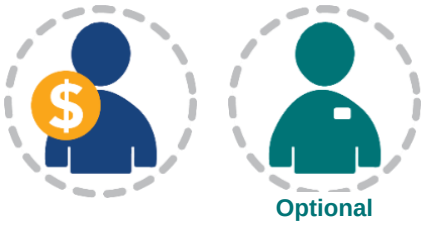
We just reviewed two ways that you might interact with DOSH—invite them or expect a visit. Which of these should you spend more time with? Should you schedule a consultation? What can you do to ensure you are ready for an inspection?

Chapter 4: Workers' Compensation

Labor & Industries has a system ready to help your employees heal and return to work should an accident happen.

This chapter is for:

- ☐ Nonprofits with compensated staff
- ☐ Nonprofits with volunteers who elect to have workers' compensation coverage in case of injury



Optional

WORKERS' COMPENSATION OVERVIEW

Know	Do	Pay attention!
1. All paid staff members are covered by workers' compensation. *Volunteers can be covered for medical coverage (not wage replacement).* 2. Workers' comp funds medical costs and wage replacement. 3. Your employer premiums are based on a formula: experience factor x base rate x number of hours worked.	☐ Register through the Department of Revenue Secure Access Washington portal. ☐ Keep current records for 3 years plus year-to-date. ☐ Report quarterly by due dates: ○ April 30 ○ July 31 ○ October 31 ○ January 31 ☐ Stay involved if a worker files a claim.	• Risk classifications can be challenging to understand. • Nonprofits must register for workers' compensation if they have staff.

Helpful resource: *Employers' Guide to Workers' Compensation Insurance* https://www.Lni.wa.gov/forms-publications/F101-002-000.pdf.

What is workers' compensation?

Workers' compensation is a public insurance system. It is "no fault," meaning that neither the employer nor employee can sue the other for negligence as a condition of participation in the program.

1. Who is covered

Covered workers ALWAYS include:

- Regular employees
- Temporary or casual workers

Covered workers MAY include:

- Volunteers of 501(c)3 organizations

About Independent Contractors

It is with workers' compensation that it is really important that you are correct in your classification of independent contractors. If you have misclassified an individual as an independent contractor when they are really an employee, you risk steep fines and potentially the full cost of the claim if it is discovered through a claim or audit.

Covering Volunteers

Workers' compensation is an inexpensive way to provide insurance coverage for your volunteers should they get injured. Because they are unpaid, workers' compensation only covers medical costs, not wage replacement and vocational services.

The 2024 base rate is $0.0726 per hour. The base rate would then be modified by the organization's experience factor, which for most nonprofits is a modest adjustment.

https://Lni.wa.gov/insurance/rates-risk-classes/risk-classes-for-workers-compensation/risk-class-lookup#/details?code=6901

You must cover all or none of your volunteers. You cannot select one type of volunteer. For example, a food bank that chooses to cover its volunteers would be covering those volunteers working on the floor of the food bank and its volunteer board members. You will need a good record-keeping system in place. You will need names of all volunteers covered and their hours, or the organization can choose to report 100 hours per year per volunteer.

To elect volunteer coverage, submit an "Application for Elective Coverage of Excluded Employment" (F213-112-000).

https://Lni.wa.gov/insurance/insurance-requirements/volunteers/#who-can-cover-volunteers

2. What is covered

Workers' compensation covers:

- **Medical costs** for the injured worker
- **Wage replacement** while the injured worker is out of work
- **Vocational services and disability payments**, where applicable

Hours calculated

- Salaried worker (full or part-time): Assumed160 hours/month, or actual hours worked
- Hourly worker: Actual hours worked

3. Employer risk rates

You can imagine two nonprofits. One is a **small food bank** open two afternoons a week. The other is a **food warehouse** where large pallets of food are moved around with forklifts and pallet jacks. Should they pay the same amount of workers' compensation insurance for the people doing their work?

No, because workers face different levels of risk.

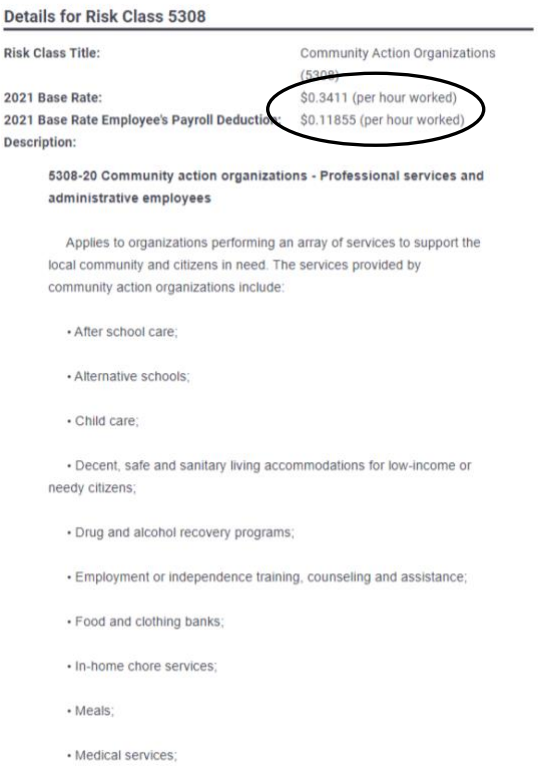
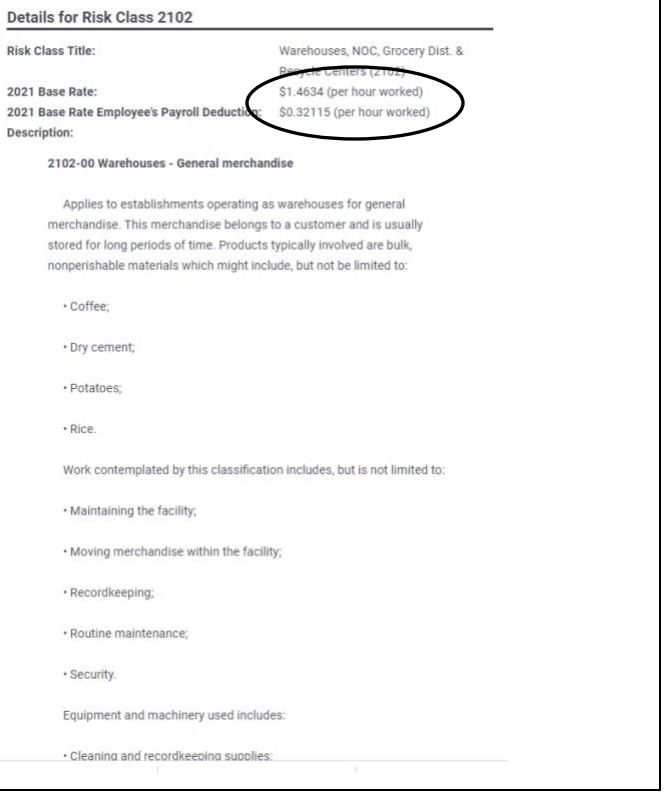
Workers' compensation rates recognize that different organizations do different work. They also reflect your track record related to claims.

Your nonprofit premium rate = Base rate × Experience factor × Hours worked

The Nonprofit Navigator website features a short video that explains risk rates. Watch **How Workers' Compensation risk rates are calculated** at https://nonprofitlearning.center/lni-riskrates/

Base rate	**Experience factor**
General for a risk class	*Specific to your organization*
Based on the work that your organization does. Includes 4 funds: accident, medical aid, stay at work, and supplemental pension fund. In some cases, you can divide an employee's hours between classifications if they split their time across multiple work types. More information here: https://app.leg.wa.gov/WAC/default.aspx?cite=296-17-31017. Accurate time and activity records must be maintained in all cases.	Starts with factor of 1.0. < 1.0 means that you have a better than average workers' comp claims history. > 1.0 means that you have had compensable claims that have required more than just payment of medical costs, so ones that have included wage replacement and/or disability payments. Fluctuates year-to-year based on your track record.

Let's compare the examples from our story. See the two base rates that apply.

Food bank	**Food warehouse**
	

4. Recordkeeping

You are required to keep records for the **current year and three previous years**.

Employment records to keep:

- Worker name, address, and social security number
- Daily time records (required for all hourly workers)
    - Timecards must track hours worked in each class (or all of the hours worked in that quarter must be reported in the highest risk class)
- Dates of hire and termination
- Basics of pay and rate, work week
- Summary of hours worked each quarter
- Worker's total gross pay, withholdings, and net pay

Financial and tax records to keep:

- Check register and canceled checks or bank records if bank online
- Bank statements
- Unemployment insurance reports (Employment Security)
- Department of Revenue reports
- IRS returns and forms (W-2, 941,1099, 990)

Corporate records to keep:

- Articles of Incorporation
- Bylaws, minutes of meetings

Independent contractors

- Legal name
- UBI number
- Certificate of Workers' Comp Coverage
- Written contracts
- Invoices
- Other documentation supporting independent contractor status

Labor & Industries conducts audits to ensure the integrity of the system. You can be ready for an audit by ensuring you are current in your recordkeeping.

5. Reporting

Quarterly reports and premiums are due four times per year:

- By April 30 for January 1-March 31
- By July 31 for April 1-June 30
- By October 31 for July 1-September 30
- By January 31 for October 1-December 31

https://www.Lni.wa.gov/insurance/quarterly-reports/file-quarterly-reports/

6. Work injury claim

After all our work trying to avoid accidents, it could happen that someone gets injured. Workers' compensation exists in Washington to protect workers and employers when this happens!

The work injury claim process:

1. Worker seeks medical attention from the medical provider of the worker's choice within one year of accident or two years of recognition of occupational disease (examples of this include asthma, carpal tunnel syndrome, or noise-induced hearing loss)
2. Medical provider and worker complete "Report of Accident"
3. Medical provider submits report to L&I
4. L&I notifies employer of claim
5. Employer fills out "Employer Report of Accident"

The employer's role during a claim:

- Communicate with worker.
- Communicate with medical provider. (Employers are entitled to all medical records related to a claim.)
- Communicate with L&I claim manager.

Consider taking advantage of the L&I Return to Work programs:

- **Get guidance** through the *Early Return to Work* program. To limit the impact of a claim on your rates, encourage and facilitate an employee's return to work as soon as medically appropriate.
- **Receive reimbursement incentives** through *Stay at Work* light duty work assignment

More information is available about these programs from L&I at https://www.lni.wa.gov/claims/for-employers/employer-incentives/

Work injury claim

The worker may seek the provider of choice for their first visit after an accident. After that, they must be seen by a doctor in the L&I network. Use the search function on the L&I website to find an L&I approved doctor: https://secure.Lni.wa.gov/provdir/.

Exercise

We just explained the steps involved with workers' compensation. Consider some questions about how you engage with it.

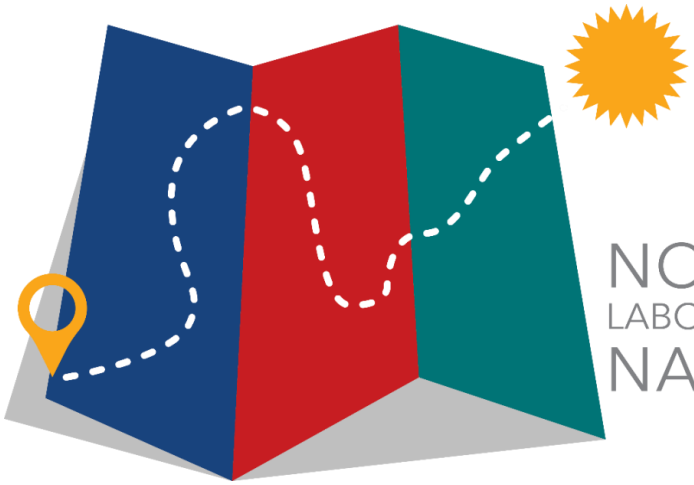
Would covering **volunteers** be a good idea for your organization? Do you ask volunteers to do work where injuries are likely? Would it be an added bonus that would help to attract volunteers?

Are there ways for you to improve your "**experience factor**" to reduce workers' compensation rates? What can you do to improve your safety rating?

Describe your system for **record-keeping**. What are ways that you can improve it?

Your Notes & Next Steps

Your Notes & Next Steps



NONPROFIT LABOR & INDUSTRIES NAVIGATOR

Washington State Department of Labor & Industries

In partnership with the Department of Labor & Industries for employer outreach and education.

Available from:

www.nonprofitlearning.center/LNI

También disponible en español | Also available in Spanish