

Exempt vs. Non-Exempt General Guidelines - California

Federal and state wage and hour laws require employers to pay minimum wages as well as overtime pay to some employees. Employees subject to these laws are called “non-exempt,” whereas employees to whom these provisions do not apply are called “exempt.” Distinguishing between these two classifications of employees is often not a simple job for an employer.

Important to remember:

- ◆ Titles are irrelevant. Simply calling someone a “manager” does not make him/her an exempt employee.
- ◆ Paying someone a salary does not automatically make the employee exempt - nor does the amount of money you pay matter. Don't assume that “hourly” means non-exempt and that “salaried” means exempt.
- ◆ An employee must meet both the federal and state exemptions in order to be truly exempt. Be careful since both sets of requirements are sometimes similar and sometimes quite different. This document summarizes how to classify someone as exempt in a manner that will meet both sets of requirements.

Who is exempt?

Under California and federal law, employees may be exempt from overtime pay provisions if they are employed in the following capacities and if their job descriptions meet the state's very narrow definition of the following job categories:

- ◆ executive
- ◆ administrative
- ◆ professional

The employee must:


1. earn a monthly salary equivalent to no less than two times the state minimum wage for full time (40 hours per week) employment;

AND

2. be "primarily engaged" (more than half of the employee's work time) in duties that meet the definition of exempt work. Details are provided on the next page.

NOTE: In addition to the more typical “white collar” exemptions under federal and state law, there are a number of special case exemptions (including computer professionals and salespersons). Please refer to our HR Info Bulletin entitled “Special Exemptions” for more details.

ANYONE NOT MEETING THE ABOVE REQUIREMENTS IS NON-EXEMPT!

 *If you are still unsure, give us a call. The laws contain specific guidelines for particular jobs, and we can provide you with more detailed information.*

Exempt vs. Non-Exempt

Rules for Classification - California

In California, employees may be exempt from overtime pay provisions if:

- ◆ they are paid a monthly salary equivalent to no less than two times the state minimum wage for full time (40 hours per week) employment; **AND**
- ◆ they can accurately be classified in one of the three following categories as defined by federal/state law:

An exempt **EXECUTIVE** employee must:

- ◆ have as his/her primary duty the management of the business or of one of its recognized departments or subdivisions; **AND**
- ◆ customarily and regularly direct the work of at least two full-time employees or their equivalent; **AND**
- ◆ have the authority to hire or fire other employees or have particular weight given to his/her suggestions and recommendations regarding the hiring, firing, advancement, promotion, or change of status of other employees; **AND**
- ◆ customarily and regularly exercise discretionary power; **AND**
- ◆ devote more than 50 percent of his/her work time to the activities described above.

An exempt **ADMINISTRATIVE** employee must:

- ◆ have as his/her primary duty the performance of office or non-manual work directly related to management policies or the general business operations of the employer or the employer's customers; **AND**
- ◆ customarily and regularly exercise discretion/independent judgment with respect to matters of significance; **AND**
- ◆ regularly and directly assist a proprietor or an exempt administrator **OR** perform, under only general supervision, work along specialized or technical lines requiring special training, experience or knowledge **OR** execute special assignments and tasks under only general supervision; **AND**
- ◆ devote more than 50 percent of his/her work time to the activities described above.

An exempt **PROFESSIONAL** employee must:

- ◆ be licensed or certified by the State of California and primarily engaged in the practice of law (lawyers, not legal assistants), medicine (physicians, not nurses), dentistry, optometry, architecture, engineering, teaching, accounting (CPAs only) **OR** primarily engaged in an occupation commonly recognized as a learned or artistic profession; **AND**
- ◆ customarily and regularly exercise discretion/independent judgment in performance of the above duties; **AND**
- ◆ perform work that is predominately intellectual and varied in character.

*Note: Licensed physicians or surgeons are exempt from overtime if their hourly pay is equal to or greater than \$69.13 during 2010 (adjusted annually). **Pharmacists and registered nurses are not considered exempt professionals; they may only be treated as exempt if they fit the definition of an exempt executive or administrative employee.

Please refer to our Info Bulletin entitled "Special Exemptions" for detailed information on learned or artistic professionals, as well as exemptions for computer professionals and salespersons.

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