

Special Exemptions Classification Rules - California

In addition to the more typical “white collar¹” exemptions under both federal and state law (“Executive, Administrative, and Professional” exemptions), there are a number of special exemptions. This document provides guidelines about some of the more commonly used special exemptions.

SALES: In general, the exemptions available for salespersons fall into one of the two following categories. Please keep in mind, however, that these sales exemptions are often misunderstood and misused by employers. In addition, there is significant deviation between federal and state regulations involving these exemptions. The following summarizes how to exempt salespersons from both federal and state law. For a more detailed discussion of the business implications of sales exemptions, please refer to our article, “Inside and Outside Sales Employees – Who is Exempt?”

An exempt **OUTSIDE SALESPERSON** must:

- ◆ be at least 18 years of age; **AND**
- ◆ devote more than 50% of his/her work time **away from the employer’s place or places of business** selling tangible or intangible items, or obtaining orders or contracts for products, services, or the use of facilities. Please note that work which is incidental to and/or in conjunction with outside sales does NOT count towards the 50% requirement. Examples of this type of work would include clerical activities such as drafting sales reports or booking appointments, as well as delivery, repair, or maintenance activities.

An exempt **INSIDE SALESPERSON** must:

- ◆ be employed by a company covered by the California Industrial Welfare Commission’s Wage Order 4 (Professional Services) or Wage Order 7 (Mercantile, i.e. retail and wholesale businesses); **AND**
- ◆ earn in excess of one and one-half times minimum wage; **AND**
- ◆ have more than 50% of his/her compensation for a representative period (not less than one month) be in the form of commissions of sales of goods or services.

¹ For details about the “white collar” exemptions, please refer to our HR Info Bulletin entitled “Exempt vs. Non-Exempt.”

An exempt **COMPUTER PROFESSIONAL** must:

- ◆ be compensated at a minimum hourly rate (\$37.94 per hour for 2010) **OR** on a minimum salaried basis (\$79,050 for 2010) which are established by the California Department of Industrial Relations; **AND**
- ◆ be engaged in work that is intellectual or creative **AND** requires the exercise of discretion and independent judgment; **AND**
- ◆ be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, OR² software engineering; **AND**
- ◆ have as his/her primary duty:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications; **OR**
 - The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; **OR**
 - The design, documentation, testing, creation or modification of computer programs related to machine operating systems; **OR**
 - A combination of the aforementioned duties, the performance of which requires the same level of skills.

No higher learning degree is required, although an individual who meets this exemption may have one. There is also no licensing or certification requirement, and any such license or certification alone will not guarantee this exemption.

This exemption described above will not apply to an employee if ANY of the following are true:

- The employee is a trainee or in an entry-level position, who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering;
- The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision;
- The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment;
- The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs, and who is skilled in computer-aided design software, including CAD/CAM, but who is not in a computer systems analysis or programming occupation;
- The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media, or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs; or

² This significant change, from “and” to “or” became effective in 2009. Previously, all of these stated conditions had to be met in order for a computer professional to be classified as exempt. Human Resource professionals should be sure to reevaluate the classification of computer professional in light of this.

- The employee is engaged in any of the exempt activities described on the previous page if those activities are for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.

An exempt **LEARNED OR ARTISTIC PROFESSIONAL** must:

- ◆ be compensated on a salary basis at a rate not less two times minimum wage; **AND**
- ◆ have as his/her primary duty the performance of work that either:
 - requires advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or study, as distinguished from a general academic education and from an apprenticeship and from training in the performance of routine mental, manual or physical processes. (“Learned Professional”); **OR**
 - is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination or talent of the individual (“Artistic Professional”); **AND**
- ◆ perform work that is predominately intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; **AND**
- ◆ consistently exercise discretion and independent judgment in the performance of the above duties.

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