



OVERTIME EXEMPTIONS – AN OVERVIEW *(as per California Department of Industrial Relations, 2018)*

Executive Exemption

A person employed in an executive capacity means any employee:

1. Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and
2. Who customarily and regularly directs the work of two or more other employees therein; and
3. Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and
4. Who customarily and regularly exercises discretion and independent judgment; and
5. Who is [primarily engaged in](#) duties, which meet the test of the exemption.
6. An executive employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in [Labor Code Section 515\(c\)](#).

With respect to the requirement that management duties must be exercised over the entire enterprise or a customarily recognized department or subdivision thereof, it is important to note that the phrase "customarily recognized department or subdivision thereof" has a particular meaning. The phrase is intended to distinguish between "a mere collection of employees assigned from time to time to a specific job or series of jobs" and "a unit with permanent status and function." Thus, in order to meet the criteria of a managerial employee, one must be more than merely a supervisor of two or more employees. The managerial exempt employee must be in charge of the unit, not simply participate in the management of the unit.

The [IWC Orders](#) require as a basic condition for the executive exemption that the manager must supervise two or more employees. This may be one full-time and two half-time employees. It has been the experience of the DLSE that a managerial employee supervising as few as two employees rarely spends as much as 50% of his or her time primarily engaged in managerial duties.

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the executive exemption, the most frequent cause of misapplication of the phrase "discretion and independent judgment" is the failure to distinguish discretion and independent judgment from the use of independent managerial skills. An employee who merely applies his or her memory in following prescribed procedures or determining which required procedure out of the company manual to follow, is not exercising discretion and independent judgment.

Administrative Exemption

A person employed in an administrative capacity means any employee:

1. Whose duties and responsibilities involve either:
 - a. The performance of office or non-manual work directly related to management policies or general business operations of his or her employer or his or her employer's customers, or
 - b. The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and
1. Who customarily and regularly exercised discretion and independent judgment; and
2. Who regularly and directly assists a proprietor, or an employee employed in a bona fide executive or administrative capacity, or
3. Who performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge, or
4. Who executes, under only general supervision, special assignments and tasks, and
5. Who is [primarily engaged in](#) duties which meet the test for the exemption.
6. An administrative employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in [Labor Code Section 515\(c\)](#).

Following are examples of employees who might qualify for the exemption if, and only if, they meet the criteria set forth above:

1. Employees who regularly and directly assist a proprietor or exempt executive or administrator. Included in this category are those executive assistants and administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers. Generally, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence and interviews must be delegated.
2. Employees who perform, only under general supervision, work along specialized or technical lines requiring special training, experience or knowledge. Such employees are often described as "staff employees," or functional, rather than department heads. They include employees who act as advisory specialists to management, or to the employer's customers. Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians. Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers. Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers, purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.
3. Employees who perform special assignments under only general supervision. Often, such employees perform their work away from the employer's place of business. Typical titles of such persons are buyers, field representatives, and location managers for motion picture companies. This category also includes employees whose special assignments are performed entirely or mostly on the employer's premises, such as customers' brokers in stock exchange firms and so-called "account executives" in advertising firms.

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance. With respect to the administrative exemption, this phrase has been most frequently misunderstood and misapplied by employers and employees alike in cases involving the following:

1. Confusion between the exercise of discretion and independent judgment, and the use of skill in applying techniques, procedures, or specific standards.
2. Misapplication of the phrase to employees making decisions relating to matters of little consequence.
3. Perhaps the most common misapplication is the application of the exemption to employees engaged in production aspects of the employer's business as opposed to administrative functions.

Caveat. As with any of the exemptions, job titles reflecting administrative classifications alone may not reflect actual job duties and therefore, are of no assistance in determining exempt or nonexempt status. The fact that an employee may have one of the job titles listed above is, in and of itself, of no consequence. The actual determination of exempt or nonexempt status must be based on the nature of the actual work performed by the individual employee.

Professional Exemption

A person employed in a professional capacity means any employee who meets all of the following requirements:

1. Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, or
2. Who is [primarily engaged in](#) an occupation commonly recognized as a learned or artistic profession. "Learned or artistic profession" means an employee who is primarily engaged in the performance of:
3.
 - a. Work requiring knowledge of an advance type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and 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, or work that is an essential part of or necessarily incident to any of the above work; or
 - b. Work that 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 employee or work that is an essential part of or necessarily incident to any of the above work; and
 - c. Whose work is predominantly 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.

4. Who customarily and regularly exercised discretion and independent judgment in the performance of duties set forth above.
5. Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in [Labor Code Section 515\(c\)](#).

Regarding the requirement for the exemption to apply that the employee "customarily and regularly exercises discretion and independent judgment," this phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered. The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.

For the learned professions, an advanced academic degree (above the bachelor level) is a standard prerequisite.

For the artistic professions, work in a "recognized field of artistic endeavor" includes such fields as music, writing, the theater, and the plastic and graphic arts.

Computer Professional

Except as provided below in paragraph 5, an employee in the computer software field who is paid on an hourly basis shall be exempt under the professional exemption, if all of the following apply:

1. The employee is primarily engaged in work that is intellectual or creative and requires the exercise of discretion and independent judgment.
2. The employee is primarily engaged in duties that consist of one or more of the following:
 - The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.
 - 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.
 - The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.
3. The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering. A job title shall not be determinative of the applicability of the exemption.
4. The employee's hourly rate of \$43.58 or annual salary of not less than \$90,790.07 for full time employment, and paid not less than \$7,565.85 per month [the rate in effect on 01/01/18]. The Division of Labor Statistics and Research shall adjust this pay rate on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers. Click here for adjusted rate information ([pdf](#)).
5. The exemption described above does not apply to an employee if any of the following apply:
 - a) The employee is a trainee or employee 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.
 - b) 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.
 - c) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.
 - d) 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.
 - e) 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.
 - f) The employee is engaged in any of the activities set forth in nos. 1 through 4 above for the purpose of creating imagery for effect used in the motion picture, television, or theatrical industry.

Outside Salesperson

Any person, 18 years of age or older, who customarily and regularly works more than half the working time away from the employer's place of business selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities.

https://www.dir.ca.gov/dlse/FAQ_OvertimeExemptions.htm