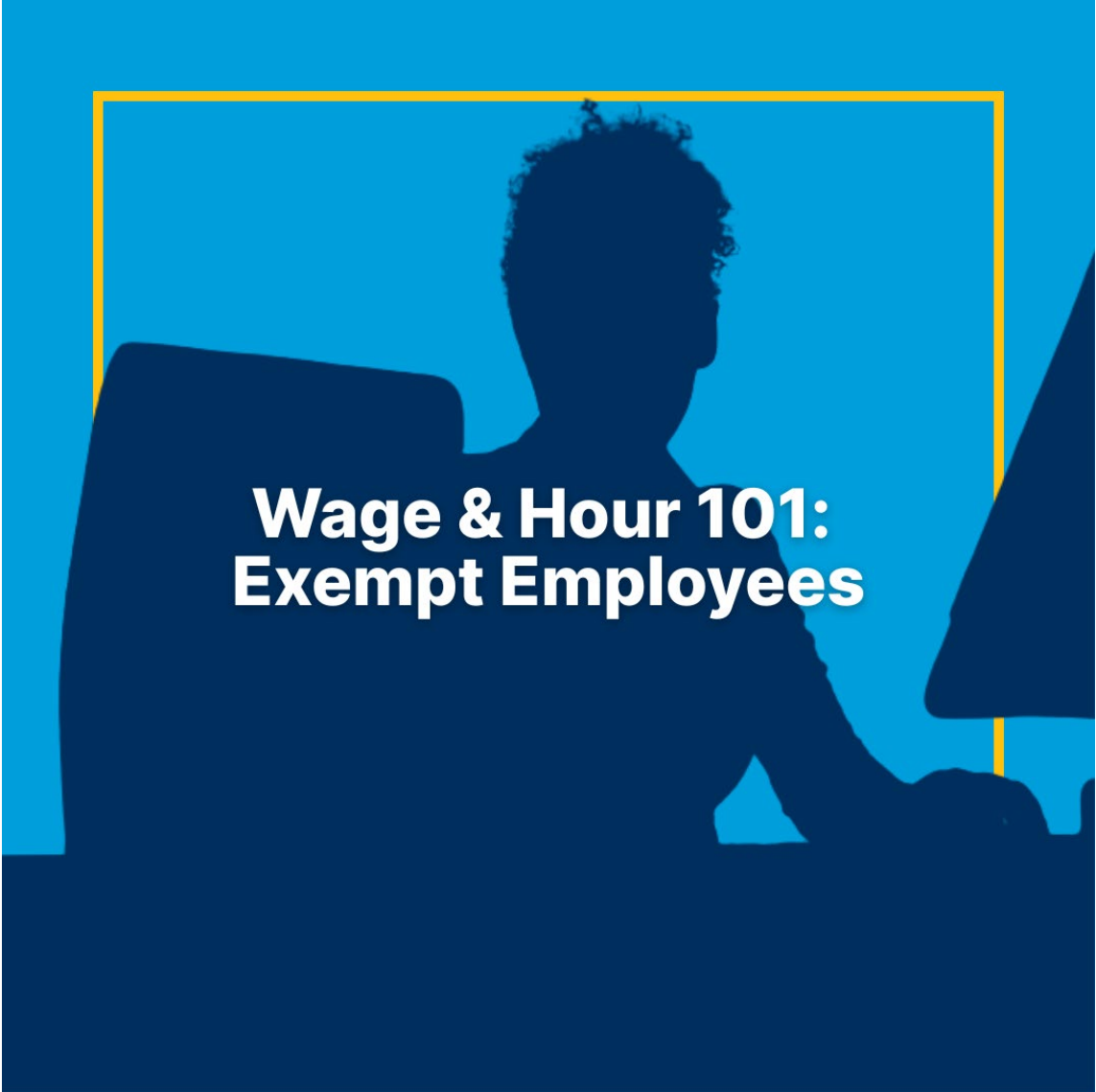




Wage & Hour 101: Exempt Employees

Presented By

Bianca N. Saad, J.D.
General Counsel, Labor and Employment



Matthew J. Roberts, J.D.
Associate General Counsel,
Labor and Employment



Vanessa M. Greene, J.D.
Employment Law Counsel



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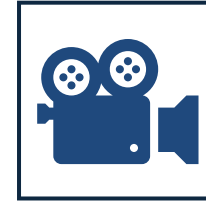
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Agenda

- Fundamentals of Exempt Classification.
- Exemption Requirements.
 - Executive Exemption.
 - Administrative Exemption.
 - Professional Exemption.
 - Other Exemptions.
- Paying Exempt Employees.
- Key Takeaways and Best Practices.

Fundamentals Of Exempt Classification



**All employees
should be nonexempt/hourly
unless
they meet the specific
requirements of one of
California's exemptions.**



Exempt Vs. Nonexempt

- Nonexempt employees:
 - Must record hours worked.
 - Are paid for all hours worked, including overtime.
 - Must have an opportunity to take meal and rest breaks.
 - Are subject to other requirements regarding pay, such as reporting time pay and travel time pay.
- Exempt employees:
 - Are paid on a set salary basis.
 - Don't track hours worked for compensation purposes.
 - Aren't paid overtime.
 - Aren't subject to meal and rest break requirements.

Common Myths About Exempt Employees

- If an employee asks to be exempt, they can be.
- If an employee is paid a salary, they are exempt.
- If an employee is a manager or supervisor, they are exempt.
- If an employee meets the requirements of an exemption, they must be classified as exempt.

Risks And Costs Of Misclassification

- Misclassification can result in:
 - Failure to maintain records of hours worked.
 - Exposure for damages and penalties for unpaid minimum wages and overtime, liquidated damages, failure to provide meal and rest periods, etc.
 - Enforcement actions by the California Labor Commissioner.
 - Administrative complaints filed by employees.
 - Civil actions, including Private Attorneys General Act (PAGA) and class actions.

Exemption Requirements

California Vs. Federal Law

- Under California and federal law, exemptions have similarities and differences.
- Some exemptions are common to both, such as the white-collar exemptions, but the specific exemption requirements can vary.
- Generally, you must apply California law to California workers; however, when the laws vary, apply the law that is more stringent for classifying a worker as an exempt employee.

California Exemptions

- Executive/Managerial.
 - Administrative.
 - Professional.
 - Licensed physicians and surgeons.
 - Computer professionals.
 - Outside salesperson.
 - Commissioned inside salesperson
- 
- “White Collar”

General Requirements

- To be exempt under California white-collar exemptions, employees must:
 - Be paid a salary that meets the **salary test**;
 - Meet the specific **duties test** of the exemption;
 - Be **primarily engaged** in exempt duties (i.e., spend more than 50 percent of their time on exempt work); and
 - **Exercise discretion and independent judgment** when performing duties.
- This is a fact-based inquiry unique to each worker, even multiple workers in the same “position.”

Salary Test — California

- White-collar exempt employees must be paid on a “salary basis.”
 - Pay predetermined amount regardless of hours worked.
 - Does not include other compensation, such as commissions or bonuses.
- The minimum salary is two times the state minimum wage for full-time employment.
 - Currently \$5,858.67 per month (\$70,304/year).
 - Increases every January 1.
- This test is not affected by higher local minimum wages but is affected by industry-specific minimum wage laws for fast food workers and health care workers.
- You may not prorate the salary for part-time exempt employees.

Salary Test — Industry Specific

- Fast food workers:
 - Salary test is based on the fast food worker minimum wage of \$20/hour.
 - Exempt employees must be paid at least \$6,933.34 per month (\$83,200/year).
- Health care workers:
 - Salary test is either 1.5 times the applicable health care worker minimum wage or two times the state minimum wage, whichever is greater.
 - Minimum wage varies depending on nature of employer so salary test will also vary.
 - See DLSE Frequently Asked Questions:
<https://www.dir.ca.gov/dlse/Health-Care-Worker-Minimum-Wage-FAQ.htm>.

Duties Test

- Just paying a proper salary alone is insufficient; each white-collar exemption has its own job duties test.
- Job title is irrelevant for this test; instead, employers must evaluate the actual work performed.
- To help with classification, job duties in the job description should reflect the expectations for the position, including the expected amount of time the employee will spend on each duty each week to ensure the employee is primarily engaged in exempt duties.

“Primarily Engaged”

- Employees must be **primarily engaged** in exempt duties — meaning they must spend more than half their time on exempt work.
- When assessing if an employee is “primarily engaged” in exempt work, consider:
 - Expectations for the position.
 - Whether expectations are realistic.
 - How the employee actually spends their time.
 - Whether the employee diverges from expectations.

Discretion And Independent Judgment

- Employees must “customarily and regularly exercise discretion and independent judgment,” including having the:
 - Power to make independent choices pertaining to matters of significance, free from immediate supervision; or
 - Ability to make recommendations for action that are subject to a superior’s final authority. Must possess sufficient authority for the recommendations to affect matters of consequence to the business or its customers.

Polls — Elements Of White-Collar Exemptions

- True or False?
 - Paying any wages as a salary is enough to meet the salary basis test for a white-collar exemption.
 - All forms of compensation, such as bonuses, can count towards the salary basis test.
 - An employee performing any exempt duties, no matter how little they perform those duties, can be classified as exempt.
 - An exempt employee who is supervised in their duties isn't using discretion and independent judgment.

Exemption Requirements — Executive Exemption

Executive Exemption — Elements

- Has duties and responsibilities involving the management of the enterprise in which they are employed or of a customarily recognized department or subdivision.
- Customarily and regularly directs the work of two or more other employees.
- Has the authority to hire or fire employees, or to make suggestions and recommendations that will be given particular weight as to the hiring, firing, advancement, promotion or any other change of status of employees.
- Customarily and regularly exercises discretion and independent judgment in the performance of their duties.
- Meets the salary test.
- Is “primarily engaged” in exempt duties.

Must Supervise Other Employees

- Executive exemption requires supervision of other employees.
- Exempt executives must supervise **the equivalent of two or more full-time employees.**
- Could be one full-time employee and two half-time employees; four half-time employees, etc.
- Supervisory responsibilities can be distributed among multiple exempt employees but cannot double count employees.

Exempt Executive Duties

- Must be directly and closely related to managerial work.
- Includes, but is not limited to:
 - Interviewing, selecting and training employees.
 - Setting and adjusting employee rates of pay and hours worked.
 - Directing the work of employees.
 - Maintaining production or sales records for use in supervision or control.
 - Evaluating employees' efficiency and productivity for purposes of recommending promotions/changes in status.
 - Disciplining employees.
 - Handling employee complaints and grievances.

‘Working Managers’

- Typically seen in businesses such as restaurants, retail stores, motels, rest homes and gas stations.
- Managers work alongside the nonexempt employees they supervise.
- Often perform same work as nonexempt employees.
- If more than 50 percent of time is spent on nonexempt duties, cannot be exempt.

Scenario — Leading By Example

- Tracy is an executive exempt employee who manages a team of customer service representatives (CSRs) for a software development company, Code Grinders.
- The CSRs primarily receive and respond to customer issues related to software purchases.
- Tracy was promoted after years of working as a CSR, and her role is designed to solely manage and direct the work of the CSRs, as well as make judgments on resolving more difficult customer service issues.

Scenario — Leading By Example, Cont.

- Tracy schedules the CSRs, including their breaks. To ensure continuity of service during breaks or in the event of unexpected absences, Tracy will work alongside CSRs performing routine customer service work, which are nonexempt duties.
- Other times, Tracy will perform customer service work for training purposes.
- Should Code Grinders be concerned about any of this work as it relates to her exemption status?

Exemption Requirements — Administrative Exemption

Administrative Exemption — Elements

1. Has duties and responsibilities that involve either:
 - a) The performance of office or non-manual work directly related to management policies or general business operations of the employer or the employer's customers; or
 - b) The performance of functions in the administration of a school system or educational establishment or institution, in work directly related to its academic instruction or training.

Administrative Exemption — Elements, Cont.

2. Performs work that involves:
 - a) Regularly and directly assisting a proprietor or an employee employed in a bona fide executive/administrative capacity; **or**
 - b) Performing, under only general supervision, specialized or technical work requiring special training, experience or knowledge; **or**
 - c) Executing, under only general supervision, special assignments and tasks.
3. Customarily and regularly exercises discretion and independent judgment in the performance of their duties.
4. Meets the salary test.
5. Is “primarily engaged” in exempt duties.

Exempt Administrative Duties

- Duties must be “directly related” to management policies or general business operations of employer or employer’s customers.
- May include work in functional areas such as accounting; budgeting; advertising; marketing; research; personnel management; human resources; legal and regulatory compliance; public relations; and computer network, internet and database administration.

Exempt Administrative Duties Examples

- Advising management.
- Planning.
- Negotiating.
- Representing the company.
- Analyzing business data.
- Determining company/personnel policies.
- Promoting sales.
- Evaluating and setting employer's pricing.
- Designing and implementing productivity improvements.

Scenario — Human Resources Department

- Leading Code Grinders' HR department, Aaron has three employees with the following job duties:

HR Generalist	Payroll Processor	Benefits Coordinator
Primarily responsible for publishing recruitment copy, screening applicants using a script, onboarding new hires, organizing training, tracking leaves of absence and maintaining the personnel files.	Reviews timesheets and ensures they're submitted to the third party on time as well as liaisons with employees for any paycheck issues.	Researches available benefits plans and provides recommendations based on several criteria she has developed based on Code Grinders' needs, oversees ongoing compliance with various benefit related laws and assists employees with questions as Code Grinders' benefits expert.

- These three employees are all considered “administrative employees.” Can Aaron consider classifying any as exempt? If so, who?

Exemption Requirements — Professional Exemption

Licensed Professional Exemption — Elements

1. Be licensed or certified by the state of California and engaged in the profession of law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting.
2. Customarily and regularly exercise discretion and independent judgment in the performance of their duties.
3. Meet the salary test.
4. Be “primarily engaged” in exempt duties.

Learned/Artistic Professional Exemption — Elements

1. Perform work that:
 - a) Requires advanced knowledge in a field of science or learning acquired by a prolonged course of specialized intellectual study;
or
 - b) Is original and creative in character in a recognized field of artistic endeavor, and the result of which depends primarily on the invention, imagination or talent of the employee; **and**
 - c) Is predominately intellectual and varied in character.
2. Customarily and regularly exercise discretion and independent judgment in the performance of their duties.
3. Meet the salary test.
4. Be “primarily engaged” in exempt duties.

Exemption Requirements — Other Exemptions

Licensed Physicians/Surgeons

- May be paid hourly.
- Minimum hourly rate is \$101.22 (increases every January 1).
- Must be primarily engaged in exempt duties.
- Does not apply to:
 - Employees in medical internships or resident programs.
 - Physicians covered by collective bargaining agreements.

Computer Professional Exemption — Elements

- Perform work that is intellectual or creative.
- Be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering.
- Customarily and regularly exercise discretion and independent judgment in the performance of their duties.
- Be “primarily engaged” in exempt duties.
- Be paid:
 - A minimum hourly rate of \$55.58; or
 - A minimum salary of \$9,646.96/month or \$115,763.35/year.

Computer Professional Exemption — Elements, Cont.

- Perform work that consists of:
 - 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; or
 - The documentation, testing, creation or modification of computer programs related to the design of software or hardware for computer operating systems.

Scenario — Sorting The “Computer Professionals”

- As a software development company, Code Grinders employs a lot of workers it considers “computer professionals.” This includes the following types of workers:
 - Software developers and designers who work to create underlying software code as well as designing the external interface for the software user.
 - Software quality assurance testers who use the software as a “typical user” might and report issues back to the developers and designers.
 - Support staff who troubleshoot issues with the software utilizing a troubleshooting manual created by the developers and designers.
- Are any of these workers potentially exempt under the computer professional? If so, who and why?

Outside Salesperson Exemption

- To be exempt, an employee must:
 - Be 18 years or older.
 - Spend more than 50 percent of their 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.
- No salary requirement.
- A “place of business” is a location owned or controlled by the employer.

Commissioned Inside Salesperson Exemption

- To be exempt, an employee must:
 - Earn more than 1.5 times the minimum wage for every hour worked in each workweek.
 - More than half of the employee's compensation must come from commission earnings.
- Applies only to employees covered by Wage Orders 4 and 7.
- Exemption from overtime only; meal and rest break rules still apply.

Paying Exempt Employees

Exempt Employees Receive A Set Salary

- **General rule: If an exempt employee works any time during the workweek, they must be paid their full salary.**
- Employers cannot deduct from an exempt employee's salary for:
 - Variations in hours worked or quality of work.
 - Disciplinary reasons.
 - Partial week shutdowns or business closures.
 - Partial week absences due to jury, witness or military duty.
 - Partial day absences (unless intermittent Family and Medical Leave Act (FMLA)/California Family Rights Act (CFRA) leave).

Permissible Salary Deductions Are Limited

- Full-day deductions from salary are allowed for:
 - An employee's initial and final weeks of employment (i.e., pay for actual days worked).
 - Full-day absences for personal reasons when employee does not have any available vacation time or Paid Time Off (PTO) to use.
 - Full-day absences for illness if employer has a bona fide sick leave plan and employee does not have time available under the plan.
- Partial-day salary deductions are only allowed if employee is taking intermittent FMLA/CFRA leave.

Exempt Employees And Vacation/PTO/Sick

- Employers can pull from vacation, PTO or sick banks for exempt employee absences. **Exercise caution with any time-off banks that include mandatory sick leave time under California law!**
- Employee's leave bank is reduced by time taken, and employee is still paid same salary.
- Leave can be used for a full or partial day absence in whatever increments the employer decides.
- Employers should create a policy for this usage under its time-off policies to provide advance notice to exempt employees.

Reimburse Business Expenses

- Employees must be reimbursed for all expenses incurred in the performance of their job.
 - If employer requires the expense, then reimburse.
- Examples:
 - Mileage and tolls when using personal vehicles.
 - “Reasonable percentage” of cell phone bill if employees are required to use cell phones.
 - Meals and lodging when traveling.
 - Cost of required uniforms.
- Must reimburse even if submitted late (but can discipline for untimely submission).

All Wages Payable At Termination

- When employment ends, employees must be paid for all wages earned to date and all accrued and unused vacation/PTO.
- Vacation/PTO is paid out at the employee's final rate of pay.
- When final pay is due varies depending on whether it is a termination or resignation.
- Delay in payment = waiting time penalties.
- Expense reimbursements can be made per usual schedule.

Timing For Final Pay

- When employer terminates:
 - Final pay is due at the time of termination.
- When employee resigns:
 - Timing depends on notice given.
 - If employee gives at least 72 hours' notice, final pay is due on the employee's last day of work.
 - If employee gives less than 72 hours' notice, final pay is due within 72 hours of when the employee gave notice.

Key Takeaways And Best Practices

Key Takeaways And Best Practices

- Classify all employees as nonexempt unless a specific exemption applies.
- Confirm job descriptions accurately describe duties and expectations for time spent on those duties for each position.
- Assess whether each exempt employee spends more than half their time on exempt duties each workweek.
- Ensure all exempt employees continue to receive enough compensation on a salary basis to maintain the exemption, and only make deductions where permitted.
- Regularly audit your exempt classifications to determine if any changes have taken place to the role over time that affects the classification.
- Consult legal counsel regarding any concerns over misclassification of exempt employees.

Q & A



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