



THE ADMINISTRATIVE EMPLOYEE EXEMPTION TO CALIFORNIA'S LABOR LAWS

Administrative employees are exempt from California's overtime and break laws only if they satisfy both a job duties test and a minimum salary test.

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California's *administrative exemption* makes certain employees exempt from important wage and hour protections, including overtime pay, the minimum wage, and meal and rest breaks.

An employee is an exempt administrative employee only if the employee: **(1)** is primarily engaged in office or non-manual work directly related to the employer's management policies or general business operations, **(2)** customarily and regularly exercises discretion and independent judgment in performing those duties, and **(3)** earns a monthly salary of at least twice the state minimum wage for full-time employment: \$5,858.67 per month in 2026.¹

Most California employees are entitled to certain important rights. Those include:



The right to be paid at least the minimum wage;²



The right to overtime wages when they work more than eight hours in a workday, more than 40 hours in a workweek, or seven consecutive days;³ or



The right to meal and rest breaks when their shifts exceed a certain duration.⁴

Some employees, however, are *exempt* from some or all of these legal protections, as well as related laws.⁵ One of those exemptions, recognized by both California and federal law, applies to *administrative* employees.⁶

It is important for both employers and employees to understand the legal test that defines the administrative employee exemption so that employees are not misclassified.⁷

California's Legal Framework



In California, employees are protected by two main sets of laws that control wages:

-  The federal Fair Labor Standards Act,⁸ and
-  California's Labor Code.

Both sets of laws have regulations that provide guidance on how they should be applied.⁹

1.1 How to Know Which Law Applies

California and federal wage and hour laws are often similar, but not identical. Usually, for example, California law protects employee rights to a greater extent than federal laws.

In situations where state and federal law are not the same, California employers are required to follow the standard that is more beneficial to employees.¹⁰

This means that most California employers are required to apply the wage or hour laws most favorable to the employee.¹¹

1.2 How Courts Interpret the Law

When the definitions of an exemption are similar, California courts are usually guided by federal law in determining how they should apply.¹² Federal law in effect at the time the Wage Orders were adopted (generally in 2001) has particularly persuasive weight.¹³

Although the federal regulations were revised in 2004, they still provide persuasive guidance in interpreting similar California exemptions to the extent that those revisions clarified, but did not expand, the earlier regulations.¹⁴

1.3 Tests to Determine the Administrative Exemption

California imposes two tests to determine whether an employee can be classified as an exempt administrative employee. Those are:

 The *job duties* test,¹⁵ and

 The *salary* test.¹⁶

The administrative exemption applies only when *both* tests are satisfied. These two tests are explained in more detail below.

The Job Duties Test



The California and federal duties tests are similar in their descriptions of the job duties that administrative employees must perform to qualify for the exemption. The duties test focuses on the duties *actually* performed, not on the job title or on the duties that an employer writes into a position description.¹⁷

For most employees,¹⁸ the duties test for an administrative employee¹⁹ is satisfied only if the employee is primarily engaged in both of the following duties:²⁰

-  Performing office or non-manual work that directly relates to the employer's management policies or general business operations; and
-  Customarily and regularly using discretion and independent judgment in performing the job.

In addition to these two requirements, an exempt administrative employee must be primarily engaged in one of the following duties:

-  Regularly and directly assisting a proprietor or an employee who is employed in a bona fide executive or administrative capacity;

- ☞ Performing specialized or technical work under only general supervision that requires special training, experience, or knowledge; or
- ☞ Executing special assignments or tasks under only general supervision.²¹

A closer analysis of the duties test will help employers and employees determine whether a job is properly classified as an exempt administrative position.

2.1 Primary Duties

To be *primarily* engaged in duties that meet the test of an administrative position, a California employee must spend more than one-half of his or her work time engaged in those duties.²²

EXAMPLE

A human relations specialist who spends more than half of his or her work time preparing and filing routine employment forms cannot be classified as exempt.

California law differs in this regard from federal law, which views time spent performing administrative duties as only one factor among many that determine whether the employee primarily performs administrative duties.²³

2.2 Office or Non-Manual Work

Manual work is the kind of repetitive physical work that depends on the use of the worker's hands rather than the worker's mind. Not all office or non-manual duties will satisfy the test for exempt administrative work, but work that is primarily manual does not qualify for the exemption.²⁴

2.3 Management Policies or General Business Operations

An administrative employee performs work that is *directly related* to the employer's management policies or general business operations.²⁵ “Directly related” refers to

the kind of work the employee performs. Work that is directly related to assisting with the running or servicing of the business is the kind of work that might meet the standard.²⁶

While all duties might be “related” to management policies in the sense that all employees follow management policies, the exemption is narrowly construed to protect the right of most workers to receive overtime.²⁷

With that end in mind, duties are directly related to management policies or general business operations when they involve the administrative operations of the business itself. Merely carrying out the routine, day-to-day affairs of the business is not a duty that is directly related to management policies or general business operations.²⁸

Exempt administrative employees are generally “white collar” employees who service the business by, for example, advising business executives, conducting research, planning, and negotiating on the company's behalf.²⁹ Work of that kind is directly related to management policies or general business operations only if it satisfies two components: it must be administrative in nature (as opposed to production work), and it must be of substantial importance to the management or operation of the business.³⁰

Examples of duties that might relate to management or general business operations include:³¹

-  Accounting,
-  Business finance,
-  Database management,
-  Managing insurance,
-  Quality control,
-  Purchasing and procurement,
-  Personnel management,
-  Human resources,
-  Employee benefits,
-  Safety and health administration,
-  Advertising and marketing,
-  Research and development, and



2.4 Production or Sales Duties vs. Administrative Duties

As a general rule, administrative duties do *not* include duties related to customer service activities, like production or sales.³³ While these distinctions are not always decisive, an employee whose work primarily involves the production of goods or services that the business exists to produce will usually not qualify for the exemption.³⁴

For that reason, employees who are engaged in an activity that constitutes the company's primary purpose will usually *not* be considered exempt administrative workers.³⁵

Of course, all employees of a for-profit business help the business produce or sell goods or services in some way. However, the administrative exemption's focus is on *internal administration* of the business, not on the *marketplace offerings* of the business. The question is not the purpose of the business (which may be to produce or sell products), but the employee's job duties.³⁶

Examples of production- or sales-related job duties that make an employee *nonexempt* include:



Insurance claims adjusters who routinely settle claims by following, rather than making, an employer's claims adjustment guidelines;³⁷



Television sportscasters or anchors who exercise no independent news judgment;³⁸



Customer service employees who train customers to use the employer's product;³⁹



Account executives who primarily sell the employer's services;⁴⁰ and



Product inspectors, including those called *graders* or *examiners*.⁴¹

The *administration* versus *production* test must be applied cautiously, however, because some employees who produce goods or services might also spend the majority of their time advising management or engaging in planning.⁴² The California Supreme Court has held that the dichotomy is an analytical tool, not a dispositive test: courts must first apply the language of the wage order and the federal

regulations it incorporates to the facts of the particular case, turning to the dichotomy only when those sources fail to provide adequate guidance.⁴³

Additionally, some specialized functions might fall within the administrative realm even if they assist the company in producing its products or service.⁴⁴

2.5 Discretion and Independent Judgment

An exempt administrative employee must regularly exercise discretion and independent judgment.⁴⁵

An employee exercises *discretion* by evaluating competing courses of conduct and choosing which one to follow.⁴⁶

Importantly, the discretion must be associated with the kind of administrative work that is described above. Simply making decisions is not the same as exercising discretion.⁴⁷

Independent judgment means the employee regularly exercises the authority to make discretionary decisions about significant matters without immediate direction or supervision.⁴⁸ Those decisions can be made in the form of recommendations for action, rather than the taking of action.⁴⁹

The fact that an administrative employee's independent judgment may be subject to approval, or may be overridden, by a higher level of authority in the company does *not* necessarily prevent the employee from being classified as exempt.⁵⁰

An employee's use of specialized knowledge or skill does not necessarily assure that the employee is regularly exercising discretion and independent judgment.⁵¹

However, an administrator may exercise discretion and independent judgment even if the administrator must adhere to an employer's guidelines or procedures. The question is whether the guidelines and procedures channel the employee's discretion, as opposed to eliminating it or constraining it to a degree where any discretion is largely inconsequential.⁵²

2.6 Specific Duties

As mentioned above, to qualify for an administrative exemption, an employee's specific duties must satisfy one of the following tests:

-  Regularly and directly assisting a proprietor or an employee who is employed in a bona fide executive or administrative capacity;
-  Performing specialized or technical work under only general supervision that requires special training, experience, or knowledge; or
-  Executing special assignments or tasks under only general supervision.⁵³

The first test reflects the reality that most administrators assist owners and executives of businesses.⁵⁴

The second test covers employees like network administrators who use specialized training to upgrade a computer network to meet the changing needs of an internet-based business.⁵⁵ Tax experts and statisticians who make significant decisions for a business might also fit within the second test.

An example of the third test is an employee who leads a team of other employees to complete major projects for the employer, such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements.⁵⁶

2.7 Educational Administrators

Educational administrators need not perform work related to an employer's management policies or general business operations. Instead, to qualify as exempt, the employee must perform functions:

-  In the administration of a school system, educational establishment or institution, or one of its departments or subdivisions, and
-  That directly relate to the academic instruction or training provided by that entity.⁵⁷

The exemption applies to administrators, not to teachers, although teachers may be exempt under the professional employee exemption.⁵⁸ The other elements of the duties test, including the exercise of discretion and independent judgment, apply equally to educational administrators.

The Salary Test



Only employees who are paid a salary qualify for the administrative employee exemption. Administrative employees who are paid an hourly wage are *not* considered exempt.⁵⁹

A *salary*, for these purposes, is a fixed minimum payment of wages that is paid regardless of hours worked or the amount or quality of work performed.⁶⁰ Employees who are paid an hourly wage cannot be classified as exempt administrative employees.

A salary that is tied to the number of hours worked, with no minimum guarantee, is treated as the payment of hourly wages and will not satisfy the exemption's salary requirement.⁶¹

A commission-only pay plan also fails the salary test. When an employer pays employees entirely in commissions and advances them money against future commissions in months when commissions fall short, the advances are not a salary, and the administrative exemption does not apply.⁶²

3.1 The Salary Amount

Importantly, to meet the salary test, an employee must be paid a monthly salary that is at least *twice the state minimum wage* for full-time employment.⁶³

“Full-time employment,” for these purposes, is defined as 40 hours per week.⁶⁴ And the phrase “monthly salary” refers to the amount of wages paid in a month, not to the frequency of payment: most employees are entitled to be paid twice a month.⁶⁵

EXAMPLE

If the applicable California minimum wage is \$16.90 per hour,⁶⁶ the equivalent monthly salary that satisfies the administrative employee exemption is \$5,858.67.

This number is calculated by doubling \$16.90 per hour, multiplying that amount by 40 hours per week, the result of which is then multiplied by 52 weeks and divided by 12 months.

3.2 Salary deductions for absences

In calculating an employee's salary for the purposes of the administrative exemption, employers are permitted to deduct any unpaid vacation days or personal days that are taken by the employee.⁶⁷ Importantly, however, the deductions must reflect a full day of pay due to absence from work.

When deductions are made from a salary for missing *less than* a full day of work, the employee cannot be classified as exempt. Docking an employee's pay for missing less than a full day of work amounts to treating the employee as an hourly employee, rather than a salaried employee.⁶⁸

Requiring exempt employees to use annual vacation or leave time when they miss work, even if they are absent for only part of a day, will not usually affect an employee's exempt status.⁶⁹ When leave or vacation time has been exhausted, however, deducting pay for missing a partial day of work would require the employer to treat the employee as nonexempt.

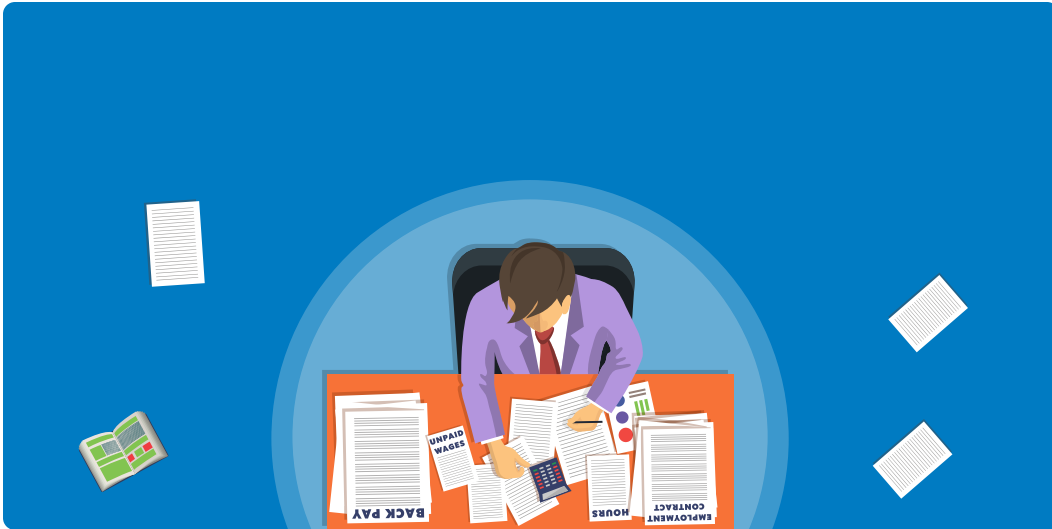
3.3 Disciplinary salary deductions

Under federal law, docking an employee's salary as a disciplinary action may nullify an employer's classification of the employee as exempt.⁷⁰

In California, however, “docking” a salary as a disciplinary action should never happen. “Docking” wages for disciplinary reasons is contrary to California's policy that an employer must pay, without deduction except for those authorized by law, the full wages an employee has earned.⁷¹

On the other hand, docking a salary for missing full days of work due to a disciplinary suspension will not cause a loss of exempt status unless the remaining salary earned during the month in which the deduction was made causes the monthly salary to fall below the threshold required for the exemption.⁷²

Applying the Tests

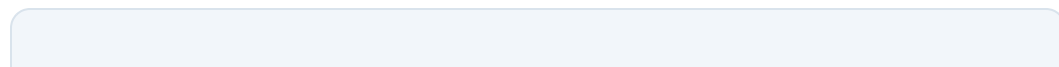


California law embodies a “strong public policy” of protecting the welfare of workers and assuring a stable labor market. To that end, if the meaning of a California wage and hour law is unclear, courts will interpret the law to promote protection of employees.⁷³

Exemptions, in particular, are narrowly construed and are only allowed if the employer is “plainly and unmistakably” entitled to classify the employee as exempt. If an employee disputes the classification, it is the employer’s burden to prove that the employee was properly classified as exempt.⁷⁴

Applying the salary test is often straightforward, but the duties test requires a close examination of the work that the employee actually does during the course of the workday. When it is unclear whether a job can properly be classified as an exempt administrative position, the employer should obtain legal advice.

When an employee believes that he or she has been misclassified, the employee should also obtain legal advice. Misclassification may create an entitlement to collect unpaid overtime and other remedies.





RELATED GUIDE

How to File a Wage and Hour Claim in California

A step-by-step guide to seeking unpaid overtime and other remedies for misclassification.

References

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- 1 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040, subd. 1(A) (2). Both the duties requirements and the salary requirement are explained in detail below.
 - 2 To learn more about California's minimum wage law, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
 - 3 To learn more about California's overtime law, see [The Ultimate Guide to California's Overtime Wage Laws](#).
 - 4 To learn more about California's meal and rest break laws, see our article [Meal Break & Rest Period Rules under California Law](#).
 - 5 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subds. 3 [overtime], 4 [minimum wage], 5 [reporting time pay], 11 [meal periods], and 12 [rest periods]. Subdivision 1(A) of that wage order provides that sections 3 through 12 “shall not apply to persons employed in administrative, executive, or professional capacities.” California wage orders for most occupations contain similar exemptions.
 - 6 29 U.S.C. § 213(a); Labor Code, § 515, subd. (a) [“The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees”]; Cal. Code of Regs., tit. 8, § 11040, subd. 1(A).
 - 7 See, e.g., *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 329 [“The record contains substantial, if disputed, evidence that deliberate misclassification was defendant's policy and practice.”].
 - 8 29 U.S.C. §§ 201–219.
 - 9 29 C.F.R. §§ 541.0–541.710 [federal regulations governing exemptions]; Cal. Code of Regs., tit. 8, §§ 11000–11170 [California wage orders adopted by the Industrial Welfare Commission].
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- 10 29 U.S.C. § 218; *Aguilar v. Association for Retarded Citizens* (1991) 234 Cal.App.3d 21, 34 [“[F]ederal law does not control unless it is more beneficial to employees than the state law.”]; see also *Pacific Merchant Shipping Ass'n v. Aubry* (9th Cir. 1990) 918 F.2d 1409, 1419 [finding that the FLSA did not preempt states from enforcing more protective overtime laws than federal law]; *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 795 [“The FLSA explicitly permits greater employee protection under state law.”].
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- 11 29 C.F.R. § 778.5 [“Various Federal, State, and local laws require the payment of minimum hourly, daily or weekly wages different from the minimum set forth in the Fair Labor Standards Act, and the payment of overtime compensation computed on bases different from those set forth in the Fair Labor Standards Act. Where such legislation is applicable and does not contravene the requirements of the Fair Labor Standards Act, nothing in the act, the regulations or the interpretations announced by the Administrator should be taken to override or nullify the provisions of these laws. Compliance with other applicable legislation does not excuse noncompliance with the Fair Labor Standards Act. Where a higher minimum wage than that set in the Fair Labor Standards Act is applicable to an employee by virtue of such other legislation, the regular rate of the employee, as the term is used in the Fair Labor Standards Act, cannot be lower than such applicable minimum, for the words 'regular rate at which he is employed' as used in section 7 must be construed to mean the regular rate at which he is lawfully employed.”].
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- 12 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(f) [“The activities constituting exempt work and non-exempt work shall be construed in the same manner as such terms are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.201-205, 541.207-208, 541.210, and 541.215.”].
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- 13 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1015 [“Federal law interpreting similar components of the FLSA exemptions is properly considered as persuasive authority, even if not binding on this court.”].
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- 14 *Soderstedt v. CBIZ So. Cal., LLC* (2011) 197 Cal.App.4th 133, 150.
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- 15 29 C.F.R. § 541.200(a) [an employee is employed in a bona fide administrative capacity, in part, when the employee's "primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers" and that primary duty "includes the exercise of discretion and independent judgment with respect to matters of significance"]; Labor Code, § 515, subd. (a) ["The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment."].
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- 16 29 C.F.R. § 541.600(a) ["To qualify as an **exempt executive**, administrative or **professional** employee under section 13(a)(1) of the Act, an employee must be compensated on a **salary basis** at a rate of not less than \$684 per week . . . , exclusive of board, lodging or other facilities."]; Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(g) [providing that an exempt administrative employee must earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment"].
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- 17 See 29 C.F.R. § 541.2 ["A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part."]; *Mies v. Sephora U.S.A., Inc.* (2015) 234 Cal.App.4th 967, 986, fn. 18 ["exemption depends first and foremost upon what an employee actually does on the job"]; *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1015 ["No bright-line rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—the regulations identify job duties, not job titles."]; *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 337 [exemption must be based on how an employee actually spends his or her time, not on an idealized job description].
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18	There is one important exception to the duties test: administrators in an educational system. They are subject to specialized exemption rules, which are discussed below.
19	See Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. 1(A)(2) [covering most occupations].
20	<i>Taylor v. United Parcel Service, Inc.</i> (2010) 190 Cal.App.4th 1001, 1014 [“Because the exemption uses conjunctive language, [the employer] was required to establish <i>all</i> of the elements.”].
21	Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. 1(A)(2)(c)–(e).
22	Labor Code, § 515, subd. (e) [“For the purposes of this section, 'primarily' means more than one-half of the employee's worktime”].
23	See 29 C.F.R. § 541.700(b).
24	<i>Bothell v. Phase Metrics, Inc.</i> (9th Cir. 2002) 299 F.3d 1120, 1125.
25	29 C.F.R. § 541.200(a) [“The term 'employee employed in a bona fide administrative capacity' . . . shall mean any employee: . . . Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers . . . ”].
26	29 C.F.R. § 541.201(a).
27	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 794.
28	<i>Bothell v. Phase Metrics, Inc.</i> (9th Cir. 2002) 299 F.3d 1120, 1125.
29	29 C.F.R. § 541.201(b).
30	Former 29 C.F.R. § 541.205(a) (2001), as incorporated by Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(f) [the phrase “describes those types of activities relating to the administrative operations of a business as distinguished from 'production' . . . ” and “limits the exemption to persons who perform work of substantial importance to the management or operation of the business . . . ”]; see <i>Harris v. Superior Court</i> (2011) 53 Cal.4th 170, 190 [in deciding whether work qualifies as administrative, “courts must consider the particular facts before them and apply the language of the statutes and wage orders at issue”].
31	29 C.F.R. § 541.201(b).

- 32 29 C.F.R. § 541.201(b).
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- 33 *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1126 [“Work relating to customer service of products sold is not necessarily 'administrative' work as that term is commonly understood.”].
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- 34 *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1127 [“Only when work falls 'squarely on the “production” side of the line,' has the administration/production dichotomy been determinative.”]; *Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 820 [“Though it offers a broad distinction demanding further refinement in some cases, the administrative/production worker dichotomy, as elucidated by federal decisions, has proven to be a useful approach to construing a statutory term that appears in a closely parallel context in the FLSA and title 8, section 11040.”].
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- 35 *Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal.App.4th 1363, 1372–1373 [“Employees engaged in an activity that constitutes the company's primary purpose are likely production workers.”].
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- 36 *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1127 [court must analyze employee's duties as opposed to “a formalistic parsing of the company's 'primary' business purpose”].
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- 37 *Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 826 [“Our review of the undisputed evidence places the work of the claims representatives squarely on the production side of the administrative/production worker dichotomy.”]. California law differs from federal law, which generally treats claims adjusters as exempt. (See 29 C.F.R. § 541.203(a) [“Insurance claims adjusters generally meet the duties requirements for the administrative exemption”].)
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- 38 *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 574.
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- 39 *Eicher v. Advanced Business Integrators, Inc.* (2007) 151 Cal.App.4th 1363, 1375.
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- 40 *Bell v. Farmers Ins. Exchange* (2001) 87 Cal.App.4th 805, 820 [citing with approval the “leading decision” of *Dalheim v. KDFW-TV* (5th Cir. 1990) 918 F.2d 1220, 1230].
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- 41 29 C.F.R. § 541.203(g), (h).
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- 42 *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1260 [“the dichotomy should be applied with great caution”].
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- 43 *Harris v. Superior Court* (2011) 53 Cal.4th 170, 190 [“We merely hold that the Court of Appeal improperly applied the administrative/production worker dichotomy as a dispositive test. The essence of our holding is that, in resolving whether work qualifies as administrative, courts must consider the particular facts before them and apply the language of the statutes and wage orders at issue. Only if those sources fail to provide adequate guidance, as was the case in *Bell II*, is it appropriate to reach out to other sources.”].
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- 44 *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1264 [network administrator was exempt when core duties involved “high-level problem solving,” planning network expansion, lease negotiations, and equipment purchasing].
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- 45 Labor Code, § 515, subd. (a) [overtime exemption allowed only when employee “customarily and regularly exercises discretion and independent judgment” in performing “the duties that meet the test of the exemption”]; see also Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2) (b) [an exempt administrative employee is one “[w]ho customarily and regularly exercises discretion and independent judgment”].
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- 46 *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1129 [“The requirement that the employee ‘customarily and regularly exercise[] discretion and independent judgment’ is satisfied if the employee has the ability to compare, evaluate, and choose from possible courses of conduct. The requirement ‘implies that the person has the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.’ [Citation.]”]; *O'Dell v. Alyeska Pipeline Serv. Co.* (9th Cir. 1988) 856 F.2d 1452, 1454.
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- 47 *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 573 [“An employee who merely applies his knowledge in following prescribed procedures is not exercising discretion and judgment of the independent sort associated with administrative work.”].
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- 48 29 C.F.R. § 541.202(a); *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1024; *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 573 [“Discretion and independent

judgment' . . . involves the comparison of possible courses of conduct, and acting after considering various possibilities. It implies that the employee has the power to make an independent choice free from immediate supervision and with respect to matters of significance.”].

49 29 C.F.R. § 541.202(c) [“The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action.”].

50 29 C.F.R. § 541.202(c) [“The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment.”].

51 *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1129 [“emphasizing the distinction between 'the use of discretion and the application of skill'”]; *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1026 [“While we agree an employee constrained by stringent protocols mandating a particular outcome to routine tasks would not be exercising discretion of the type contemplated by Wage Order 9, merely because an employer requires adherence to regulations, guidelines or procedures does not mean an executive does not exercise discretion or judgment.”].

52 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1026 [“We conclude that where government regulations or internal employer policies and procedures simply *channel* the exercise of discretion and judgment, as opposed to *eliminating* it entirely or otherwise constraining it to a degree where any discretion is largely inconsequential, the executive exemption may still apply.”].

53 Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. 1(A)(2)(c)–(e).

54 29 C.F.R. § 541.203(d) [“An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.”].

55 *Combs v. Skyriver Communications, Inc.* (2008) 159 Cal.App.4th 1242, 1264.

56	29 C.F.R. § 541.203(c).
57	Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(a)(ii).
58	Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(a).
59	29 C.F.R. § 541.600(a) ["To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than \$684 per week . . . , exclusive of board, lodging or other facilities."]; see also Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(2)(g) [an exempt administrative employee must earn "a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment"]. The wage order imposes the same salary requirement on each exempted category.
60	See <i>Negri v. Koning & Associates</i> (2013) 216 Cal.App.4th 392, 397 ["A salary is generally understood to be a fixed rate of pay as distinguished from an hourly wage."]; 29 C.F.R. § 541.602(a) ["An employee will be considered to be paid on a 'salary basis' within the meaning of this part if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed."].
61	<i>Negri v. Koning & Associates</i> (2013) 216 Cal.App.4th 392, 399 [A salary must be "a <i>predetermined amount</i> that is <i>not subject to reduction</i> based upon the quantity or quality of work."].
62	<i>Semprini v. Wedbush Securities, Inc.</i> (2020) 57 Cal.App.5th 246, 248 [compensation plan based solely on commissions, with recoverable advances against future commissions, did not satisfy the salary basis test for the administrative exemption].
63	Labor Code, § 515, subd. (a).
64	Labor Code, § 515, subd. (c) ["For the purposes of subdivision (a), 'full-time employment' means employment in which an employee is employed for 40 hours per week"].
65	Labor Code, § 204, subd. (a) ["All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any

employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular [paydays](#).”].

- 66 California has one statewide minimum wage that applies regardless of the employer's size, and the rate adjusts each January 1. (Labor Code, § 1182.12.) For more information, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
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- 67 *Conley v. Pacific Gas & Elec. Co.* (2005) 131 Cal.App.4th 260, 266–267 [following 29 C.F.R. § 541.602(b)(1), which provides that “[d]eductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability”]. Federal law provides that deductions from pay for full days of sickness or disability will not affect the exemption if the employer has a plan in place that compensates the employee “for loss of salary occasioned by such sickness or disability,” or if the employee has not yet qualified for the plan or has exhausted its benefits. (29 C.F.R. § 541.602(b)(2).)
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- 68 *Conley v. Pacific Gas & Electric Co.* (2005) 131 Cal.App.4th 260, 267 [“It is undisputed that the combined effect of these provisions of federal law is to preclude employers from docking the pay of an employee for an absence of less than a day (a partial-day absence). If they do, then the involved employees do not meet the salary basis test, and are nonexempt for purposes of overtime pay.”].
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- 69 *Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1569.
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- 70 *Auer v. Robbins* (1997) 519 U.S. 452, 456 [117 S.Ct. 905, 909] [adopting Labor Secretary's view that “employees whose pay is adjusted for disciplinary reasons do not deserve exempt status because as a general matter true 'executive, administrative, or professional' employees are not 'disciplined' by piecemeal deductions from their pay, but are terminated, demoted, or given restricted assignments”].
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- 71 See, e.g., *Prachasaisoradej v. Ralphs Grocery Co., Inc.* (2007) 42 Cal.4th 217, 231 [“the public policy of special protection for wages generally had been expressed in numerous statutes and decisions that required the prompt and full payment of wages due, as the employee's exclusive property”].
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- 72 See Dept. of Industrial Relations, DLSE Opn. Letter No. 2002.05.06 (May 6, 2002), [available here](#) ². This interpretation of California law differs from the federal rule, which permits deductions from pay of exempt employees if they are “made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules” and are “imposed pursuant to a written policy applicable to all employees.” 29 C.F.R. § 541.602(b)(5).
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- 73 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1009.
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- 74 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1010.
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