



THE COMPUTER PROFESSIONAL EXEMPTION TO CALIFORNIA'S WAGE AND HOUR LAWS

When a software employee counts as exempt from overtime in California, and why the answer turns on both a yearly pay threshold and the work the employee actually does.

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In California, an employee who works in the computer software field can be classified as exempt from overtime pay, and from certain related wage and hour protections, but only if the employee satisfies *both* a compensation test and a job-duties test.¹

The compensation test sets a minimum hourly rate, or a monthly and annual salary, that the state recalculates every year to account for the cost of living. The duties test asks whether the employee is primarily engaged in high-level systems analysis, programming, or software engineering that requires the exercise of discretion and independent judgment.²

An employee who does not meet both tests is not exempt and is entitled to overtime like any other nonexempt worker. Here is why that is important: Most California employees are entitled to be paid minimum wage.³ They are also entitled to overtime wages when they work more than eight hours in a workday, more than forty hours in a workweek, or seven consecutive days.⁴

Some employees, however, are *exempt* from minimum wage and overtime laws, as well as related laws requiring employers to provide rest periods.⁵ The computer professional exemption is one of these, and it is recognized by both California and federal law.⁶

Employers sometimes misclassify an employee as an exempt computer professional employee, either inadvertently or in a deliberate attempt to avoid paying overtime.⁷ It is important for both employers and employees to understand the legal test that defines the computer professional employee exemption so that employees are not misclassified.

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

State 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 Computer Professional Exemption

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

 The *compensation* test,¹⁵ and

 The *job duties* test.¹⁶

The computer professional exemption applies only when *both* tests are satisfied.

The computer professional employee exemption differs from the exemption that applies to scientists, engineers, and other professional employees. The minimum salary and duties that satisfy the professional employee exemption are discussed in our article, [The Professional Exemption to California's Wage & Hour Laws](#).

Compensation Test



In 2026, computer professionals may be exempt from overtime if they are paid at least \$58.85 per hour or an annual salary of at least \$122,573.13 (or \$10,214.44 per month). The minimum compensation required to satisfy the exemption is recomputed every year to account for changes in the cost of living.¹⁷

The California compensation test is more favorable to employees than the federal compensation test, which requires computer professionals to be compensated on an hourly basis at a rate of not less than \$27.63 an hour or a salary of at least \$684 per week.¹⁸ As mentioned above, California law applies when it is more favorable to employees than federal law.¹⁹

Job Duties Test



To satisfy the requirements of the computer professional exemption, the employee must be:

-  Primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment,²⁰ and
-  Highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering.²¹

Throughout these tests, “primarily” means more than half of the employee’s work time.²²

Additionally, the employee’s *primary* job duties must 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; or
- </> The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.²³

Job duties that require highly specialized knowledge of computer systems or software will *not* usually satisfy the duties test unless the employee applies that knowledge to computer systems analysis, programming, or software engineering.²⁴

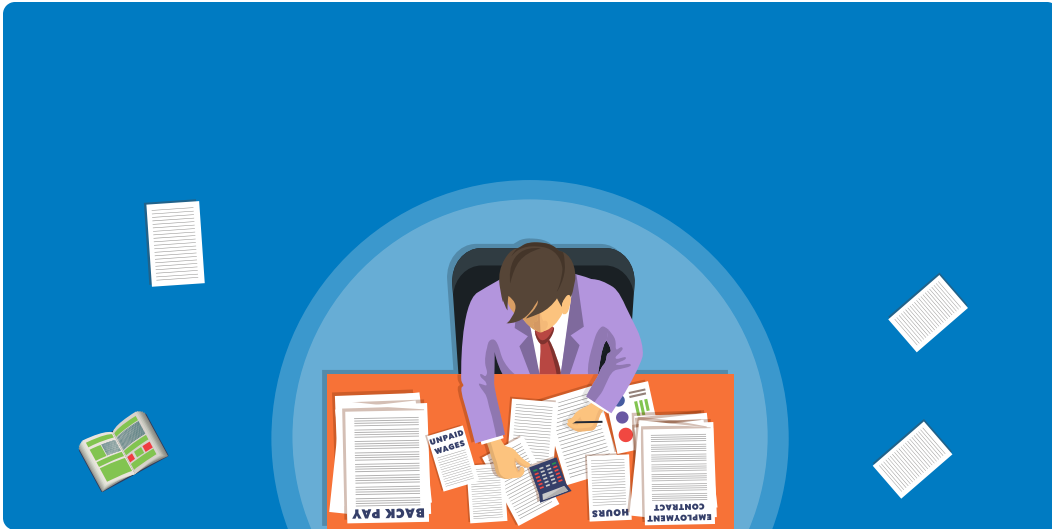
Certain employees in the computer field *cannot* be classified as exempt, even if they meet the compensation test described above. They include:

-  Trainees and entry-level employees;
-  Employees who have not attained the level of skill and expertise necessary to work independently and without close supervision;
-  Employees whose primary job is to operate computers;
-  Employees whose primary job is to manufacture computers;
-  Employees whose primary job is to repair or maintain computers;
-  Engineers, drafters, and other professionals who are assisted by computer software but are not engaged in computer systems analysis, programming, or similar skills associated with the duties of exempt computer professionals;
-  Writers who create manuals, instructions, website content, or other materials associated with computer use; or
-  Employees who use computers to create imagery for television, movies, or theatrical productions.²⁵

As a general rule, employees who provide IT support will *not* meet the duties test required for the computer professional exemption.²⁶

Engineers and other employees who cannot be classified as exempt *computer professionals* may satisfy the requirements of the professional employee exemption if they meet the salary and job duties tests that apply to professional employees.

Applying the Tests



California law has adopted 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.²⁷

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.²⁸

Applying the compensation 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. A job title does not make an employee exempt; what controls is the work the employee actually performs and the compensation the employee actually receives.²⁹ Misclassification may create an entitlement to collect unpaid overtime and other remedies.³⁰

Information about how employees can seek those remedies is available in our article, [How to File a Wage and Hour Claim in California](#).

References

- 1 Labor Code, § 515.5; Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(3)(h).
- 2 Labor Code, § 515.5, subd. (a).
- 3 To learn more about the minimum wage, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
- 4 To learn more about California's overtime law, see our article: [The Ultimate Guide to California's Overtime Wage Laws](#).
- 5 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subds. 3 [overtime], 4 [minimum wage], 5 [reporting time pay], 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.”
- 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 regulations adopted by the Industrial Welfare Commission].
- 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)(3)(e) [“Subparagraph (b) above is intended to be construed in accordance with the following provisions of federal law as they existed as of the date of this wage order: 29 C.F.R. Sections 541.207, 541.301(a)-(d), 541.302, 541.306, 541.307, 541.308, and 541.310.”].
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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. § 541.600(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 (or \$455 per week if employed in the Commonwealth of the Northern Mariana Islands, Guam, Puerto Rico, or

the U.S. Virgin Islands by employers other than the Federal Government, or \$380 per week if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities.”]; Cal. Code of Regs., tit. 8, § 11040 [providing that, for each exempted category, the 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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- 16 29 C.F.R. § 541.300(a)(2) [“Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.”]; Labor Code, § 515, subd. (a).
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- 17 Labor Code, § 515.5, subd. (a)(4) [“The employee’s hourly rate of pay is not less than thirty-six dollars (\$36.00) or, if the employee is paid on a salaried basis, the employee earns an annual salary of not less than seventy-five thousand dollars (\$75,000) for full-time employment, which is paid at least once a month and in a monthly amount of not less than six thousand two hundred fifty dollars (\$6,250). The department shall adjust both the hourly pay rate and the salary level described in this paragraph 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.”]. The Department of Industrial Relations publishes the current figures each year. (Memorandum from the Department of Industrial Relations (Oct. 28, 2025), [available here](#) .)
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- 18 29 C.F.R. § 541.400(b); Dept. of Labor, [Fact Sheet #17A](#) .
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- 19 *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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- 20 Labor Code, § 515.5, subd. (a)(1).
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- 21 Labor Code, § 515.5, subd. (a)(3).
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- 22 Cal. Code of Regs., tit. 8, § 11040, subd. 2(O) [“‘Primarily’ as used in Section 1, Applicability, means more than one-half the employee’s work time.”].
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23	Labor Code, § 515.5, subd. (a)(2).
24	<i>Martin v. Indiana Michigan Power Co.</i> (6th Cir. 2004) 381 F.3d 574 [“the regulations provide that an employee’s primary duty must require ‘theoretical and practical application of highly-specialized knowledge in computer systems analysis, programming, and software engineering’ not merely ‘highly-specialized knowledge of computers and software’”].
25	Labor Code, § 515.5, subd. (b).
26	<i>Martin v. Indiana Michigan Power Co.</i> (6th Cir. 2004) 381 F.3d 574, 580–581 [IT tasks: “installing and upgrading hardware and software on workstations, configuring desktops, checking cables, replacing parts, and trouble-shooting Windows problems—are all performed to predetermined specifications in the system design created by others”; maintaining a computer system within “predetermined parameters” does not involve the kind of design and development of systems or software that the duties test requires].
27	<i>Taylor v. United Parcel Service, Inc.</i> (2010) 190 Cal.App.4th 1001, 1009.
28	<i>Taylor v. United Parcel Service, Inc.</i> (2010) 190 Cal.App.4th 1001, 1010.
29	Cal. Code of Regs., tit. 8, § 11040, subd. 1(A)(3)(h)(iii) [“A job title shall not be determinative of the applicability of this exemption.”].
30	To learn more about remedies and how to pursue them, see our article, How to File a Wage and Hour Claim in California .