



THE EXECUTIVE EMPLOYEE EXEMPTION UNDER CALIFORNIA LAW

Exempt executives can be denied overtime and other protections, so this guide explains the salary and job-duties tests that decide whether the exemption really applies.

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He writes these guides to put the state's labor laws into plain English, in neutral terms, with a citation for every claim.



Most California employees are entitled to certain important rights. Those include the right to be paid at least the minimum wage,¹ the right to overtime wages,² and the right to meal and rest breaks when their shifts exceed a certain duration.³

Some employees, however, are *exempt* from some or all of these legal protections, as well as related laws.⁴ One of those exemptions, recognized by both California and federal law, applies to *executive* employees.⁵

An employee can lawfully be classified as an exempt executive only if the employee passes both of the following tests:⁶

- ☞ The **salary test**. The employee must earn a fixed monthly salary of at least twice the state minimum wage for full-time employment (\$5,858.67 per month in 2026).
- ☞ The **job duties test**. The employee must primarily perform executive duties: managing the business or one of its departments, regularly supervising at least two other employees, playing a meaningful role in hiring and firing decisions, and regularly exercising discretion and independent judgment.

Employees who satisfy both tests can lawfully be denied overtime and the other protections mentioned above. An employee who is treated as exempt without meeting both tests has been *misclassified*, so it is important for both employers and employees to understand how each test works.⁷

It is important for both employers and employees to understand the legal test that defines the executive employee exemption so that employees are not misclassified.⁸

California's Legal Framework



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



The federal Fair Labor Standards Act,⁹ and



California's Labor Code.

Both sets of laws have regulations that provide guidance on how they should be applied.¹⁰

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.¹¹

This means that most California employers are required to apply the wage or hour laws most favorable to the employee.¹²

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.¹³ Federal law in effect at the time the Wage Orders were adopted (generally in 2001) has particularly persuasive weight.¹⁴

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.¹⁵

1.3 Tests to Determine the Executive Exemption

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

 The *salary* test,¹⁶ and

 The *job duties* test.¹⁷

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

The Salary Test



Only employees who are paid a salary qualify for the executive employee exemption. Executive employees who are paid an hourly wage are *not* considered exempt.¹⁸

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.¹⁹

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.²⁰

2.1 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.²¹

“Full-time employment,” for these purposes, is defined as 40 hours per week.²² 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.²³

EXAMPLE

If the applicable California minimum wage is \$16.90 per hour,²⁴ the equivalent monthly salary that satisfies the executive 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.

Higher salary floors apply to a few groups of workers. Covered health care employees and fast food restaurant employees are subject to industry-specific minimum wages that are higher than the statewide rate, and the minimum salary needed to treat those employees as exempt is correspondingly higher.²⁵

2.2 Salary Deductions for Absences

In calculating an employee's salary for the purposes of the executive exemption, employers are permitted to deduct any unpaid vacation days or personal days that are taken by the employee.²⁶ 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.²⁷

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.²⁸ 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.

2.3 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.²⁹

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.³⁰

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.³¹

The Job Duties Test



The California and federal duties tests are similar in their descriptions of the job duties that executive 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 job description.³²

The duties test for an executive employee³³ is satisfied only if the employee is *primarily* engaged in **all** of the following duties:³⁴

-  Managing the business or one of its departments or subdivisions;
-  Customarily and regularly directing the work of two or more employees;
-  Exercising the authority to hire and fire employees, or to make recommendations about hiring, firing, and promotion that are given “particular weight”; *and*
-  Customarily and regularly using discretion and independent judgment in performing the job.³⁵

Only employees who actually hold a management position can be classified as exempt executive employees. Trainees for management positions are nonexempt.³⁶

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

3.1 Primary Duties

To be *primarily* engaged in duties that meet the test of an executive position, a California employee must spend more than one-half of his or her work time engaged in those duties.³⁷

EXAMPLE

A store manager who spends more than half of his or her work time operating a cash register cannot be classified as exempt.

California law differs in this regard from federal law, which views time spent performing executive duties as only one factor among many that determine whether the employee primarily performs executive duties.³⁸

3.2 Management

The heart of the executive exemption is its requirement that the employee occupies a management position. The employee might manage the entire business or a subdivision of the business.³⁹

If the employee manages only part of the business, it must be a unit of the business that has a permanent status and function, as opposed to a temporary assembly of workers who have been assigned to a specific task. A permanent shift of workers who routinely perform the same function will qualify if it is recognized and supervised as a permanent unit within the business.⁴⁰

In addition to supervising employees and playing a significant role in hiring or firing employees, characteristics of a management position typically include:



Training employees;



Scheduling the work hours of employees;



Assigning job duties;

-  Controlling inventory, supplies, or materials used by the business;
-  Maintaining production or sales records;
-  Creating a budget;
-  Handling complaints and grievances made by employees;
-  Disciplining employees;
-  Assuring the safety of employees; and
-  Assuring compliance with applicable laws and regulations.⁴¹

Duties not listed above might still be considered managerial if they are closely related to managerial duties or if they make it possible to perform managerial duties.⁴²

Whether an employee primarily engages in management will depend on the nature of the business, the employer's realistic expectations, and the amount of time the employee devotes to duties that are necessary to management of the business or one of its departments or subdivisions.⁴³

3.3 Supervision

Directing the work of *at least* two other employees is another critical component of the test. Supervising employees must be a customary and regular part of the exempt employee's work.⁴⁴

An employee who fills in while a manager is on vacation does not meet the duties test even if that employee supervises other employees during the manager's absence because supervision is not a customary and regular duty of that employee.⁴⁵

"Two employees," in this context, refers to two full-time employees or their equivalent.⁴⁶ Supervising two part-time employees does not satisfy the test.

Supervising several part-time employees can satisfy the test, however, if their combined hours are equivalent to those of two full-time employees. One full-time and two half-time employees, for example, count as the equivalent of two full-time employees, as do four half-time employees.⁴⁷ Additionally, hours worked by one employee cannot be credited more than once for different executives.⁴⁸

3.4 Hiring and Firing

An exempt executive employee must either have the authority to hire and fire subordinate employees **or** must have input into those decisions (as well as decisions about promotion and advancement of subordinate employees).⁴⁹

If the employee does not have independent authority to hire and fire a subordinate employee, their input must be given “particular weight” by the employer. An executive employee's recommendations are given *particular weight* when an employer considers them to be of substantial importance.⁵⁰

Whether recommendations and suggestions about personnel decisions are given “particular weight” depends on several factors, including:

-  Whether making those recommendations and suggestions is part of the employee's job,
-  How often such input is requested or offered, and
-  How often the person who makes the final decision relies upon the employee's recommendations.⁵¹

There is no strict formula that a court can apply to determine whether a manager who lacks the authority to hire or fire can be said to make recommendations that are given particular weight.

Courts examine all of the factors mentioned above and any other relevant facts to decide whether an employer considers the employee's recommendations to be substantially important.

3.5 Discretion and Independent Judgment

An exempt executive employee must regularly exercise discretion and independent judgment.⁵²

An employee exercises *discretion* by evaluating competing courses of conduct and choosing which one to follow.⁵³

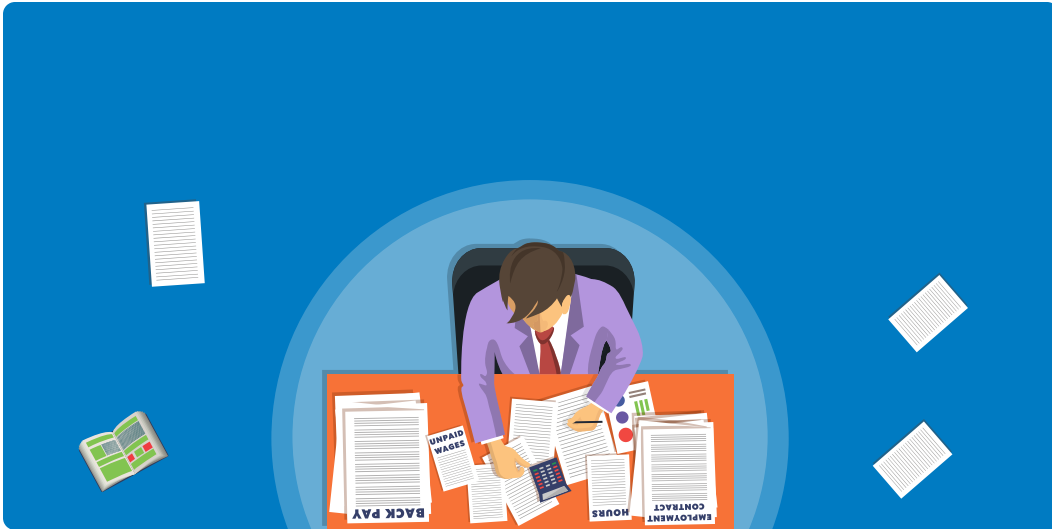
Independent judgment means the employee regularly exercises the authority to make discretionary decisions about significant matters without immediate direction or supervision.⁵⁴ Those decisions can be made in the form of recommendations for action, rather than the taking of action.⁵⁵

The fact that an executive 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.⁵⁶

An employee who merely uses skill or knowledge when making decisions based on strict protocols or procedures is *not* exercising discretion and independent judgment, even if the employee has some leeway in making those decisions.⁵⁷

However, an executive may exercise discretion and independent judgment even if the executive 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.⁵⁸

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.⁵⁹

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.⁶⁰

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 executive 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.

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

References

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- 1 To learn more about California's minimum wage law, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
 - 2 To learn more about California's overtime law, see [The Ultimate Guide to California's Overtime Wage Laws](#).
 - 3 To learn more about California's meal and rest break laws, see our article [Meal Break & Rest Period Rules under California Law](#).
 - 4 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subds. 3 [overtime], 4 [minimum wage], 5 [reporting time pay], & 12 [rest periods]. Subdivision 1(A) of that wage order provides that subdivisions 3 to 12 “shall not apply to persons employed in [administrative](#), executive, or professional capacities.” California wage orders for most occupations contain similar exemptions.
 - 5 29 U.S.C. § 213(a)(1); 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).
 - 6 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11010, subd. 1(A) (1); see also 29 C.F.R. § 541.100(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 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.”].
 - 9 29 U.S.C. §§ 201–219.
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- 10 29 C.F.R. §§ 541.0–541.710 [federal regulations governing exemptions]; Cal. Code of Regs., tit. 8, §§ 11010–11538 [California regulations adopted by the Industrial Welfare Commission].
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- 11 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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- 12 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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- 13 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(e) [“The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items 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 541.102, 541.104-111, and 541.115-116.”].
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- 14 *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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- 15 *Soderstedt v. CBIZ So. Cal., LLC* (2011) 197 Cal.App.4th 133, 150.
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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 [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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- 17 29 C.F.R. § 541.100(a) [an exempt executive is an employee “[w]hose primary duty is management of the enterprise in which the employee is employed or of a customarily recognized department or subdivision thereof,” “[w]ho customarily and regularly directs the work of two or more other employees,” and “[w]ho has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight”]; 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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- 18 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 [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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- 19 See *Negri v. Koning & Associates* (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.”].
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- 20 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 399 [A salary must be “a *predetermined amount* that is *not subject to reduction* based upon the quantity or quality of work.”].
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- 21 Labor Code, § 515, subd. (a).
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- 22 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”].
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- 23 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.”].
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- 24 As of January 1, 2026, California requires nonexempt employees to be paid a minimum wage of \$16.90 per hour, regardless of the employer's size. The rate is adjusted each January 1. For more information, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
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- 25 Labor Code, §§ 1182.14 [covered health care employees], 1474–1476 [fast food restaurant employees]; see Dept. Industrial Relations, Health Care Worker Minimum Wage FAQ, [available here](#) ; Dept. Industrial Relations, Fast Food Minimum Wage FAQ, [available here](#) .
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- 26 *Conley v. Pacific Gas & Electric 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).)

27 *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.”].

28 *Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1569.

29 *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”].

30 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”].

31 See Dept. Industrial Relations, DLSE Opn. Letter No. 2002.05.06 (May 6, 2002), [available here](#) ²⁷. 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).

32 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, 978 [exemption depends “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, 330 [exemption must be based on how an employee actually spends his or her time, not on an idealized job description].

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- 33 See Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. 1(A)(1) [most, but not all, occupations are covered by these regulations].
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- 34 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1014 [“Because the exemption uses conjunctive language, the employer is required to establish *all* of the elements.”].
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- 35 See Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. 1(A)(1).
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- 36 29 C.F.R. § 541.705.
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- 37 Labor Code, § 515, subd. (e) [“For the purposes of this section, 'primarily' means more than one-half of the employee's worktime”].
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- 38 See 29 C.F.R. § 541.700(b).
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- 39 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(a).
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- 40 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1017 [“[A] shift of specific workers, performing the same primary function as a permanent unit operating within a larger organizational structure, and recognized and supervised as such within that organization, constitutes a customarily recognized 'department or subdivision' within the meaning of Wage Order 9.”].
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- 41 29 C.F.R. § 541.102; *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1020–1021.
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- 42 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(e) [“Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions.”].
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- 43 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(e) [“The work actually performed by the employee during the course of the work week must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer's realistic

expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.”].

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- 44 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(b) [“A person employed in an executive capacity means any employee: . . . Who customarily and regularly directs the work of two or more other employees herein”]; 29 C.F.R. § 541.104(a).
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- 45 29 C.F.R. § 541.104(c).
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- 46 See 29 C.F.R. §§ 541.100(a)(3), 541.104(a).
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- 47 29 C.F.R. § 541.104(a) [“The phrase ‘two or more other employees’ means two full-time employees or their equivalent. One full-time and two half-time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent.”].
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- 48 29 C.F.R. § 541.104(d).
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- 49 See, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(c) [executive employee “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”]; *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1022 [executive employee “need not have final authority to hire or fire”].
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- 50 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1022–1023.
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- 51 29 C.F.R. § 541.105.
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- 52 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, e.g., Cal. Code of Regs., tit. 8, § 11010, subd. 1(A)(1)(d) [exempt employee in executive capacity “customarily and regularly exercises discretion and independent judgment”].
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- 53 *O'Dell v. Alyeska Pipeline Serv. Co.* (9th Cir. 1988) 856 F.2d 1452, 1454.
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- 54 29 C.F.R. § 541.202(c); *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.”].

55 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.”].

56 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.”].

57 *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.”].

58 *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.”].

59 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1009.

60 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1010.
