EXEMPT VS. NON-EXEMPT EMPLOYEES: GUIDE TO CALIFORNIA LAW

Non-exempt employees have California wage and hour rights, like overtime and rest breaks, that exempt employees who meet a salary and duties test do not.

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California's wage and hour laws require most employers to follow certain rules, such as paying overtime, tracking hours, and providing meal and rest breaks. Employees who receive these protections are *nonexempt*. An *exempt employee*, by contrast, is one whose job is not subject to one or more of these wage and hour laws.[1]

In most cases, there are three simple requirements to determine whether a worker is an exempt employee under California law:

- **Minimum Salary.** The employee must be paid a salary that is at least twice the state minimum wage for full-time employment.[2]
- **White Collar Duties.** The employee's primary duties must consist of administrative, executive, or professional tasks.[3]
- **Independent Judgment.** The employee's job duties must involve the use of discretion and independent judgment.[4]

If all three requirements are met, the employee will usually be classified as "exempt" from overtime, minimum wage, and rest break requirements (but not meal break requirements). There are, however, many caveats to this test.

There are also some jobs that are subject to a different test altogether. And some employees are only partially exempt, meaning they are protected by some labor laws but not others.

The rest of this article explains these requirements in greater detail, as well as what happens when employers fail to properly classify their employees under California law.

CH. 01

The Rights of Nonexempt Employees

1.1 Minimum Wage Rights

Federal law requires employers to pay nonexempt employees a minimum wage of $7.25 per hour.[5] California law, fortunately, is more favorable to employees.

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.[6]

Certain cities and counties have set a minimum wage higher than the statewide rate. Some workers are also covered by industry-specific minimum wages that exceed the general rate: covered fast-food restaurant employees must be paid at least $20.00 per hour,[7] and many health-care facility employees are covered by separate wage schedules that step up over time.[8]

1.2 Overtime Rights

Federal law requires employers to pay nonexempt employees an overtime rate of at least one-and-one-half times their regular hourly wage for each hour worked in excess of 40 during a workweek.[9]

Again, California law protects nonexempt employees to a greater degree than federal law.[10]

California's overtime law requires employers to pay nonexempt employees *one-and-a-half times* their regular hourly rate of pay for:

- All hours worked in excess of 8 in a single workday,
- All hours worked in excess of 40 in a single workweek, and
- The first 8 hours worked on the seventh consecutive day of work in the workweek.[11]

California employers are required to pay nonexempt employees *twice their regular hourly rate* of pay for:

- All hours worked in excess of 12 in a single workday, and
- All hours worked in excess of 8 on the seventh consecutive day of work in the workweek.[12]

1.3 Meal Break Rights

Most employees in California (including most exempt employees) are entitled to an unpaid, *30-minute meal break* if they work more than 5 hours in a day.[13] A second meal break is required if employees work more than 10 hours in a day.[14]

Employees can agree to waive the first meal break if they do not work more than 6 hours in a day.[15] They can agree to waive the second meal break if they do not work more than 12 hours in a day, and the first meal break was not waived.[16]

During the meal break, the employee must be relieved of *all* responsibility and be free to leave the work premises. If the employee is required to remain on the employer's premises or job site, the employee must be paid for the meal break.[17]

When employers fail to provide an employee a meal break, they must pay the employee one additional hour of pay at the employee's regular rate of compensation.[18] The employee may earn only one extra hour per workday for missed meal breaks.

There are some types of exemptions that apply to meal breaks.[19] But the main exemptions discussed in this article (namely, those that apply to executive, administrative, and professional employees) do *not* apply to meal breaks.[20]

1.4 Rest Break Rights

Nonexempt employees in California are also entitled to take a paid *10-minute rest period* during the middle of each 4-hour work period.[21]

Employees are *not* entitled to a rest period if they work less than 3.5 hours in the work day.[22]

When employers fail to provide an employee a rest period, they must pay the employee one additional hour of pay at the employee's regular rate of compensation. The employee may earn only one extra hour per workday for missed rest periods.[23]

Employers must also provide reasonable break time to lactating employees who want to express breast milk for their children.[24]

Lactation breaks must be paid if they are taken during the employee's regular rest period. They need not be paid to the extent that they last longer than, or are in addition to, the regular rest period.[25]

CH. 02

Determining Whether an Employee is Exempt

Certain employees are *exempt* from California and federal laws governing minimum wage, overtime, work hours, and rest periods.[26]

As mentioned above, there are usually three simple requirements to determine whether a worker is an *exempt employee* under California law:

- **Minimum Salary.** The employee must be paid a salary that is at least twice the state minimum wage for full-time employment.[27]
- **White Collar Duties.** The employee's primary duties must consist of administrative, executive, or professional tasks.[28]
- **Independent Judgment.** The employee's job duties must involve the use of discretion and independent judgment.[29]

In addition to this three-part test, there are several types of exemptions that apply to specific jobs. The most common job-specific exemptions apply to:

- Commissioned employees,

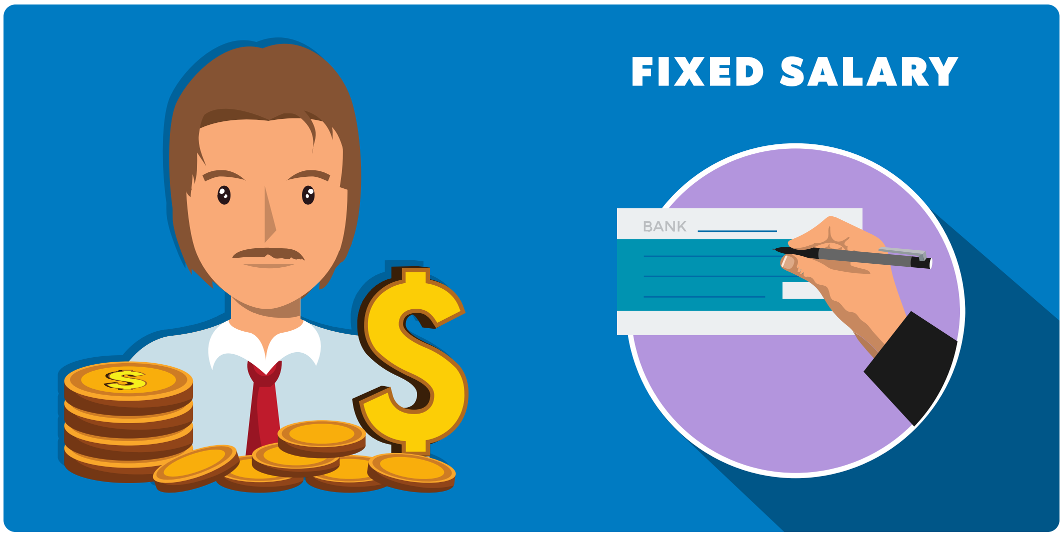
- Physicians and surgeons,
- Computer professionals,
- Private school teachers,
- Outside salespersons,
- Truck drivers, and
- Union employees.

These job-specific exemptions have their own tests (distinct from the three-part test mentioned above). And some of them are only partially exempt. Each job-specific exemption is discussed in its own section below.

Importantly, employers are only entitled to claim an exemption when an employee "plainly and unmistakably" meets the standard required for the exemption.[30] When doubt exists, the law generally requires the employee to be classified as nonexempt.

CH. 03

The Salary Requirement



In general, an employee is only exempt if they are paid on a salary basis (rather than an hourly wage).[31] The salary must be at least *twice the state minimum wage* for full-time employment.[32]

3.1 "Salary" Defined

A *salary*, for these purposes, is an unvarying minimum amount of pay.[33] The employee's pay must be predetermined, and cannot change based on the number of hours worked or the quality of the work performed.[34]

Courts have suggested that employers can deduct from an employee's pay for *full-day* absences and still consider the employee to be paid on a salary basis.[35] But the employee would no longer be considered "salaried" if the employer deducted for *partial-day* absences.[36]

If the employee's pay is based on the number of hours worked with no minimum guarantee, the employee will be treated as being an hourly employee (and thus nonexempt).[37]

3.2 Calculating the Minimum Salary

As mentioned above, California law requires exempt employees to be paid a monthly salary of at least twice the state minimum wage for full-time employment to qualify as exempt. For these purposes, *full-time employment* is considered 40 hours per week.[38]

In 2026, employees are entitled to a minimum wage of $16.90 per hour.[39] To meet the minimum *salary* requirement for exempt employees, the applicable minimum wage must be multiplied by two, and then multiplied by 40 hours per week. That gives us a weekly salary that is twice the minimum wage.

This means that the minimum salary for exempt employees in 2026 is **$5,858.67 per month** (or $70,304.00 annually). These numbers are calculated by doubling the applicable minimum wage, multiplying that amount by 40 hours per week, the result of which is then multiplied by 52 weeks and divided by 12 months. This calculation gives us a monthly salary that is equal to twice the state minimum wage for full-time employment.[40]

Some covered employees must meet a higher salary threshold. A fast-food restaurant employee who is exempt must be paid at least twice the fast-food sector minimum wage for full-time work,[41] and certain exempt health-care employees must earn the greater of 150% of their facility's health-care minimum wage or twice the state minimum wage.[42]

Importantly, California's minimum wage is set to increase every year on January 1. This means that the minimum salary for exempt employees in California will also be increasing annually as follows:

Minimum Annual Salary for Exempt Employees

Year	Minimum Annual Salary
2023	$64,480.00
2024	$66,560.00
2025	$68,640.00
2026	$70,304.00

Each figure is twice the California minimum wage for full-time work (40 hours per week). Before January 1, 2023, the minimum wage (and therefore the exempt salary floor) depended on the employer's size.

For more information about California's minimum wage, please read our article: Guide to California's Minimum Wage Laws in 2026 and Beyond.

CH. 04

The White Collar Duties Requirement

If the salary requirements are met, the next question is whether the employee is employed in an administrative, executive, or professional capacity.[43] This is sometimes called the “white collar duties” test.

To determine whether an employee is employed in an administrative, executive, or professional capacity, we look at which duties the employee actually performs, regardless of job title or how the job is defined in a position description.[44]

Importantly, the white collar duties test focuses on the employee's *primary* duties. California law requires an employee to devote more than half of his or her working hours to the primary duty in order to satisfy this test.[45]

An employee who meets this test will be exempt from several rights, including:

- The right to 10-minute rest periods,
- The right to overtime compensation, and
- The right to a minimum wage (provided, of course, that they met the minimum salary requirement).[46]

It is therefore important to carefully determine whether an employee meets all requirements of the test.

4.1 Administrative Employees

An employee is considered employed in an administrative capacity if their primary duty is office or nonmanual work directly related to management or general business operations.[47]

Work *relates* to management or general business operations when the employee assists in running the business.[48]

Secretaries, store clerks, bookkeepers, and lead operators on production lines cannot be classified as administrative employees because they do not help run the business.

Examples of duties that relate to management or general business operations include responsibility for marketing, research, budgeting, finance, accounting, purchasing, quality control, human resources, labor or government relations, regulatory compliance, and database administration.[49]

4.2 Executive Employees

An employee is considered employed in an executive capacity when:

- Their primary duty is the management of a business or one of its departments;
- They regularly direct the work of two or more other employees; and
- They have the authority to hire and fire employees, or to make recommendations about hiring, firing, promotions, and wages that are given particular weight.[50]

Management includes such activities as hiring, firing, training, supervising, and disciplining employees; making work assignments; resolving employee grievances; maintaining production or sales records; ordering materials or inventory; and planning a budget.[51]

Executive employees receive little direct supervision.

4.3 Professional Employees

There are three types of professional employees that can qualify for exemptions:

- **Licensed Professionals.** People who are licensed or certified by the State of California and are primarily engaged in the practice of: law, medicine, dentistry, optometry, architecture, engineering, teaching,[52] or accounting.[53]
- **Learned Professionals.** People who have advanced knowledge in a field of science or learning that is customarily acquired by prolonged and specialized study.[54]
- **Creative Professionals.** People who focus on invention, imagination, originality, or talent in a recognized field that is artistic or creative.[55]

The professional employee exemption is fact-specific and depends on the nature of the work that the employee primarily undertakes.

Of note, registered nurses who are employed to engage in the practice of nursing are not exempt professionals, but they might still be exempt as administrators or executives.[56]

CH. 05

The Discretion and Independent Judgment Requirement

To qualify as an exempt employee, California's Labor Code requires the worker to regularly exercise *discretion and independent judgment* in performing their duties.[57]

An employee exercises discretion and independent judgment when the employee makes and implements important choices after considering competing courses of action.[58]

An employee's judgment is *independent* when it is free from immediate direction or supervision, even if an employee who is higher in the management chain has the authority to override the decision.[59]

CH. 06

Job-Specific Exemptions

In addition to the main exemptions explained above, a handful of other occupations are exempt from some or all of California's labor laws. The more common exemptions are discussed below.

6.1 Commissioned Employees

Employees who are paid on a commission basis are sometimes exempt from California's overtime pay laws. To qualify for this exemption, the following requirements must be met:

- The employee's earnings are more than one-and-a-half times the minimum wage.
- Commission payments constitute more than half of the employee's total compensation.
- They work in either: the retail industry, or a professional, technical, or clerical occupation.[60]

Commissions are wage payments that an employee is entitled to as a result of sales they make. In a commission-based arrangement, the size of the employee's compensation depends on the amount or value of the thing that was sold.[61]

A discretionary payment that an employer can choose to pay or withhold, such as a performance bonus, is *not* a commission even if it is computed as a percentage of sales or profits.[62]

6.2 Physicians and Surgeons

Licensed physicians and surgeons are sometimes exempt for the purposes of *overtime* compensation. To fall under this exemption, the physician or surgeon must:

- Be paid at an hourly rate of at least $107.17 per hour.[63]
- Perform, as their primary duties, tasks that require them to be licensed.[64]

The applicability of this exemption is limited. Medical interns and residents do not qualify. Nor do physicians covered by certain types of collective bargaining agreements.[65]

6.3 Computer Professionals

Employees in the computer software field are sometimes exempt for the purposes of *overtime* compensation.[66] To qualify for this exemption, the following requirements must be met:

- The employee must be primarily engaged in work that is intellectual or creative.[67]
- The employee's primary duties must require the exercise of discretion and independent judgment.[68]
- The employee must be highly skilled in a field of computer systems analysis, programming, or software engineering.[69]
- The employee's primary duties must involve designing or developing computer hardware or software.[70]
- If the employee is hourly, they must be paid at least $58.85 per hour.[71]
- If the employee is salaried, they must earn at least $122,573.13 per year.[72]

6.4 Private School Teachers

Many teachers are exempt under the *professional* exemption described above. But some teachers at private schools are exempt even if they don't meet those requirements. Instead, they will be considered exempt if:

- They teach students who are in kindergarten or any of grades 1 through 12,
- They earn at least the salary California requires for private school teachers, which is set by reference to local public school salary schedules rather than the general minimum wage, and[73]
- They hold a baccalaureate degree (or higher) from an accredited institution of higher learning, or they meet the requirements for a teaching credential from California or any other state.[74]

6.5 Outside Salespersons

Employees who are considered "outside salespersons" are generally considered exempt employees.[75] An *outside salesperson* is defined as someone:

- Who is at least 18 years old,
- Who spends more than half of their working time away from their employer's place of business, and
- Who sells items, services, contracts, or the use of facilities.[76]

6.6 Truck Drivers

Some truck drivers are exempt from California's overtime laws (but not other employment rights, like meal breaks or the minimum wage).[77] This exemption applies to interstate truck drivers and drivers who transport hazardous materials.[78]

In those situations, the drivers' hours are controlled by either: federal regulations,[79] or California's motor vehicle regulations.[80]

6.7 Union Employees

Union employees are sometimes exempt from California's overtime laws.[81] To qualify as exempt, the employees must be employed under a collective bargaining agreement that expressly provides for the wages, hours of work, and working conditions of the employees.[82]

The collective bargaining agreement must also provide premium wage rates for all overtime hours worked and a regular hourly rate of pay of at least 30 percent more than the state minimum wage.[83]

6.8 Other Job-Specific Exemptions

California law is governed, in part, by a series of regulations called *wage orders*, which have been issued by California's Industrial Welfare Commission.[84] The wage orders have adopted several exceptions to California's overtime laws, in addition to those listed above, that apply to workers in specific industries or jobs. Occupations to which special overtime rules apply include:

- Live-in household employees;[85]
- Personal attendants;[86]
- Camp counselors;[87]
- Managers of homes for the aged;[88]
- Certain providers of 24-hour residential childcare;[89]
- Ambulance drivers and attendants;[90]
- Agricultural occupations;[91] and
- The employer's spouse, children, and parents.[92]

CH. 07

Consequences of Misclassification

California courts narrowly construe the exemptions explained above. The employee must "plainly and unmistakably" meet the standard required for the exemption.[93] Otherwise, the employee should be classified as nonexempt.

This standard strongly favors the employee, and the employer has the legal burden of proving an exemption.[94] When employers fail to properly treat their employees as nonexempt, the consequences can be severe.

California law provides for a variety of penalties for Labor Code violations. Some of the most common examples are below.

7.1 Unpaid Overtime

Nonexempt employees in California have a right to be paid overtime wages when they work more than eight hours in a workday, 40 hours in a work week, or seven consecutive days.[95] When employers misclassify their employees as *exempt*, they often fail to pay the employee overtime wages.

Employees who have been deprived of overtime pay because of a misclassification can seek back-pay for the unpaid overtime wages the employee earned.[96] These can add up quickly, even for employees earning a low amount.

Additionally, the employer may be obligated to pay the legal costs and attorney fees that the employee incurred while pursuing their overtime wages.[97]

In some cases, there may also be a penalty of $100 or $200 per pay period in which California's overtime laws were violated.[98] That penalty is normally payable to the State of California, but under the Private Attorneys General Act (PAGA) an aggrieved employee may recover a share of it, currently 35%.[99]

7.2 Rest Break and Meal Period Penalties

Non-exempt employees are entitled to meal breaks and rest periods.[100] Employers who misclassify their employees as *exempt* commonly fail to provide the required breaks.

When an employee misses a meal period or rest break, they are entitled to *one extra hour of pay* at the employee's regular rate of compensation.[101]

If the employee misses multiple rest breaks or meal periods, they can earn up to one extra hour *per workday* for their missed rest periods and an additional one hour *per workday* for their missed meal breaks.[102]

Thus, a twelve-hour shift with no rest or meal breaks will entitle the employee to two extra hours of pay at the employee's regular rate of compensation.[103]

7.3 Pay Stub Penalties

If the employer failed to keep proper records of the employee's work, the employer may be obligated to pay the employee a pay stub penalty.[104] The amount of the penalty depends on the number of pay periods that the violation lasted.

For the first pay stub violation, the employee is entitled to a $50 penalty.[105] The employee is then entitled to a penalty of $100 per pay period for every violation after that, up to $4,000.[106]

These penalties apply only where the employer's failure was “knowing and intentional.” An employer's objectively reasonable and good-faith belief that its wage statements complied with the law defeats that requirement.[107]

This penalty often arises when the employee isn't sure how much back-pay they might be owed because the employer mistakenly classified the employee as exempt.

7.4 Waiting Time Penalties

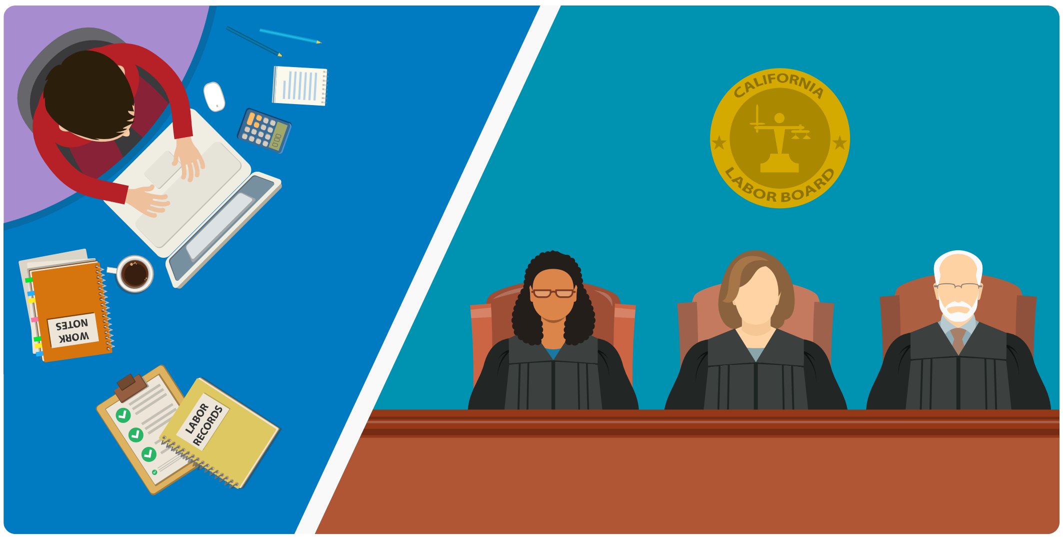
When an employer willfully fails to pay an employee's wages on-time as required by the Labor Code, they can be subject to a waiting time penalty. If an employee has been deprived of their full pay due to being misclassified as exempt, they are sometimes entitled to receive this.

Specifically, a delayed payment can result in a penalty of up to 30 days of the employee's wages.[108] The unpaid wages accrue on a daily basis, not just for the days the employee might have worked, but also on non-workdays.

This penalty applies only when the failure to pay was *willful*. A good-faith dispute about whether the wages were owed defeats willfulness, so the penalty does not accrue where the employer had a legitimate, good-faith reason to believe no further wages were due.[109]

CH. 08

What to Do If You Have Been Misclassified



Employees who have been improperly classified as exempt have three basic options:

- Resolve their dispute informally with their employer,
- File a lawsuit in court, or
- File a wage claim with California's Division of Labor Standards Enforcement (the "DLSE").[110]

The best way to resolve an exemption dispute will depend on the employee's specific situation. It's usually a good idea to get the opinion of a lawyer before deciding how to proceed.

Employees should keep in mind, however, that there are strict deadlines they need to meet to file a wage claim or lawsuit.

8.1 Deadlines to File Claims

Employees usually have **three years** in which to make a wage claim under California law.[111]

The clock begins to run at the time the wages first become legally due. Usually, wages first become due on the regular payday for the pay period in which the employee performed the work.[112]

When the work is continuing and the employee is paid periodically (e.g., weekly or monthly) a separate and distinct cause of action accrues on each payday, triggering on each occasion the running of a new period of limitations.[113]

8.2 Exceptions

Employees wishing to pursue certain types of claims may face a shorter deadline. A claim for the breach of an oral contract must be filed within **two years**.[114]

A claim seeking statutory penalties may also face a short deadline. The law is somewhat unsettled, but some penalties for the late payment of wages may be subject to a **one-year** statute of limitations.[115] Other penalties, however, are subject to the normal **three-year** statute of limitations.[116]

In some cases, a claim for unpaid wages (but not penalties) can be pursued as late as **four years** after the claim began to accrue. To take advantage of this longer statute of limitations, the employee must be filing their claim based on a breach of a written contract.[117]

Alternatively, the employee might be able to claim the failure to pay their wages was an unlawful business practice under California's Unfair Competition Law.[118] This is sometimes another way for an employee to access a four-year statute of limitations, but the remedies can be limited.[119]

8.3 Federal Cases

Employees can usually seek back pay for overtime wages earned during the **two years** prior to making a wage claim. Federal law extends that time to three years if the misclassification was willful.[120]

References

1	Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A).
2	Labor Code, § 515, subd. (a); 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”].
3	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.”].
4	Labor Code, § 515, subd. (a) [requiring employees to “customarily and regularly exercises discretion and independent judgment in performing” the duties of their job].
5	29 U.S.C. § 206(a)(1)(C).
6	Labor Code, § 1182.12, subds. (b), (c).
7	Labor Code, §§ 1474–1476; Cal. Dept. of Industrial Relations, Fast Food Minimum Wage Frequently Asked Questions, available here.
8	Labor Code, §§ 1182.14–1182.15; Cal. Dept. of Industrial Relations, Health Care Worker Minimum Wage Frequently Asked Questions, available here.
9	29 U.S.C. § 207.
10	Labor Code, § 510.

11 Labor Code, § 510, subd. (a) ["Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."]; see also Labor Code, §§ 511, 514, 515.

12 Labor Code, § 510, subd. (a) ["Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."].

13 Labor Code, § 512, subd. (a) ["An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee."]; Cal. Code of Regs., tit. 8, § 11050, subd. (11).

14 Labor Code, § 512, subd. (a) ["An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."].

15 Labor Code, § 512, subd. (a).

16 Labor Code, § 512, subd. (a).

17 Cal. Code of Regs., tit. 8, § 11050, subd. (11)(A) ["Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time."].

18 Cal. Code of Regs., tit. 8, § 11050, subd. (11)(B) ["If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour

of pay at the employee's regular rate of compensation for each workday that the meal period is not provided."]. The "regular rate of compensation" for this premium is synonymous with the overtime "regular rate of pay" and includes nondiscretionary payments, not merely the base hourly wage. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

19 See, e.g., Labor Code, § 512, subd. (e) [exempting certain unionized employees from the normal meal break rules under the right conditions].

20 Labor Code, §§ 512, subd. (a), 516, subd. (a) [stating that, with the exception of meal breaks described in Labor Code section 512, "the Industrial Welfare Commission may adopt or amend working condition orders with respect to break periods"].

21 Cal. Code of Regs., tit. 8, § 11040, subd. (12)(A) ["Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. . . . Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages."].

22 Cal. Code of Regs., tit. 8, § 11040, subd. (12)(A) ["[A] rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours."].

23 Cal. Code of Regs., tit. 8, § 11040, subd. (12)(B) ["If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."].

24 Labor Code, § 1030 ["Every employer, including the state and any political subdivision, shall provide a reasonable amount of break time to accommodate an employee desiring to express breast milk for the employee's infant child each time the employee has need to express milk."].

25 Labor Code, § 1030 ["The break time shall, if possible, run concurrently with any break time already provided to the employee. Break time for an

employee that does not run concurrently with the rest time authorized for the employee by the applicable wage order of the Industrial Welfare Commission shall be unpaid."].

26 See 29 U.S.C. § 213 [federal exemptions]; Cal. Code of Regs., tit. 8, § 11040, subd. (1)(A).

27 Labor Code, § 515, subd. (a); 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"].

28 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."].

29 Labor Code, § 515, subd. (a) [requiring employees to "customarily and regularly exercises discretion and independent judgment in performing" the duties of their job].

30 *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562 ["Exemptions are narrowly construed against the employer and their application is limited to those employees plainly and unmistakably within their terms."]; *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 794–795 [the employer bears the burden of proving an exemption]. California continues to construe its own wage and hour exemptions narrowly against the employer, even though the United States Supreme Court rejected that canon for the federal Fair Labor Standards Act in *Encino Motorcars, LLC v. Navarro* (2018) 584 U.S. 79 [138 S.Ct. 1134, 1142] [FLSA exemptions are entitled to "a fair (rather than a 'narrow') interpretation"].

31 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040.

32 Labor Code, § 515, subds. (a), (c).

33 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 395; *Kettenring v. Los Angeles Unified School Dist.* (2008) 167 Cal.App.4th 507, 513–514.

34 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 ["Since federal law requires that, in order to meet the salary basis test for exemption the employee would have to be paid a predetermined amount that is not subject to reduction based upon the number of hours worked, state law requirements must be at least as protective."]; *Kettenring v. Los Angeles Unified School Dist.* (2008) 167 Cal.App.4th 507, 513–514 [salary cannot be "subject to reduction because of variations in the quality or quantity of the work performed"], quoting 29 C.F.R. § 541.602(a).

35 *Conley v. Pacific Gas and Elec. Co.* (2005) 131 Cal.App.4th 260, 267; 29 C.F.R. § 541.602(b)(1).

36 *Conley v. Pacific Gas and Elec. 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."].

37 *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 400.

38 Labor Code, § 515, subds. (a), (c).

39 Labor Code, § 1182.12, subds. (b), (c).

40 Labor Code, § 515, subd. (a).

41 Labor Code, §§ 1474–1476; Cal. Dept. of Industrial Relations, Fast Food Minimum Wage Frequently Asked Questions, available here.

42 Labor Code, §§ 1182.14–1182.15; Cal. Dept. of Industrial Relations, Health Care Worker Minimum Wage Frequently Asked Questions, available here.

43 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.”].

44 29 C.F.R. § 541.2; *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 [“[S]tate law requirements for exemption from overtime pay must be at least as protective of the employee as the corresponding federal standards.”].

45 Labor Code, § 515, subd. (e) [“For the purposes of this section, 'primarily' means more than one-half of the employee's worktime.”].

46 Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, §§ 11010–11170 [wage orders of the California Industrial Welfare Commission].

47 Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (1)(A)(2) [defining administrative employee under California law]. An employee might also be considered administrative if they perform “functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.” (*Id.*)

48 29 C.F.R. § 541.201(a).

49 29 C.F.R. § 541.201(b).

50 Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (1)(A)(1) [defining executive employee].

51 29 C.F.R. § 541.102.

52 “Teaching” for these purposes only applies to teaching under a certificate from the Commission for Teacher Preparation and Licensing or teaching in an accredited college or university. (Cal. Code of Regs., tit. 8, § 11040, subd. (2)(R).)

53 Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (3)(A).

54 Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (3)(B).

55 29 C.F.R. § 541.300 [defining professional employee under the federal FLSA]; Cal. Code of Regs., tit. 8, §§ 11010–11150, subd. (1)(A)(3) [defining professional employee under California law].

56 Labor Code, § 515, subd. (f)(1).

57 Labor Code, § 515, subd. (a).

58 29 C.F.R. § 541.202(a) ["In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered."].

59 29 C.F.R. § 541.202(c) ["The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level."].

60 Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subds. (3)(D).

61 Labor Code, § 204.1 defines commissions as "compensation paid to any person for services rendered in the sale of such employer's property or services and based proportionately upon the amount or value thereof." (See also *Areso v. CarMax, Inc.* (2011) 195 Cal.App.4th 996, 1003.)

62 See Labor Code, § 2751, subd. (c) [excluding short-term productivity bonuses, bonus and profit-sharing plans that are not based on a fixed percentage of sales or profits, and "[t]emporary, variable incentive payments that increase, but do not decrease, payment under the written contract" from the statutory definition of a commission].

63 Labor Code, § 515.6, subd. (a); California Department of Industrial Relations, Overtime Exemption for Licensed Physicians and Surgeons, available here.

64 Labor Code, § 515.6 ["Section 510 shall not apply to any employee who is a licensed physician or surgeon, who is primarily engaged in duties that require licensure pursuant to Chapter 5 (commencing with Section 2000) of Division 2 of the Business and Professions Code, and whose hourly rate of pay is equal to or greater than fifty-five dollars ($55.00). The department shall adjust this threshold rate of pay each October 1, to be effective the following January 1, by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers."].

65 Labor Code, § 515.6, subd. (b).

66 Labor Code, § 515.5.

67 Labor Code, § 515.5, subd. (a)(1).

68 Labor Code, § 515.5, subd. (a)(1).

69 Labor Code, § 515.5, subd. (a)(3).

70 Labor Code, § 515.5, subds. (a)(2)(A)–(C).

71 Labor Code, § 515.5, subd. (a)(4); California Department of Industrial Relations, Overtime Exemption for Computer Software Employees, available here.

72 Labor Code, § 515.5, subd. (a)(4); California Department of Industrial Relations, Overtime Exemption for Computer Software Employees, available here.

73 Labor Code, § 515.8, subd. (b)(3) [since July 1, 2017, requiring a full-time teacher to earn the greater of (i) 100 percent of the lowest salary offered by any school district for a position that requires a valid California teaching credential, or (ii) the equivalent of 70 percent of the lowest schedule salary offered by the school district or county office of education in which the institution is located].

74 Labor Code, § 515.8, subd. (b)(4).

75 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. (1)(C).

76 Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. (2)(M).

77 See, e.g., Cal. Code of Regs., tit. 8, § 11090, subd. (3)(L).

78 Cal. Code of Regs., tit. 8, § 11090, subd. (3)(L); 49 C.F.R. §§ 395.1–395.13; Cal. Code of Regs., tit. 13, § 1200, et seq.

79 See 49 C.F.R. §§ 395.1–395.13.

80 See Cal. Code of Regs., tit. 13, § 1200, et seq.; see also *Collins v. Overnite Transp. Co.* (2003) 105 Cal.App.4th 171, 175.

81 Labor Code, § 514.

82 Labor Code, § 514.

83 Labor Code, § 514.

84 Labor Code, § 1173.

85 Cal. Code of Regs., tit. 8, § 11150, subd. 3.

86 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

87 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

88 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

89 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

90 Cal. Code of Regs., tit. 8, § 11050, subd. 3.

91 Cal. Code of Regs., tit. 8, § 11140, subd. 3.

92 See, e.g., Cal. Code of Regs., tit. 8, § 11040, subd. 1(D).

93 *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562 ["Exemptions are narrowly construed against the employer and their application is limited to those employees plainly and unmistakably within their terms."].

94 *Ramirez v. Yosemite Water Co., Inc.* (1999) 20 Cal.4th 785, 794–795 ["[T]he assertion of an exemption from the overtime laws is considered to be an affirmative defense, and therefore the employer bears the burden of proving the employee's exemption."].

95 Labor Code, §§ 204, 510, subd. (a) ["Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."]; see also Labor Code, §§ 511, 514, 515.

96 Labor Code, §§ 204, 1194, subd. (a).

97 Labor Code, § 1194, subd. (a).

98 Labor Code, §§ 204, 210, 225.5.

99 Labor Code, §§ 210, 225.5; Labor Code, § 2699, as amended by Stats. 2024 (AB 2288, SB 92). For PAGA claims based on a notice filed on or after June 19, 2024, the aggrieved employees' share is 35 percent (raised from 25 percent), and the statute now includes a framework of

penalty caps and cure procedures; actions noticed before that date keep the 25 percent share.

100 Labor Code, § 512, subd. (a).

101 See, e.g., Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (11)(B).

102 Labor Code, § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11010–11150, subds. (11)(B), (12)(B).

103 *United Parcel Service, Inc. v. Superior Court* (2011) 196 Cal.App.4th 57, 69.

104 Labor Code, § 226.

105 Labor Code, § 226, subd. (e)(1).

106 Labor Code, § 226, subd. (e)(1) [“An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.”].

107 *Naranjo v. Spectrum Security Services, Inc.* (2024) 15 Cal.5th 1056 [an objectively reasonable, good-faith belief in compliance precludes the “knowing and intentional” penalty under section 226, subdivision (e)].

108 Labor Code, § 203, subd. (a); see *McLean v. State of California* (2016) 1 Cal.5th 615, 619 [“An 'employer' that 'willfully fails to pay' in accordance with sections 201 and 202 'any wages of an employee who is discharged or who quits’ is subject to so-called waiting-time penalties of up to 30 days' wages.”].

109 Cal. Code of Regs., tit. 8, § 13520 [a good faith dispute that any wages are due precludes a waiting-time penalty under Labor Code section 203].

110 See *Reynolds v. Bement* (2005) 36 Cal.4th 1075, 1084 [“The employee may seek judicial relief by filing an ordinary civil action against the employer for breach of contract and/or for the wages prescribed by statute. [Citations.] Or the employee may seek administrative relief by

filing a wage claim with the commissioner pursuant to a special statutory scheme codified in [Labor Code] sections 98 to 98.8."].

111 Code Civ. Proc., § 338, subd. (a) [statute of limitations: "Within three years: (a) An action upon a liability created by statute, other than a penalty or forfeiture."]; *Aubry v. Goldhor* (1988) 201 Cal.App.3d 399, 404 ["[A]n employer's obligation to pay overtime compensation to his employee would not exist but for the Labor Code. An action to enforce that obligation therefore is governed by the three-year statute of limitations . . . ."].

112 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 859.

113 *Cuadra v. Millan* (1998) 17 Cal.4th 855, 859.

114 Code Civ. Proc., § 339.

115 See Code Civ. Proc., § 340, subd. (a) [statute of limitations: "Within one year: (a) An action upon a statute for a penalty or forfeiture, if the action is given to an individual, or to an individual and the state, except if the statute imposing it prescribes a different limitation."].

116 *Pineda v. Bank of America, N.A.* (2010) 50 Cal.4th 1389, 1392–1401.

117 Code Civ. Proc., § 337, subd. (a) ["Within four years: (a) An action upon any contract, obligation or liability founded upon an instrument in writing . . . ."].

118 Bus. & Prof. Code, § 17208.

119 See Bus. & Prof. Code, § 17203; *Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 178 ["[A]n order that a business pay to an employee wages unlawfully withheld is consistent with the legislative intent underlying the authorization in section 17203 for orders necessary to restore to a person in interest money or property acquired by means of an unfair business practice."].

120 29 U.S.C. § 255(a).