



THE OUTSIDE SALESPERSON EXEMPTION TO CALIFORNIA'S LABOR LAWS

Outside salespersons are exempt from minimum wage and overtime, but only when they truly spend most of their time selling away from the employer's place of business.

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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 be paid minimum wage.¹ They are also entitled to overtime wages when they work more than eight hours in a workday, more than 40 hours in a workweek, or on a seventh consecutive day of work in a workweek.²

Some employees, however, are *exempt* from minimum wage and overtime laws, as well as related laws requiring employers to provide rest periods.³ The primary exemptions in California apply to executive, administrative, and professional employees.

Another exemption, recognized by both California and federal law, applies to **outside salespersons**.⁴ The outside salesperson exemption differs from the other exemptions in that outside salespersons are exempt regardless of the compensation they earn.⁵

An employee counts as an exempt outside salesperson only if the employee is at least 18 years old and customarily and regularly spends more than half of his or her working time away from the employer's place of business, selling items or obtaining orders or contracts for products, services, or the use of facilities.⁶ When those criteria are not satisfied, the exemption does *not* apply and California's normal wage and hour laws must be followed.

Definition of Outside Salesperson



California law defines an outside salesperson as:

-  A person 18 years of age or over,
-  Who regularly spends more than half their working time away from the employer's place of business, and
-  Who sells items, or obtains orders or contracts for products, services, or the use of facilities.⁷

Each element of that definition must be met before an employee can be classified as an exempt outside salesperson.

1.1 Age

Only adult employees (age 18 or over) can be classified as exempt, even if they meet the other requirements for the outside salesperson exemption.⁸

1.2 Location of Work

The location at which work is performed is a critical factor that defines an outside salesperson. Where the employee spends his or her work time is determined not just by the employee's job description, but by where the employee actually works.⁹

The employee must customarily and regularly spend *more than half* of their worktime away from the employer's place of business.¹⁰

EXAMPLE

If an employee spends two days a week on the road making sales calls and three days a week in the office preparing sales orders and talking to customers on the telephone, the employee cannot be classified as exempt because the employee is not regularly working more than half the time away from the employer's place of business.

The employer's *place of business* is any fixed location, including the salesperson's home, that the salesperson uses as a place of business. The exemption is meant to apply to salespersons who are visiting a customer's place of business or selling door-to-door.¹¹

Time that the salesperson spends making telephone solicitations, addressing mailed advertisements, or doing other sales work in an office (including a home office) does not count as time that the salesperson is working outside the employer's place of business.¹²

1.3 Sales Duties

An exempt outside salesperson must not only spend more than half of his or her working time away from the employer's place of business, but that time must be spent selling or obtaining orders for products or services, including the use of facilities.¹³

The test under California law has been described by courts as “uniquely quantitative.”¹⁴ If the employee spends more than half of his or her work time away from the employer's place of business, but less than half of his or her overall work time is devoted to selling, the employee cannot be classified as an exempt outside salesperson.

EXAMPLE

A sales representative who not only sells and takes orders for bottled water, but who also delivers bottled water to customers, cannot be classified as an exempt outside salesperson if more time is spent delivering than selling.¹⁵

The exemption only applies if more than half the employee's total work time is devoted to selling and taking orders.

Time that is not directly devoted to making sales, but that is necessary to making sales, may count as time spent “selling” or “taking orders” if the time is spent away from the employer's place of business. Driving to a customer's place of business to make a sales call is thus counted as time spent “selling.”¹⁶

On the other hand, if a salesperson is driving both to make a sales call and to make a delivery (or for some other non-sales purpose), the driving time must be apportioned between the two purposes when deciding whether more than half the employee's time is devoted to selling.¹⁷

Employers may not evade overtime regulations by imposing unrealistic expectations that employees will spend more than half their time selling, when their actual job duties require them to spend most of their time engaged in non-sales activities.¹⁸

But, if an employee who is supposed to be engaged in sales activities falls below the 50 percent mark due to his or her own substandard performance, the exemption might still be met.¹⁹

When a dispute arises concerning the job duties an employee classified as an outside salesperson actually performs, courts inquire into the realistic requirements of the job. In doing so, they consider several factors:

-  How the employee actually spent his or her time;
-  Whether the employee's practice diverged from the employer's realistic expectations;
-  Whether the employer concretely expressed displeasure over the employee's substandard performance; and
-  Whether those expressions of displeasure were realistic given the actual overall requirements of the job.²⁰

How the employee actually spends his or her time is the most important factor,²¹ but in some cases an employer's realistic expectation that an employee will spend most of his or her time making sales will justify the exemption even if the employee (through his or her own fault) fails to do so.

Salespeople who fail the outside salesperson test are not always entitled to overtime, however. A separate exemption covers certain commissioned employees: an employee whose earnings exceed one and one-half times the state minimum wage of \$16.90 per hour, and whose compensation is more than half commissions, is exempt from the wage order's overtime requirements (although not from its minimum wage, meal period, or rest break protections).²²



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How commission pay works under California law, including the overtime exemption for commissioned salespeople.

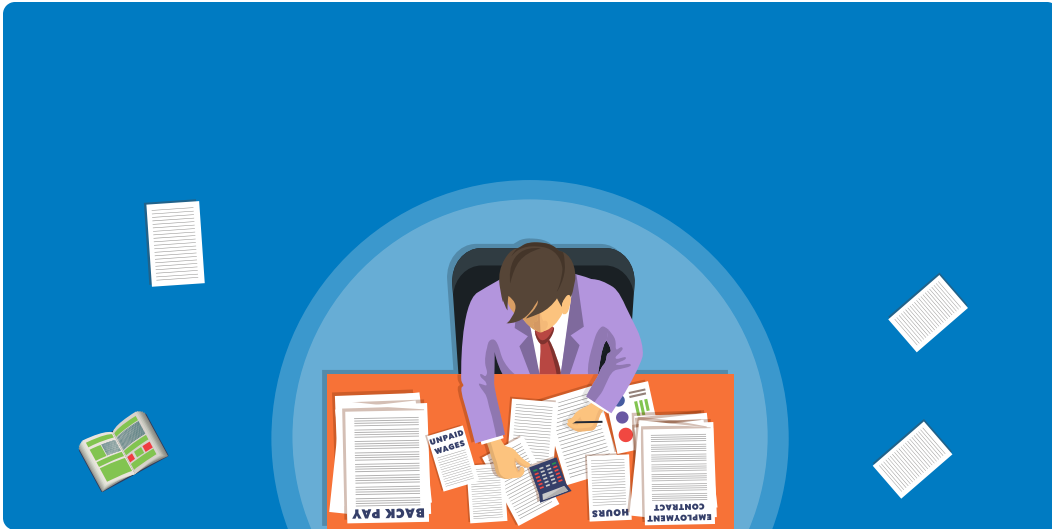
The Effect of the Exemption

The outside salesperson exemption sweeps more broadly than California's other exemptions. The executive, administrative, and professional exemptions remove only some of a wage order's protections, but the wage orders do not apply to exempt outside salespersons at all.²³ Exempt outside salespersons are therefore not entitled to the minimum wage, overtime pay, meal periods, rest breaks, reporting-time pay, or the wage order's other protections.²⁴

The exemption does not erase every workplace right, however. Protections that come from laws outside the wage orders still apply. Exempt outside salespersons remain entitled to:

-  Reimbursement of the business expenses they necessarily incur in doing their jobs, including mileage and other automobile costs;²⁵
-  Paid sick leave of at least 40 hours or five days per year;²⁶ and
-  An itemized wage statement each pay period, although the statement need not show the total hours an exempt outside salesperson worked.²⁷

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.²⁸

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.²⁹

Whether an outside salesperson can be classified as exempt usually requires a close examination of the work that the employee actually does during the course of the workday. When it is unclear whether the employee can properly be classified as an exempt outside salesperson, 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 the minimum wage, see our [Guide to California's Minimum Wage Laws in 2026 and Beyond](#).
 - 2 To learn more about California's overtime law, see our article: [The Ultimate Guide to California's Overtime Wage Laws](#).
 - 3 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 subdivisions 3 to 12 “shall not apply to persons employed in administrative, executive, or professional capacities.”
 - 4 California's law governing exemptions is similar in many respects to federal law. When the definitions of an exemption are similar, California courts are usually guided by federal law. (See, e.g., Cal. Code of Regs., tit. 8, § 11070, 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.”]; *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.”].) Federal law is not always helpful in interpreting the outside salesperson exemption, however, because the federal and California exemptions differ in significant ways. A key difference is discussed below.
 - 5 Labor Code, § 1171 [“The provisions of this chapter shall apply to and include men, women and minors employed in any occupation, trade, or industry, whether compensation is measured by time, piece, or otherwise, but shall not include any individual employed as an outside salesman”]; Cal. Code of Regs., tit. 8, § 11070, subd. 1(C) [“The provisions of this order shall not apply to outside salespersons.”].
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6	Cal. Code of Regs., tit. 8, § 11070, subd. 2(K).
7	Cal. Code of Regs., tit. 8, § 11070, subd. 2(K). Section 11070 applies to the mercantile industry, in which many outside salespersons are employed. The same definition appears in the wage orders governing other occupations, although the subdivision letter varies from order to order. (See Cal. Code of Regs., tit. 8, §§ 11010–11170.)
8	Cal. Code of Regs., tit. 8, § 11070, subd. 2(K).
9	<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1, 26 [“California’s wage order definition ‘takes a purely quantitative approach’ and focuses exclusively on whether the employee spends more than half of the workday engaged in sales activities outside the office. . . . The exemption requires scrutiny of both the job description and an employee’s own work habits.”]; <i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 802 [“the court should consider, first and foremost, how the employee actually spends his or her time”].
10	Cal. Code of Regs., tit. 8, § 11070, subd. 2(K).
11	29 C.F.R. § 541.502 [“Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer’s places of business, even though the employer is not in any formal sense the owner or tenant of the property.”].
12	29 C.F.R. § 541.502.
13	Cal. Code of Regs., tit. 8, § 11070, subd. 2(K).
14	<i>Duran v. U.S. Bank National Assn.</i> (2014) 59 Cal.4th 1, 27 [discussing “California’s uniquely quantitative approach to this exemption”]; <i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785 [discussing “California’s distinctive quantitative approach to determining which employees are outside salespersons” and holding that lower courts erred in relying on federal interpretations of federal law, given California’s “quantitative method for determining whether an employee is an outside salesperson that differs in some respect from the qualitative method employed under federal law”].

15	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785.
16	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 801.
17	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 801 [“If a salesperson must travel one hour to destination A in order to attempt a sale, then surely the most reasonable interpretation of the wage order is to count the hour of travel time as time spent ‘selling.’ But if, as in the present case, an employee travels to a destination to engage in both sales and nonsales activities, the travel time must be apportioned among the two types of activities for purposes of determining the total amount of time spent doing sales and nonsales work.”].
18	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 802.
19	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 802.
20	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 802.
21	<i>Ramirez v. Yosemite Water Co.</i> (1999) 20 Cal.4th 785, 802 [“the court should consider, first and foremost, how the employee actually spends his or her time”].
22	Cal. Code of Regs., tit. 8, §§ 11040, 11070, subd. 3(D) [“Provisions of subsections (A), (B), and (C) above shall not apply to any employee whose earnings exceed one and one-half (1½) times the minimum wage if more than half of that employee’s compensation represents commissions.”]. Subsections (A), (B), and (C) of section 3 are the wage orders’ overtime provisions. This exemption appears in the wage orders governing professional, technical, clerical, and similar occupations (Wage Order 4) and the mercantile industry (Wage Order 7).
23	Compare Cal. Code of Regs., tit. 8, § 11070, subd. 1(A) [exempting employees “employed in administrative, executive, or professional capacities” from sections 3 through 12 of the order] with Cal. Code of Regs., tit. 8, § 11070, subd. 1(C) [“The provisions of this order shall not apply to outside salespersons.”].
24	Cal. Code of Regs., tit. 8, § 11070, subd. 1(C); Labor Code, § 1171 [excluding outside salespersons from the statutory chapter governing wages, hours, and working conditions].

- 25 Labor Code, § 2802, subd. (a); *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554 [employer must fully reimburse outside sales representatives for the automobile expenses they necessarily incur in performing their duties].
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- 26 Labor Code, §§ 245.5, 246, as amended by Stats. 2023, ch. 309 (SB 616).
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- 27 Labor Code, § 226, subds. (a), (j)(2)(B).
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- 28 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1009.
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- 29 *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1010.
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