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# The Minimum Salary Requirement for Exempt Employees in California

Employees are usually only exempt if they are paid a salary that equals at least *twice* the applicable state minimum wage for full-time employees.

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## INTRODUCTION




California's employment laws divide employees into two main categories: exempt employees and nonexempt employees. The distinction can be important because nonexempt employees have more rights in the workplace than exempt employees.

Most importantly for the purposes of this article, the employee must usually be paid a salary that is at least *twice the state minimum wage* for full-time employment.<sup>1</sup>

There are, however, many exceptions and caveats to the minimum salary requirement. The rules that apply to California's minimum salary are explained in more detail below.

## CH. 1. THE DEFINITION OF “EXEMPT EMPLOYEE” IN CALIFORNIA

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

-  The right to be paid at least the minimum wage;<sup>2</sup>
-  The right to overtime wages when they work more than eight hours in a workday, more than 40 hours in a workweek, or seven consecutive days;<sup>3</sup> and
-  The right to meal and rest breaks when their shifts exceed a certain duration.<sup>4</sup>

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<sup>1</sup> Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040.

<sup>2</sup> Labor Code § 1182.12.

<sup>3</sup> Labor Code, § 510.

<sup>4</sup> Labor Code, § 512, subd. (a); Cal. Code of Regs., tit. 8, §§ 11010–11170 [wage orders of the California Industrial Welfare Commission].

Some employees, however, are *exempt* from some or all of these legal protections, as well as related laws.<sup>5</sup> In most cases, there are three simple requirements to determine whether a worker is an exempt employee under state law:

- ☑ **Minimum Salary.** The employee must be paid a salary that is at least twice the state minimum wage for full-time employment.<sup>6</sup>
- ☑ **White-Collar Duties.** The employee's primary duties must consist of administrative, executive, or professional tasks.<sup>7</sup>
- ☑ **Independent Judgment.** The employee's job duties must involve the use of discretion and independent judgment.<sup>8</sup>

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).

## CH. 2. THE REQUIREMENT OF A SALARY GENERALLY

In most cases, employees must be paid a salary to qualify as an *exempt* employee. Employees who are paid an hourly wage are usually considered non-exempt.<sup>9</sup> (Although there are a number of job-specific exemptions that apply to certain types of hourly employees, like commissioned employees, outside salespersons, and computer professionals.)

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<sup>5</sup> See, e.g., Cal. Code 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.

<sup>6</sup> Labor Code, § 515, subd. (a); Cal. Code of Regs., tit. 8, § 11040.

<sup>7</sup> Labor Code, § 515, subd. (a).

<sup>8</sup> Labor Code, § 515, subd. (a) [requiring employees to “customarily and regularly exercises discretion and independent judgment in performing” the duties of their job].

<sup>9</sup> 29 C.F.R. § 541.600(a).

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.<sup>10</sup> Employees who are paid an hourly wage cannot be classified as exempt employees—even if their work consists primarily of job duties that would otherwise be considered exempt.

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.<sup>11</sup>

## CH. 3. THE MINIMUM REQUIRED SALARY AMOUNT

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.<sup>12</sup>

“Full-time employment,” for these purposes, is defined as 40 hours per week.<sup>13</sup> 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.<sup>14</sup>

In 2018, people that work for an employer with 25 or fewer employees are entitled to be paid a minimum wage of at least \$10.50 per hour. People that work for an employer with more than 25 employees are entitled to be paid a minimum wage of at least \$11.00 per hour.<sup>15</sup>

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<sup>10</sup> 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).

<sup>11</sup> *Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 399 [A salary must be “a pre-determined amount that is not subject to reduction based upon the quantity or quality of work.”].



<sup>12</sup> Labor Code, § 515, subd. (a).

<sup>13</sup> 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”].

<sup>14</sup> Labor Code, § 204, subd. (a).

<sup>15</sup> Labor Code § 1182.12, subd. (b). The minimum wage applies to “all industries” and to

This means that the minimum salary for exempt employees in 2018 is either:

-  \$3,640.00 per month (or \$43,680.00 annually) if the employee works for an employer of 25 or fewer people, or
-  \$3,813.33 per month (or \$45,760.00 annually) if the employee works for an employer of more than 25 people.<sup>16</sup>

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.<sup>17</sup>

Importantly, California's minimum wage is set to increase every year on January 1st until 2023. This means that the minimum salary for exempt employees in California will also be increasing annually.

For more information about California's minimum wage, please read our article: [\*Guide to California's Minimum Wage Laws in 2018 and Beyond\*](#).

### 3.1. 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.<sup>18</sup>

In California, however, "docking" a salary as a disciplinary action should never happen. "Docking" wages for disciplinary reasons is contrary

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"any occupation" except outside salespersons and individuals participating in certain national service programs. (Labor Code, §§ 1171, 1182.12.)

<sup>16</sup> Labor Code, §§ 515, subd. (a), 1182.12.

<sup>17</sup> Labor Code § 515(a).

<sup>18</sup> *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"].

to California's policy that an employer must pay, without deduction except for those authorized by law, the full wages an employee has earned.<sup>19</sup>

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 exempt employee status.<sup>20</sup>

### 3.2. SALARY DEDUCTIONS FOR ABSENCES

In calculating an employee's salary for the purposes of the salary test for exempt employees, employers are permitted to deduct any unpaid vacation days or personal days that are taken by the employee.<sup>21</sup> 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

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<sup>19</sup> 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”].

<sup>20</sup> See Dept. Industrial Relations, DLSE Opn. Letter No. 2002.05.06 (May 6, 2002). 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(a)(5).

<sup>21</sup> *Conley v. Pacific Gas & Elec. Co.* (2005) 131 Cal.App.4th 260, 266–267 [following 29 C.F.R. § 541.602(b)(1), which provides that “[d]eductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability”]. Federal law provides that deductions from pay for full days of sickness or disability will not affect the exemption if the employer has a plan in place that compensates the employee “for loss of salary occasioned by such sickness or disability,” or if the employee has not yet qualified for the plan or has exhausted its benefits. (29 C.F.R. § 541.602(b)(2).)



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.<sup>22</sup>

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.<sup>23</sup> 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.

## CH. 4. POTENTIAL CHANGES IN FEDERAL EXEMPTION LAWS

Many websites are incorrectly reporting that the minimum salary of exempt employees has increased to \$47,892.00 per year. As this section will explain, they are relying on a federal regulation that has been blocked by the courts. Until the courts let the regulation take effect, the minimum salary amount mentioned in Chapter 3 remains in force for California employees.

On March 23, 2014, President Obama issued a memorandum directing the Secretary of Labor to “modernize and streamline the existing overtime regulations for executive, administrative, and professional employees.”<sup>24</sup>

In response, the Department of Labor published new regulations that would have increased the minimum salary level for exempt employees to \$921.00 per week (or \$47,892.00 annually).<sup>25</sup> The regulations would also have instituted regular increases in the minimum salary amount every three years.<sup>26</sup>

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<sup>22</sup> *Conley v. Pacific Gas & Electric Co.* (2005) 131 Cal.App.4th 260, 267.

<sup>23</sup> *Rhea v. General Atomics* (2014) 227 Cal.App.4th 1560, 1569.

<sup>24</sup> *Updating and Modernizing Overtime Regulations* (Mar. 13, 2014) 79 Fed. Reg. 18737, 18737.

<sup>25</sup> 29 C.F.R. § 541.600(a).

<sup>26</sup> 29 C.F.R. § 541.600(a).

These changes were set to take effect on December 1, 2016.<sup>27</sup> Before they could, however, a federal court issued a nationwide injunction, which prevented the new minimum salary from being enforced.<sup>28</sup>

On August 31, 2017, the same court found that the Department of Labor had “exceeded its authority and gone too far” with the new minimum salary requirements. It therefore held that the new rules were invalid and could not take effect.<sup>29</sup> The case was then appealed to the United States Court of Appeals for the Fifth Circuit, where it is currently pending.<sup>30</sup>

The Department of Labor has since suggested it may reassess what the minimum salary level should be, while the courts figure out whether its previous rule was legal. In the meantime though, it does not appear that the increased salary amount will take effect. The current minimum annual salary for most exempt California employees remains at \$43,680.00 or \$45,760.00, depending on the size of the employer.<sup>31</sup>

Notably, if the rule fails to take effect before January 1, 2019, California’s minimum salary level for many exempt employees will surpass the proposed federal minimum salary, when the state minimum wage increases to \$12.00 for employees of employers of 25 or more people.<sup>32</sup> So,

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<sup>27</sup> 29 C.F.R. § 541.600(a); *Nevada v. United States DOL* (E.D.Tex. 2016) 218 F. Supp. 3d 520, 525.

<sup>28</sup> *Nevada v. United States DOL* (E.D.Tex. 2016) 218 F. Supp. 3d 520, 534 [“[T]he Department’s Final Rule described at 81 Fed. Reg. 32,391 is hereby enjoined. Specifically, Defendants are enjoined from implementing and enforcing the following regulations as amended by 81 Fed. Reg. 32,391; 29 C.F.R. §§ 541.100, 541.200, 541.204, 541.300, 541.400, 541.600, 541.602, 541.604, 541.605, and 541.607 pending further order of this Court.”].

<sup>29</sup> *Nevada v. United States DOL* (E.D.Tex. Aug. 31, 2017, Civil Action No. 4:16-CV-731) 2017 U.S. Dist. LEXIS 140522, at \*27–\*28.

<sup>30</sup> See Wage & Hour Div., *Important information regarding recent overtime litigation in the U.S. District Court of Eastern District of Texas* (2017), available at <https://www.dol.gov/whd/overtime/final2016/litigation.htm>.

<sup>31</sup> Labor Code, §§ 515, subd. (a), 1182.12.

<sup>32</sup> Labor Code § 1182.12, subd. (b).




these potential changes could be rendered irrelevant for many California employees if the courts keep blocking them.

## CH. 5. JOB-SPECIFIC EXEMPTIONS

The discussion above has focused on the three most commonly-exempt employees (professionals, executives, and administrators). There are, however, a handful of other occupations that are exempt from some or all of California's labor laws. The minimum salary, among other requirements, may differ from the general exemption test above. Several of the more common exemptions are discussed below.

### 5.1. 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.<sup>33</sup>

*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.<sup>34</sup>

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<sup>33</sup> Cal. Code of Regs., tit. 8, §§ 11040, subd. (3)(D), 11070, subds. (3)(D).

<sup>34</sup> 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.

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.<sup>35</sup>

## 5.2. 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 \$55.00 per hour.
-  Perform, as their primary duties, tasks that require them to be licensed.<sup>36</sup>

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.<sup>37</sup>

## 5.3. COMPUTER PROFESSIONALS

Employees in the computer software field are sometimes exempt for the purposes of *overtime* compensation.<sup>38</sup> To qualify for this exemption, the following requirements must be met:

-  The employee must be primarily engaged in work that is intellectual or creative.<sup>39</sup>
-  The employee's primary duties must require the exercise of discretion and

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<sup>35</sup> 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].

<sup>36</sup> Labor Code, § 515.6.

<sup>37</sup> Labor Code, § 515.6, subd. (b).

<sup>38</sup> Labor Code, § 515.5.

<sup>39</sup> Labor Code, § 515.5, subd. (a)(1).

independent judgment.<sup>40</sup>

- The employee must be highly skilled in a field of computer systems analysis, programming, or software engineering.<sup>41</sup>
- The employee's primary duties must involve designing or developing computer hardware or software.<sup>42</sup>
- If the employee is hourly, they must be paid at least \$42.35 per hour.<sup>43</sup>
- If the employee is salaried, they must earn at least \$88,231.36 per year.<sup>44</sup>

## 5.4. 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 twice the state's minimum wage, and
- 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.<sup>45</sup>

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<sup>40</sup> Labor Code, § 515.5, subd. (a)(1).

<sup>41</sup> Labor Code, § 515.5, subd. (a)(3).

<sup>42</sup> Labor Code, § 515.5, subds. (a)(2)(A)–(C).

<sup>43</sup> Labor Code, § 515.5, subd. (a)(4).

<sup>44</sup> Labor Code, § 515.5, subd. (a)(4).

<sup>45</sup> Labor Code, § 515.8.

## 5.5. OUTSIDE SALESPERSONS

Employees who are considered “outside salespersons” are generally considered exempt employees.<sup>46</sup> An *outside salesperson* is defined as someone:

- A** Who is at least 18 years old,
- A** Who spends more than half of their working time away from their employer’s place of business, and
- A** Who sells items, services, contracts, or the use of facilities.<sup>47</sup>

## 5.6. TRUCK DRIVERS

Some truck drivers are exempt from California’s overtime laws (but not other employment rights, like meals breaks or the minimum wage).<sup>48</sup> This exemption applies to interstate truck drivers and drivers who transport hazardous materials.<sup>49</sup>

In those situations, the drivers’ hours are controlled by either: federal regulations,<sup>50</sup> or California’s motor vehicle regulations.<sup>51</sup>

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<sup>46</sup> Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. (1)(C).

<sup>47</sup> Cal. Code of Regs., tit. 8, §§ 11010–11170, subds. (2)(M).

<sup>48</sup> See, e.g., Cal. Code of Regs., tit. 8, § 11090 (3)(L).

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

<sup>50</sup> See 49 C.F.R. §§ 395.1–395.13.

<sup>51</sup> See Cal. Code of Regs., tit. 13, § 1200, et seq.; see also *Collins v. Overnite Transp. Co.* (2003) 105 Cal.App.4th 171, 175.





## 5.7. UNION EMPLOYEES

Union employees are sometimes exempt from California's overtime laws.<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup>

## 5.8. OTHER JOB-SPECIFIC EXEMPTIONS

California law is governed, in part, by a series of regulations called *wage orders*, which have been issued California's Industrial Welfare Commission.<sup>55</sup> 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 overtimes rules apply include:

-  Live-in household employees;<sup>56</sup>
-  Personal attendants;<sup>57</sup>
-  Camp counselors<sup>58</sup>
-  Managers of homes for the aged;<sup>59</sup>

<sup>52</sup> Labor Code, § 514.

<sup>53</sup> Labor Code, § 514.

<sup>54</sup> Labor Code, § 514.





<sup>55</sup> Labor Code, § 1173.

<sup>56</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

<sup>57</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

<sup>58</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

<sup>59</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

-  Certain providers of 24-hour residential childcare;<sup>60</sup>
-  Ambulance drivers and attendants;<sup>61</sup>
-  Agricultural occupations;<sup>62</sup> and
-  The employer's spouse, children, and parents.<sup>63</sup>

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<sup>60</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

<sup>61</sup> Cal. Code Regs., tit. 8, § 11150, subd. 3.

<sup>62</sup> Cal. Code Regs., tit. 8, § 11140, subd. 3.

<sup>63</sup> See, e.g., Cal. Code Regs., tit. 8, § 11040, subd. 1(D).



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