

# Exempt vs. Non Exempt

## A Question & Answer Guide for Supervisors

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### What are the exemptions?

Job titles do not determine a California employee's exempt or nonexempt status. An employee with an impressive job title may not qualify as an exempt employee if his/her actual duties do not meet the requirements for one of the exemptions. **Always remember it's the job not the person.**

- ✓ Any position earning less than \$3,120.00 per month is non-exempt. Effective July 1, 2014 the required minimum monthly earnings to qualify for exempt status increased to \$3,120.00 and on January 1, 2016 the salary threshold will increase to \$3,466.67 per month. This threshold is a consistent value no matter what the job duties require and whether the position is full or part-time.

### **EXEMPTIONS as defined by California Fair Labor Standards Act (FLSA)**

**Executive:** Must customarily and regularly exercise discretion and independent judgment; must have the authority or power to make an independent choice, free from immediate direction or supervision on matters of “**significance**”.

Must be **primarily engaged** (must spend more than 50% of his/her time) doing exempt duties.

Regularly directs the work of two (full-time equivalent) or more other employees.

Has the authority to hire or fire other employees, recommend advancement or promotion.

**Administrative:** Must meet **ALL** of the following:

The position has duties and responsibilities involving one or both of the following:

- Office or non-manual work “directly related” to management policies or general business operations. Directly related must meet two components.
  - ~ The work must be “qualitatively” administrative which includes advising management, planning, negotiating and representing the College **and**
  - ~ “Quantitatively,” the work must be of **substantial** importance to the management or operations of the College.
- The administrative functions of an educational establishment or one of its departments engaging in work directly related to its academic instruction.

**AND**

Must customarily and regularly exercise discretion and independent judgment; must have the authority or power to make an independent choice, free from immediate direction or supervision on matters of “**significance**”.

Must be **primarily engaged** (must spend more than 50% of his/her time) doing exempt duties.

Regularly and directly assists an employee employed in an executive or administrative capacity; under only general supervision, performs work along specialized or technical lines requiring special training, experience or knowledge or executes special assignments or tasks.

**Professional:** The professional exemption extends to three categories of potentially exempt employees:

- Licensed – or certified by the State of California and primarily engaged (more than 50% of the time) in the practice of: law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting.
- Learned – Requires advanced knowledge in a science or learning field customarily acquired by a prolonged course of specialized intellectual instruction and study.
- Artistic – Must be primarily engaged (more than 50% of the time) in the performance of work that is original and creative in character in a recognized field of artistic endeavor.

**AND**

Must customarily and regularly exercise discretion and independent judgment; must have the authority or power to make an independent choice, free from immediate direction or supervision on matters of “**significance**”.

**Computer Professional:** Must meet all of the following requirements:

- Is primarily engaged in work that is intellectual or creative
- Is primarily engaged in work that requires the exercise of discretion and independent judgment
- Is primarily engaged in duties that consist of one or more of the following:
  - ~ Applying systems analysis techniques and procedures, including consulting with users, to determine hardware, software or system functional specifications
  - ~ Designing, developing, documenting, analyzing, creating, testing or modifying computer systems or programs, including prototypes, based on and related to user system design specifications
  - ~ Documenting, testing, creating or modifying computer programs related to the design of software or hardware for computer operating systems.

**AND**

Is highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering.

**Must earn at least \$40.38 per hour (\$83,990 per year) as of January 1, 2014. Rate adjustments to this hourly rate are made annually and is based on the California Consumer Price Index.**

**What is the difference between exempt and non-exempt?**

<b>Situation</b>	<b>Exempt</b>	<b>Non-Exempt</b>
Overtime	No pay-work until the job is done	Paid 1.5 times hourly salary for any hours worked over 7.5/8 in one day or 37.5/40 in one week
Double time	No pay-work until the job is done	Paid 2 times hourly salary for any hours worked over 12 in one day or for any hours worked beyond 45/48 in one week
Meal period *	None	<p>You cannot employ someone for a work period of more than five hours without providing an unpaid, off-duty meal period of at least 30 minutes. The first meal period must be provided no later than the end of the employee's fifth hour of work.</p> <p>The employer satisfies its legal obligation to provide an off duty meal period to its employees if it:</p> <ul style="list-style-type: none"> <li>• Relieves its employees of all duty.</li> <li>• Relinquishes control over their activities.</li> <li>• Permits them a reasonable opportunity to take an uninterrupted, 30-minute break.</li> <li>• Does not impede or discourage them from</li> </ul>

		<p>doing so.</p> <p>A meal break can be unpaid only if all of the above conditions are met.</p> <p>When a work period of not more than six hours will complete the day's work, the meal period may be waived by mutual consent of the employer and the employee.</p>
Breaks *	None	Employers must authorize and permit rest periods for all nonexempt employees whose total daily work time is at least 3.5 hours. Two 15 minutes paid breaks are to be taken, one mid morning and one mid afternoon. These cannot be used to shorten arrival or departure times and cannot be used to extend a meal period.
Reporting	Required by policy to be submitted monthly. Due by the 5 <sup>th</sup> of each month whether time off was taken or not. Those working less than 12 months are required to submit attendance for those months not working or not paid.	Daily. Recording time in and out with actual hours worked/not worked. Attendance reports are due on the 5 <sup>th</sup> and 20 <sup>th</sup> of every month. <b>Timely submission is required by law.</b>
Deductions from pay	Must be paid their full salary in any week they perform any work. Deductions from leave accruals can be made for any time off taken during the work week for vacation/sick, etc. Deductions in pay of one week or more are allowed.	Can be made if requested or required by an employer if no accrued leave is available. Payroll will deduct as detailed on the attendance report but if no time is available, pay deductions will be made.
Travel Time	None	Under certain circumstances "working hours" may include such activities as travel time and education and training time.

Compensatory time off/Make up time	Not recognized	Not allowed
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There are many other “rules” that differentiate an exempt status from a non-exempt status that need to be determined by Human Resources and in some cases need legal counsel’s assistance to make an informed decision.

**• Consequences for Failing to Provide Meal and Rest Breaks**

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California employers face costly consequences for violating work break laws. Court decisions have increased the potential for large financial fines.

**Missed Meal Break**

For each workday that you fail to provide an employee a meal period, as required, you owe the employee one additional hour of pay at the employee's regular rate. The additional hour of pay is a wage owed to the employee. This allows employees up to three years to claim unpaid wages.

**Missed Rest Break**

If either rest break is not given, you owe the employee one hour of pay, which you must include in the next paycheck