

# The California Executive Exemption

---

BUSINESS & PEOPLE STRATEGY CONSULTING GROUP  
EMPLOYMENT LAW COMPLIANCE SERIES

# Welcome

---

## Today's Agenda...

- Part 1 of our 5 part series reviewing exemption in California
- Introduction to the fundamentals of the “exempt” classification
- Review of the requirements for exemption under the California Executive Exemption

# Understanding Exempt

---

- When an employee is “exempt” it means that they are not entitled to receive overtime pay.
- This is different than a “non-exempt” employee (also referred to as “hourly”) which is entitled to receive overtime pay and is subject to various working laws such as breaks and meal periods.

# Understanding Exempt

---

- It is important not to confuse “salaried” with “exempt”, although they can be the same in some situations.
- Simply paying an employee a salary does not make them exempt.
- To be exempt, an employee must meet the requirements of one of the designated exempt classes, including minimum compensation requirements.

# Understanding Exempt

---

- The criteria for exemption is defined both on the federal level (FLSA) and state level (California).
- California's exempt laws are currently stricter and a bit broader than the federal requirements, thus, prevail in application.

# Understanding Exempt

---

- The pending FLSA changes, though, will set the federal minimum compensation requirements higher than those in California, thus California employers must be prepared to classify employees by California definitions and apply the federal compensation minimum.
- The 2016 CA minimum requirement is currently set at \$41,600 and the pending FLSA minimum is likely going to be \$50,440.

# Importance of Classifying Correctly

---

- The costs associated with misclassifying employees are extraordinary.
- Costs include back wages, overtime pay, taxes, meal and break penalties, interest and attorney fees.
- Litigation in this area is increasing again and will explode in the next year due to the FLSA's proposed laws, increased California penalties for wage violations, and the pending elimination of mandatory arbitration agreements.

# Hear Me Now...Believe Me Later

---

Do not fall into the trap of these common misconceptions about classifying employees as exempt:

- The employee has a bachelor's degree.
- The employee is a manager, director or vice president
- The employee is paid a set salary...and it is over the minimum required.
- The job description reads the position has exempt responsibilities.
- The employee and company agreed to being exempt.
- The title is one that is usually exempt.
- Employees in my last job with the position were classified as exempt.



# California Exempt Classifications

---

California exempt classes include:

- Executive
- Administrative
- Professional
- Creative Professional
- Computer Professional
- Sales Professional (commissioned inside & outside sales)
- Highly Compensated Employee

# CA Executive Exemption Defined

---

According the CA Department of Industrial Relations, Executive Exemption means a person employed in an executive capacity means any employee:

- Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof; and

# CA Executive Exemption Defined

---

- Who customarily and regularly directs the work of two or more other employees therein; and
- Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; and

# CA Executive Exemption Defined

---

- Who customarily and regularly exercises discretion and independent judgment; and
- Who is primarily engaged in duties, which meet the test of the exemption.
- An executive employee must also earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment. Full-time employment means 40 hours per week as defined in Labor Code Section 515(c).

# Duties and Responsibilities

---

*Whose duties and responsibilities involve the management of the enterprise in which he or she is employed or of a customarily recognized department or subdivision thereof.*

- The phrase is intended to distinguish between " a mere collection of employees assigned from time to time to a specific job or series of jobs" and " a unit with permanent status and function."
- Thus, in order to meet the criteria of a managerial employee, one must be more than merely a supervisor of two or more employees.
- The managerial exempt employee must be in charge of the unit, not simply participate in the management of the unit.

# Supervision

---

*Who customarily and regularly directs the work of **two or more other employees therein***

- The IWC Orders require that the Executive exempt manager must supervise two or more employees.
- This may be one full-time and two half-time, two full-time, or four half-time employees.
- This is based upon the DLSE's position that a managerial employee supervising as few as two employees rarely spends as much as 50% of his or her time primarily engaged in managerial duties.

# Impact Employee Status

---

*Who has the **authority to hire or fire** other employees or whose **suggestions and recommendations** as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees **will be given particular weight**.*

- This generally must pertain to employees whom the executive customarily and regularly directs.
- It does not include occasional suggestions.

# Discretion and Judgment

---

*Who customarily and regularly exercises discretion and independent judgment.*

- Customarily and regularly means greater than occasional but less than constant.
- The employee must have the authority or power to make an independent choice, free from immediate direction or supervision and with respect to matters of significance.



# Discretion and Judgment

---

*Who customarily and regularly exercises discretion and independent judgment.*

- With respect to the executive exemption, the most frequent cause of misapplication of the phrase "discretion and independent judgment" is the failure to distinguish discretion and independent judgment from the use of independent managerial skills.
- An employee who merely applies his or her memory in following prescribed procedures or determining which required procedure out of the company manual to follow, is not exercising discretion and independent judgment.

# Primarily Engaged in Exempt Duties

---

Who is **primarily engaged in** duties, which meet the test of the exemption.

- The term "primarily engaged in" means that more than one-half of the employee's work time must be spent engaged in exempt work.
- This differs substantially from the federal test which simply requires that the "primary duty" of the employee falls within the exempt duties.

# Exempt Duties

---

Examples of executive exempt duties include:

- Interviewing
- Selecting
- Training
- Setting and adjusting rates of pay
- Directing the work of employees
- Disciplining employees
- Conducting performance, productivity and efficiency
- Handling employee complaints
- Monitoring or implementing legal compliance measures
- Controlling the flow and distribution of materials or merchandise and supplies

# Non-Exempt Duties

---

Examples of non-exempt duties include:

- Duties that subordinates perform
- Repetitive and routine tasks
- Tasks that apply policy
- Skilled trade work
- Typing and filing
- Bookkeeping
- Operating machines and equipment
- Shared supervision of the same employees in a department\*

# Salary Requirement

---

*An executive employee must also earn a monthly salary equivalent to **no less than two times the state minimum wage** for full-time employment. Full-time employment means 40 hours per week as defined in Labor Code Section 515(c).*

- The current state minimum wage is \$9.00 per hour, thus an exempt employee under this exemption must have a salary of no less than \$37,440.
- CA is set to have a new minimum wage of \$10.00 per hour (\$41,600) effective January 1, 2016, unless SB3 passes which will set it at \$11.00 per hour (\$45,760).
- If the FLSA proposed rate passes, both CA rates will be preempted and the minimum salary will be set at \$50,440.

# Common Executive Misclassifications

---

- Restaurant, retail, and services managers
- Corporate department managers
- Stand alone managers, directors and vice-presidents
- Manufacturing, production, and logistics managers

# Summary

---

- To meet the criteria of being exempt in California, the role must meet the requirements and minimum salary threshold set forth by the state.
- In general, meeting the criteria of exempt in California is difficult and in most situations, there are fewer than more exempt positions in a company.
- Paying employees a “salary”, even if meeting the minimum salary threshold, does not make the employee exempt.
- A job description, even if written to be exempt, does not make an employee exempt.
- Misclassifying employees as exempt can lead to exhaustive and costly litigation.

---

# QUESTIONS



# THANKS FOR JOINING US TODAY

---

Please join us Wednesday September 14, 2015 at 10:00AM where we will introduce Part 2 of this series...The California Administrative Exemption.

For a copy of today's webinar or to listen again, please visit our website at [www.bpscllc.com](http://www.bpscllc.com) (materials and the webinar will be available Thursday October 1).

Do you need assistance reviewing your exempt employees?  
Contact one of our experts at 661.621.3662 or email us at [services@bpscllc.com](mailto:services@bpscllc.com).