

The Professional Exemption

PART 3 OF THE CALIFORNIA EXEMPT SERIES

Recapping Parts 1 and 2

We reviewed the basics of classifying California employees as exempt.

We reviewed the requirements for classifying employees under the Executive and Administrative Exemption classes.

Recapping Parts 1 and 2

There are two sets of requirements that must be met for exemption...the tasks and the salary.

We learned that the following do not determine exemption:

- Title
- Education
- Previous classification in another job
- Job description
- Salary
- Management

Requirements: Licensed and Certified

To classify an employee as exempt under the CA Professional Exempt class, they must meet all of the following requirements:

Who is licensed or certified by the State of California and is primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting, or

Requirements: Learned or Artistic

Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. "Learned or artistic profession" means an employee who is primarily engaged in the performance of one of the following:

Requirements: Learned or Artistic

Work requiring knowledge of an advance type in a field or science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education and from an apprenticeship, and from training in the performance of routine mental, manual, or physical processes, or work that is an essential part of or necessarily incident to any of the above work; or

The learned professional exemption is not available for occupations that may be performed with only the **general knowledge acquired by an academic degree** in any field; knowledge acquired through an apprenticeship; or training in the performance of routine mental, manual, mechanical or physical processes.

The exemption also does not apply to occupations in which most employees acquire skill by experience.

Requirements: Learned or Artistic

Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work which can be produced by a person endowed with general manual or intellectual ability and training), and the result of which depends primarily on the invention, imagination, or talent of the employee or work that is an essential part of or necessarily incident to any of the above work; and

To satisfy this requirement, invention, imagination, originality or talent is required and distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy.

The creative professional exemption also does not apply if the employee's work can be produced by a person with general manual ability and training.

Since the duties of employees vary widely, the determination of exempt creative professional status must be made on a case-by-case basis, based on the extent of the invention, imagination, originality or talent exercised by the employee.

Requirements: Learned or Artistic

Whose work is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical, or physical work) and is of such character that the output produced or the result accomplished cannot be standardized in relation to a given period of time.

For the **learned professions**, an advanced academic degree (above the bachelor level) is a standard prerequisite.

For the **artistic professions**, work in a "recognized field of artistic endeavor" includes such fields as music, writing, the theater, and the plastic and graphic arts.

Recognized Fields

The recognized fields of artistic or creative endeavor include music, writing, acting and the graphic arts.

Thus, exempt creative professionals include groups like musicians, composers, conductors, novelists, screen writers, actors, painters and photographers.

Requirements: Independent Judgment

Who customarily and regularly exercised discretion an independent judgment in the performance of duties described earlier.

This phrase means the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered.

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.

Requirements: Salary Test

Who earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.

To calculate: Multiply the Minimum Wage by 2 and then multiply by 2,080

For instance:

- Current Minimum is \$9.00, so $\$9.00 \times 2 = \18.00
- Multiply $\$18.00 \times 2,080 = \$37,440$

Salary Considerations for 2016

CA Minimum Wage to go to \$10.00 per hour (\$41,600)

SB 3 has proposed moving to \$11.00 per hour (\$45,760)

DOL has proposed for January 1, 2016:

Federal minimum of \$50,440 per year

Highly compensation level to \$125,000 per year

QUESTIONS



Thanks for joining us today!

To obtain or review today's materials, please visit <http://bpscllc.com/past-webinars.html>

To contact a member of our team about your compliance with CA exempt laws, please call us at 1.844.322.3300 or 661.621.3662 or email us at services@bpscllc.com.

Future Holiday Schedule

November 11, 2015: Introduction to Supplemental Benefits

December 2, 2015: Part 4 of the California Exempt Class Series (Sales Professionals)