

# **Part II: California Exempt Classification**

## **The Administrative Exemption**

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NUTS AND BOLTS OF CALIFORNIA'S MOST  
MISUNDERSTOOD EXEMPT CLASS

# Revisiting Part I

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In Part I of this series, we introduced you to the complex world of classifying employees as exempt (not entitled to receive overtime pay).

California exempt standards are stricter than those set forth by the FLSA and employers must ensure that specific criteria and salary requirements are met when classifying employees as exempt.

In summary, the Executive Exempt classification requires managing at least 2 full-time employees, having a very high level of authority and decision making capability, being responsible for a major part of the business, and not engaging or performing routine, procedurally based, and subordinate like duties over 50% of the time AND being paid no less than two times the prevailing minimum wage (currently \$37,440).

Failing to meet these requirements can lead to costly and exhausting litigation.

# Administrative Exemption Defined

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*Must work in a qualifying “administrative” job (one of the two):*

The performance of office or non-manual work directly related to management policies or general business operations of his or her employer or his or her employer's customers, or

The performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein; and

# Primary Duty

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**Work “*directly related to management or general business operations*” includes, but is not limited to work in functional areas such as** tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, Internet and database administration; legal and regulatory compliance; and similar activities.

# Discretion and Judgment

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Who customarily and regularly exercised discretion and independent judgment...

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.*

With respect to the administrative exemption, this phrase has been most frequently misunderstood and misapplied by employers and employees alike in cases involving the following:

# The Confusion

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1. Confusion between the **exercise of discretion and independent judgment**, and the **use of skill in applying techniques, procedures, or specific standards**.
2. Misapplication of the phrase to employees **making decisions relating to matters of little consequence**.
3. Perhaps the most common misapplication is the application of the exemption to employees **engaged in production aspects of the employer's business** as opposed to **administrative functions**.

# Job Duties

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*The employee must perform the right job duties...*

Either directly assist an owner or truly executive or administrative employee; OR

Do specialized or technical tasks that require special training or education and only under general supervision; OR

Do special assignments and tasks under only general supervision;

The employee must perform exempt duties more than 50% of the workweek:

All exempt administrative employees must do exempt tasks more than 50% of the workweek.

# Job Duties Important Reminder

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As with any of the exemptions, **job titles reflecting administrative classifications alone may not reflect actual job duties** and therefore, are of no assistance in determining exempt or nonexempt status.

The actual determination of exempt or nonexempt status must be **based on the nature of the actual work performed** by the individual employee.

# Examples of Potential Administrative Exemption Roles and Duties

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Employees leading a team of other employees to complete major projects for the employer such as purchasing, selling, or closing part of the business; negotiating real estate or collective bargaining agreements.

Employees responsible for developing or executing financial, marketing, or sales strategies.

Movie location managers.

Account executives in advertising firms.

# Examples of Potential Administrative Exemption Roles and Duties

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Employees who regularly and directly assist a proprietor or exempt executive or administrator.

Executive assistants and administrative assistants to whom executives or high-level administrators have delegated part of their discretionary powers.

Generally, such assistants are found in large establishments where the official assisted has duties of such scope and which require so much attention that the work of personal scrutiny, correspondence and interviews must be delegated.

# Examples of Potential Administrative Exemption Roles and Duties

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Employees who perform, only under general supervision, work along specialized or technical lines requiring special training, experience or knowledge.

They include employees who act as advisory specialists to management, or to the employer's customers.

Typical examples are tax experts, insurance experts, sales research experts, wage rate analysts, foreign exchange consultants, and statisticians.

Such experts may or may not be exempt, depending on the extent to which they exercise discretionary powers.

Also included in this category would be persons in charge of a functional department, which may even be a one-person department, such as credit managers, purchasing agents, buyers, personnel directors, safety directors, and labor relations directors.

# Minimum Compensation

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Just as with the Executive Exemption, employee's classified as exempt under the California Administrative exemption must be paid a rate of no less than two times the state minimum wage.

The current minimum wage is \$37,440.

Whether or not the employee is employed part or full-time, if they are exempt, they must be paid the minimum rate.

The minimum rate for 2016 is still in flux...

California is set to move to \$10 per hour (\$41,600), but SB3 may push it to \$11 per hour (\$45,760).

The FLSA is set to move the minimum annual base to \$50,440, which will preempt California law.

# Some Closing Thoughts...

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A good way to think about this classification is that workers in a company are classified as either administrative or production.

Production work is anything that relates to the end products or services that your company provides.

Administrative work is anything that relates to supporting the business itself.

# Some Closing Thoughts...

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Production work is easy to understand in the case of companies like Ford, Toyota, and Honda...they produce cars.

Employees working at these companies that are producing cars are doing production work.

On the other hand, companies like Microsoft and Oracle produce software.

An employee who writes software that these companies produce are doing production work.

Other cases are not as simple.

# Some Closing Thoughts...

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For instance, an employee may write software that calculates how much money the company is making each minute of the day.

Such software is not produced and sold by the employer, but is instead used to help the CEO run the business.

Writing this software would be considered “administrative” – however, the employee would likely still get overtime because they would not be exercising business judgment over matters of substantial importance.

# Some Closing Thoughts...

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In cases where the company provides a service, the service is considered the “product” made by the company.

For instance, courts have held that a County Probation Department “produces” the monitoring of convicted persons who are on probation.

Since a probation officer directly works by monitoring people on probation, s/he is involved in production work and entitled to overtime.

Another example of an intangible “product” that courts have found is a newscast.

The court held that a newscast was the product of the TV station and that the producers, directors, and reporters on the newscast were doing production work and thus entitled to overtime.

# Some Closing Thoughts...

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Meeting the criteria for exemption is **not as easy as you think**.

Exemption **is not based upon** title, experiences in other companies, or job descriptions...it is based upon the work that is performed.

Misclassifying employees as exempt can lead to **costly and exhaustive litigation**.

With the recent and pending changes to the FLSA, California's mission to find misclassified employees, and recent laws related to wage & hour violations and arbitration...this area is heating up and will continue over the next 1 to 2 years.

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# QUESTIONS

# Thanks for joining us today!

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If you have any questions about today's topic or need assistance with evaluating your current exempt employees, you can reach a member of our team at:

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[www.bpscllc.com](http://www.bpscllc.com) under the "Webinars" tab and "Past Webinars" subtab.

Please join us Wednesday October 28 at 10AM when we will discuss Part III of the series...  
the California Professional Exemption.