

California “exempt” employees

The 2002 Update Of The DLSE Enforcement Policies and Interpretations Manual

Employees Exempted From Orders Generally:

1. Employees primarily “engaged in” administrative, executive, or professional capacities are exempt from Section 3 through 12 of the Orders. (IWC Orders, Section 1, Applicability of Order)

Primarily Engaged In. Each of the exemptions – administrative, executive or professional – require that the employee be “primarily engaged in” the duties which meet the test for the exemption. The term “Primarily Engaged In” means that more than one-half (½) of the employee’s work time must be spent engaged in exempt work and differs substantially from the federal test which simply requires that the “primary duty” of the employee fall within the exempt duties.

52 ADMINISTRATIVE EXEMPTION.

52.1 Administrative Employee means any employee whose duties and responsibilities involve either:

1. The performance of office or non-manual work directly related to management policies or general business operations of his employer or his 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

2. Who customarily and regularly exercises discretion and independent judgment; and

3. Who regularly and directly assists a proprietor, or another employee who is employed in a bona fide executive or administrative capacity (as such terms are defined for purposes of this section), or

Who performs, under only general supervision, work along specialized or technical lines requiring special training, experience, or knowledge, or

Who executes, under only general supervision, special assignments and tasks, and

4. Who is primarily engaged in duties which meet the test for the exemption.

Right To Exercise Discretion And Independent Judgment. As provided in 29 CFR § 541.207, means “the comparison and evaluation of possible courses of conduct and acting or making a decision after the various possibilities have been considered.”

53 EXECUTIVE EXEMPTION.

53.1 Executive (Managerial) Employee means any employee whose duties and responsibilities involve:

1. The management of the enterprise in which he is employed or of a customarily recognized department or subdivision thereof; and

2. Who customarily and regularly directs the work of at least two or more other

employees therein; and

3. 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

4. Who customarily and regularly exercises discretion and independent judgment; and

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

54. PROFESSIONAL EXEMPTION.

54.1 Professional Employee means any employee whose duties and responsibilities meet the following criteria:

1. 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

2. Who is primarily engaged in an occupation commonly recognized as a learned or artistic profession. For the purposes of this subsection, "learned or artistic profession" means an employee who is primarily engaged in the performance of:

(i) Work requiring knowledge of an advanced 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

(ii) 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

(iii) 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.

3. Who customarily and regularly exercises discretion and independent judgment in the performance of duties set forth above.

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