



Putting the human back into human resources

DLSE Exempt vs. Non-Exempt Test

EXECUTIVE EMPLOYEES

1. Is the employee's primary duty managing a company, or a department subdivision of a company? Yes No
2. Does the employee customarily direct the work of at least two other workers? Yes No
3. Does the employee have the authority to hire and fire, or do his recommendations on such matters carry significant weight? Yes No
4. Does the employee regularly exercise discretionary powers in his work? Yes No
5. Does the employee earn a minimum of \$2,774.00 per month? Yes No

If you answered "No" to any of these questions, the worker should be classified as a non-exempt executive employee.

For the purposes of the executive exemption, "primarily engaged in" means that more than half of the employee's work time must be spent doing exempt level work. This means that an exempt employee must spend more than 50 percent of their time managing the work of those who report to them as well as doing other exempt duties.

ADMINISTRATIVE EMPLOYEES

1. Is the employee responsible for office or non-manual work directly related to the management policies or general business operations? Yes No
2. Does the employee regularly exercise discretion and independent judgment (as opposed to always following established procedures)? Yes No
3. Does the employee earn at least \$2,774.00 per month? Yes No
4. Do any of the following circumstances describe the employee's regular duties?
 - a. Assisting a proprietor, executive or administrative employee. Yes No
 - b. Performing work only under general supervision along technical lines that requires special training, experience or knowledge. Yes No
 - c. Executing special assignments only under general supervision. Yes No

If you answered "No" to any of these questions, the worker should be classified as a non-exempt administrative employee.

PROFESSIONAL EMPLOYEES

1. Does the employee consistently exercise discretion and judgment? Yes No
2. Does the employee spend less than 20 percent of his time on tasks that are not part of his professional duties? Yes No
3. Is the employee paid a salary of at least \$2,774.00 per month? Yes No
4. Do any of the following statements reflect the employee's regular duties?
 - a. The employee performs work that requires knowledge of an advanced type in a field of science or learning, customarily obtained by a prolonged course of specialized instruction and study. Yes No
 - b. The employee performs work that is original and creative in character in a recognized field of artistic endeavor whose result depends primarily on the employee's invention, imagination or talent. Yes No

If you answered "No" to any of these questions, the worker should be classified as a non-exempt professional employee. Exceptions: If the worker holds a valid license or certificate permitting the practice of law or medicine (including interns and residents) and engages in such a practice, question 3 does not apply. If the worker is a teacher in a school or other educational institution, question 3 does not apply.

With regard to the licensing requirement for professional employees, the state Labor Commissioner has indicated that:

- Medicine includes physicians but not nurses;
- Attorneys are exempt, but paralegals are not;
- Certified public accountants are exempt, but uncertified accountants are not;
- Licensed civil, mechanical, and electrical engineers are exempt, but junior drafters or engineers are not.

There are several professional occupations that are specifically listed as being non-exempt. These occupations include artists, copy writers, editors, librarians, nurses, photographers, social workers, statisticians, and teachers (other than if state certified). Unless an employee in one of these occupations meets one of the exemptions discussed in this workbook, based in the duties of the job, the employee must be classified as non-exempt.

OUTSIDE SALES EMPLOYEES

1. Is the employee employed for the purpose of outside sales? Yes No
2. Does he/she spend more than 50 percent of working time away from the employer's place of business? Yes No
3. Does the employee sell tangible or intangible items, such as goods, insurance, stocks, or real estate? Or does he obtain

orders or contracts for services?

Yes No

4. Does the employee spend less than 20 percent of his time engaged in activities not described in question 3?

Yes No

5. Is the employee 18 years of age or older?

Yes No

If you answered "No" to any of these questions, the worker should be classified as a non-exempt outside sales employee. There is no salary test for outside sales personnel. California law does not allow work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, to be considered exempt work. This distinction is particularly important for route salespeople and others who perform many functions other than sales in an average day, such as delivery, repair, and maintenance.

COMPUTER PROFESSIONAL EMPLOYEES

1. Does the employee primarily engage in work that is intellectual or creative?

Yes No

2. Does the employee primarily exercise discretion and independent judgment?

Yes No

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

Yes No

4. Is the employee paid at least \$36.00 per hour?

Yes No

5. Do the employee's regular duties consist of one or more of the following?

a. Application of systems analysis techniques and procedures, including consulting with users to determine hardware, software, or system functional specifications;

Yes No

b. Design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; or

Yes No

c. Documentation, testing, creation, or modification of computer programs related to the design of hardware or software for computer operating systems.

Yes No

If you answered "No" to any of these questions, the worker should be classified as a non-exempt computer professional employee.