

FLSA and IWC Compliance: Exempt vs. Non-Exempt Classification

CALIFORNIA

California’s Industrial Welfare Commission (IWC) sets the rules for exempt status by way of Wage Orders applicable to each industry. Wage Order #4 applies to professional medical and dental offices. **Employers must follow the rules (state or federal) that are most favorable to employees.** If employees meet the job duties and salary criteria of an exemption category, the employer is entitled to treat these employees as “exempt” from the requirement to pay overtime, record hours worked, and pay minimum wage for all hours worked. Employers should periodically review and audit employee classifications, especially after a reorganization.

- **Exempt Employees are exempt from the Fair Labor Standards Act (FLSA) and therefore are NOT subject to Overtime, Minimum Wage, or Timekeeping Requirements.**
- **Non-exempt Employees are subject to the Fair Labor Standards Act (FLSA) and therefore ARE subject to Overtime, Minimum Wage, and Timekeeping Requirements.**

Employees may be classified as Exempt if they meet ALL of the following criteria:

1. **Salary level test: The salary must be at least twice the State Minimum Wage.**

The applicable minimum wage rate depends upon the business’ size, and the rates are scheduled to increase on a yearly basis. Please see the charts below for the exempt salary levels that are currently scheduled to go into effect:

Employers with **26 or more** employees:

January 1, 2017	\$43,680/year (\$840/week)
January 1, 2018	\$45,760/year (\$880/week)
January 1, 2019	\$49,920/year (\$960/week)
January 1, 2020	\$54,080/year (\$1,040/week)
January 1, 2021	\$58,240/year (\$1,120/week)
January 1, 2022	\$62,400/year (\$1,200/week)

Employers with 25 or fewer employees:

January 1, 2017	\$41,600/year (\$800/week)
January 1, 2018	\$43,680/year (\$840/week)
January 1, 2019	\$45,760/year (\$880/week)
January 1, 2020	\$49,920/year (\$960/week)
January 1, 2021	\$54,080/year (\$1,040/week)
January 1, 2022	\$58,240/year (\$1,120/week)
January 1, 2023	\$62,400/year (\$1,200/week)

A licensed physician does not need to be paid on a salary basis to be considered exempt, as long as the physician is paid a minimum of \$77.15 per hour.

Important Update: A scheduled December 1, 2016 federal law increase in the minimum salary level is currently on hold due a court injunction. Contact CEDR with questions.

2. **Salary basis test: Fixed amount per pay period**

(Doesn't apply to Professional Exemption).

3. **Duties test: Must meet all of the criteria in one of the categories below (Administrative, Executive, or Professional).**

Be sure to look at the job duties, not just the job title to see if exempt status applies.

I. **ADMINISTRATIVE EXEMPTION (Must meet ALL: A + B + C + Salary Tests)**

A. The employee's primary duty is office or non-manual work that is directly related to management or general business operations of the employer or of the employer's customers; AND

Note on management or general business: Though this sounds like an easy catchall for your admin team, it is actually intended to cover only those whose activities directly relate to the administration of high-level business processes, as distinguished from production-related work. It would include big picture strategic planning related to the direction of the company, its finances, marketing strategies, large scale budgeting, compliance, quality control, auditing, etc. Also, note that primary duty means **more than 50%**

B. Customarily and regularly exercises of discretion and independent judgment with respect to matters of significance (though not necessarily without review).

Note on exercising discretion: The exercise of discretion and independent judgment must relate to the operations and policies of the company, not just in performing the duties of their position. For example, a scheduler might use discretion in determining which employees work on a day, and when patients are to be scheduled, but this is considered “production work” rather than “administrative.” Rather, discretion must pertain to issues of *significant weight* related to the running of the company on a regular basis, by someone who has the authority to make independent choices. It should not be confused with the use of skill in applying techniques, procedures or specific standards.

C. In addition to A & B, one of the following must also be true:

1. Regularly and directly assist a proprietor or an employee employed in a bona fide executive or administrative capacity;
2. Perform under only general supervision work along specialized or technical lines requiring special training, experience, or knowledge; *or*
3. Execute special assignments and tasks under only general supervision.

Examples of employees who may fit into the Administrative Exemption: COO’s, financial directors, human resource directors, tax specialists, supply chain managers, and those on the executive team.

II. EXECUTIVE EXEMPTION (must meet ALL: A + B+ C + D + Salary tests)

A. The employee’s primary duty must consist of the management of the enterprise in which he or she is employed or of a department or subdivision of the business.

Note on primary duty: Must generally spend more than 50% of his or her time actively engaged in managerial duties.

Examples of “Managerial Duties” that count toward Primary Duty of Management:

- Interviewing, selecting, and training employees;
- Setting rates of pay and hours of work and planning work schedule;
- Maintaining production or sales records (beyond the merely clerical);
- Appraising productivity, handling employee grievances or complaints, or disciplining employees;
- Determining work techniques;
- Planning the work;
- Apportioning work among employees;
- Determining the types of equipment to be used in performing work, or materials needed;
- Planning budgets for work;

- Monitoring work for legal or regulatory compliance; and
- Providing for safety and security of the workplace.

B. The employee must customarily and regularly directs the work of two or more other full time employees (or Full Time Equivalent).

Note on number of employees: It should actually be more than two. According to the Department of Labor, a manager supervising as few as two employees rarely spends as much as 50% of their time primarily engaged in managerial duties.

C. The employee has the authority to hire or fire other employees or provide suggestions and recommendations that will be given particular weight in the hiring, firing, advancement, or promotion.

Note on authority to hire and fire: it should be part of the employee's job duties to make such suggestions and recommendations on a regular basis.

AND

D. The employee must customarily and regularly exercise discretion and independent judgment.

Examples of employees who may fit into the Executive Exemption: Office managers, practice managers, and clinic administrators.

III. **PROFESSIONAL EXEMPTION (Must meet A + B Only)**

Note: Professional exempt employees may be paid on a salary OR a fee/commission basis. **In California, licensed physicians or surgeons are exempt from overtime if their pay meets the minimum hourly rate requirement, as provided above.** The exemption does not apply to an employee in a medical internship or resident program. Attorneys do not have to meet the salary level test.

A. The employee is licensed or certified by the state of California and primarily engaged in the practice of one of the following recognized professions: law, medicine, dentistry, optometry, architecture, engineering, teaching, or accounting.

Note: **Nurses, Hygienists, and Pharmacists** are NOT included within the larger realms of medicine or dentistry. Especially in CA, these individuals are not considered exempt, unless the person meets the criteria for exemption in another category. Certified nurse midwives, certified nurse anesthetists, and certified nurse practitioners may qualify for the professional exemption.

B. The employee's primary duty is work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction;

Note on work requiring knowledge of an advanced type: This includes the requirement that the employee must exercise discretion and independent judgment. Again, the exercise of discretion and independent judgment should not be confused with the use of skill in applying techniques, procedures or specific standards. The work should be predominantly intellectual in character, involving evaluating and deciding on possible courses of conduct based on varying facts and circumstances. It does not include routine mental, manual, mechanical, or physical work.

Special note about hygienists: According to the US DOL, dental hygienists who have successfully completed four academic years pre-professional or professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association **may** be exempt (i.e., not guaranteed). However, the DOL has repeatedly advised that hygienists **do not** meet the requisite level of education or discretion to be exempt under the professional exemption, as their work is more of a routine, mechanical nature than that of the discretion used of a high level provider such as a dentist. They should only be treated as exempt if they meet the criteria for a different category.

Examples of employees who may fit into the Professional Exemption: Dentists, doctors, associate doctors, lawyers, CPA's, physician assistants, or nurse practitioners.

There are a few other exemption categories that may apply, but less often in a medical/dental setting. These each have different criteria that are not addressed here. Contact CEDR with questions about any of these categories:

1. Highly paid Computer Software Employees (\$41.85/hour or \$87,185/year minimum).
2. Professionals in the creative or artistic Fields (e.g. Videographer, Graphic Designer)
3. Academic Instructors/Teachers
4. Outside Sales Associates (commissioned and work primarily in the field)

Questions? Concerns? We're here to help!

Call CEDR Solutions at 866-414-6056 or support@cedrsolutions.com

Position Audit Checklist

Date of Audit: _____

Auditor: _____

Use this form to enter each position in your office, and how you classify them. Note this is not categorized by the individual, but by the position and duties required. You should be able to review the employee's job description to help make your determination. In the Base Salary category, enter the lowest or starting salary for the position. That way, when the base salary threshold for exempt status increases, you can review your past classifications easily.

Position	Exempt or Non-Exempt	Base Salary	Category, if Exempt