

Exempt vs. Non Exempt

A Question & Answer Guide for Supervisors

What are the exemptions?

Job titles do not determine a California employee's exempt or nonexempt status. An employee with an impressive job title may not qualify as an exempt employee if his/her actual duties do not meet the requirements for one of the exemptions. Always remember it's the job not the person .

Must customarily and regularly exercise discretion and independent judgment; must have the authority or power to make an independent choice, free from immediate direction or supervision on matters of "significance".

Must be primarily engaged (must spend more than 50% of his/her time) doing exempt duties.

Regularly and directly assists an employee employed in an executive or administrative capacity; under only general supervision, performs work along specialized or technical lines requiring special training, experience or knowledge or executes special assignments or tasks.

Professional: The professional exemption extends to three categories of potentially exempt employees:

- x Licensed – or certified by the State of California and primarily engaged (more than 50% of the time) in the practice of: law, medicine, dentistry, optometry, architecture, engineering, teaching or accounting.
- x Learned – Requires advanced knowledge in a science or learning field customarily acquired by a prolonged course of specialized intellectual instruction and study.
- x Artistic – Must be primarily engaged (more than 50% of the time) in the performance of work that is original and creative in character in a recognized field of artistic endeavor.

AND

Must customarily and regularly exercise discretion and independent judgment; must have the authority or power to make an independent choice, free from immediate direction or

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

		<p>doing so.</p> <p>A mealbreak can be unpaid only if all of the above conditions are met.</p> <p>When a work period of not more than six hours will complete the day's work, the meal period may be waived by mutual consent of the employer and the employee.</p>
Breaks *	None	<p>Employers must authorize and permit rest periods for all nonexempt employees whose total daily work time is at least 3.5 hours. Two 15 minutes paid breaks are to be taken, one mid morning and one mid afternoon. These cannot be used to shorten arrival or departure times and cannot be used to extend a meal period.</p>

Compensatory time off/Make up time	Not recognized	Not allowed
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There are many other “rules” that differentiate an exempt status from a nonexempt status that need to be determined by Human Resources and in some cases need legal counsel’s assistance to make an informed decision.