

QUESTIONNAIRE

Classification of Exempt/Non-Exempt Employees

Instructions:

To determine whether an employee qualifies as an exempt employee under an applicable exemption, answer the questions and then evaluate the criteria for each relevant exemption category based on the responses to the questions. Note that a single employee may qualify for more than one exemption.

This Questionnaire should be used in conjunction with the informational letter provided to you regarding the five (5) major classifications for exempt employees (administrative, executive, professional, computer professional, outside sales, incl. commissions).

Employee Name:

Job Title:

Questionnaire Completed By:

Questionnaire Completion Date:

1. **Salary Basis Test:** Complete this section of the Questionnaire if you are evaluating whether an employee qualifies for the administrative, executive, or professional exemptions. After you have completed this section of the questionnaire, also complete the section relating to the duties of the relevant exemption to determine if the employee qualifies for that exemption.

Questions:

1.1. How is the employee paid?

Salary

Hourly

Daily

Per Shift

Other / Explain _____

1.2. What is the employee's rate of pay (if hourly, provide hourly rate; if salary, provide annual salary)?

\$ _____

1.3. Is the employee guaranteed any minimum weekly compensation?

Yes

No

1.3.1. If so, how much guaranteed compensation is the employee paid per week?

\$ _____

1.4. How frequently is the employee paid?

1.5. May the employee's compensation be reduced for any reason?

Yes

No

1.5.1. If so, please explain:

1.6. Are any deductions taken from the employee's pay?

Yes

No

1.6.1. If so, please explain:

Explanations/Application:

— California law generally follows the federal “salary basis test” to determine whether:
(i) employers may make deductions to exempt employees’ salaries; and (ii) employees are exempt from overtime and minimum wage laws.

— California employees are exempt from minimum wage and overtime laws if they are employed in an *administrative, executive, or professional capacity* AND:

- Primarily engage in duties that meet the applicable exemption test. ***An employee is primarily engaged in exempt duties if they occupy more than half of the employee’s worktime*** (Lab. Code § 515(e)).
- Customarily and regularly exercise discretion and independent judgment in performing those duties.
- Earn a monthly salary equivalent to no less than two times the state minimum wage for full-time employment (full-time employment means 40 hours per week as defined in Labor Code § 515(c)).

— California law generally follows the federal salary basis test to determine whether an employer may make deductions to exempt employees’ salaries and whether the employer may have those employees remain exempt from overtime and minimum wage requirements. ***The only deductions an employer can take from an employee’s salary without jeopardizing the employee’s exempt status are:***

- Deductions in full-day increments for unpaid disciplinary suspensions imposed in good faith for the employee’s violation of workplace conduct rules (other than attendance or performance rules), if the discipline is imposed under a written policy that applies to all employees.
- Deductions in full-day increments if the employee is absent for one or more full days for personal reasons other than disability or sickness.
- Deductions in full-day increments if the employee is absent because of sickness or disability if the employer has a bona fide plan or policy of paying wage-replacement benefits.
- Reductions in the employee’s salary proportionate to the amount of Family and Medical Leave Act leave taken in a workweek.
- Reductions in the employee’s salary as a penalty for infractions of safety rules of major significance.

- Offsets for any amounts received by an employee as jury duty fees, witness fees, or military pay for a particular workweek against the salary due to the employee for that particular workweek.
- Proportional reductions of the employee’s salary in the first and last week of employment based on the time actually worked in those workweeks.

— The relevant exemption is not jeopardized because of an employer’s proper withholding or deduction for amounts otherwise required or permitted by law (such as federal and state income tax withholdings, social security and Medicare tax).

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Salary Basis Test”?

Yes

No

If not, the employee is not exempt under this exemption.



2. Administrative Exemption:

Questions:

2.1. Briefly describe the employee's job duties (specify which, if any, are primary duties):

2.2. How much time does the employee spend on each of his/her job duties?
[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

2.3. How much supervision does this employee receive with respect to each job duty? [Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

2.4. How much discretion and independent judgment does the employee exercise with respect to each job duty? Provide one (1) or two (2) examples.

2.5. Based upon the responses you provided above, please answer the following Yes/No questions to determine whether or not the proper criteria were met:

- | | | |
|--|-----|----|
| 2.5.1. Is the employee primarily engaged in (i.e. spends more than 50% of his/her time) duties that involve office or non-manual work which is directly related to mgmt. policies or general business operations? | Yes | No |
| 2.5.2. Does the employee exercise discretion and independent judgment ³ in the performance of his/her job duties? | Yes | No |
| 2.5.3. Does the employee assist an officer, director, or manager of the company, or another employee working in an executive or administrative capacity? | Yes | No |
| 2.5.4. Does the employee perform, under only <i>general</i> supervision, specialized or technical work? | Yes | No |
| 2.5.5. Does the employee perform, under only <i>general</i> supervision, any special assignments or tasks? | Yes | No |

³ An administrative employee exercises "**discretion and independent judgment**" if he/she has the power to: (i) compare and evaluate possible courses of action; and then (ii) act or make decisions based on his/her analysis of those possible courses of action. *Employees who merely apply their skills and knowledge by following set procedures are not exercising discretion and judgment.* The employee must have the ability/authority to make an independent choice free from immediate direction or supervision *regarding significant matters.* **This definition shall apply each time these words are used in this Questionnaire.**

2.5.6. Does the employee earn a monthly salary of *at least* double the minimum wage for *full-time* employment?

Yes

No

Explanations/Application:

— To qualify under the *administrative* exemption, the employee’s administrative duties must relate to the management or general business operations of the employer or the employer’s customers. For example, they include work relating to running or servicing the business, but not work on a manufacturing production line or selling the products of a retail employer.

— The following areas of business typically involve the required administrative duties:

- | | | | |
|--------------|-------------------|--------------------|---------------------|
| • Tax | • Insurance | • Marketing | • Gov’t Relations |
| • Finance | • Quality Control | • Research. | • Computer/IT |
| • Accounting | • Purchasing | • Health & Safety | • Legal/Reg. Compl. |
| • Budgeting | • Procurement | • HR | • Office Mgmt. |
| • Auditing | • Advertising | • Public Relations | • Employee Benefits |

— By contrast, employees may *not* satisfy the administrative duties test if:

- They’re engaged in production or clerical work.
- Their duties generally involve routine or structured tasks, such as:
 - Bookkeeping;
 - Processing daily or weekly information (e.g., payroll processing);
 - Generating (as opposed to drafting or creating) reports; or
 - Recording and tracking data and data tabulation.

— The employee must also:

- Exercising discretion and independent judgment.
- Assist a proprietor or an employee working in an executive or administrative capacity.
- Perform, under only general supervision, specialist or technical work.
- Execute, under only general supervision, special assignments and tasks.

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To qualify under the administrative exemption, **all** of the above questions (2.5.1 through 2.5.6) must receive a “Yes” response. If you checked “No” to one (1) or more of the above questions/criterion, the employee will **not** qualify as exempt.

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Administrative Exemption test”?

Yes

No

If not, the employee is not exempt under this exemption.



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3. Executive Exemption:

Questions:

3.1. Briefly describe the employee's job duties (specify which, if any, are primary duties):

3.2. How much time does the employee spend on each of his/her job duties? [Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

3.3. How much supervision does this employee receive with respect to each job duty? [Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

3.4. Does this employee supervise any other employees?

Yes

No

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3.4.1. If so, describe the supervisory responsibilities:

3.5. How much authority does the employee have with respect to human resources decisions, such as hiring, firing, promotions, or demotions (or other employment status changes)?

3.6. Based upon the responses you provided above, please answer the following Yes/No questions to determine whether or not the proper criteria were met:

3.6.1. Does the employee spend more than 50% of his/her working hours engaged in executive duties, including:

- Managing a place of employment or a customarily recognized department of sub-division?
- Directing the work of two (2) or more employees?
- Responsibility for hiring or firing employees, or taking an influential role in hiring, firing, or otherwise changing the job status of other employees?

Yes No

3.6.2. Does the employee exercise **discretion and independent judgment**?

Yes No

3.6.3. Does the employee earn a monthly salary of *at least* double the minimum wage for *full-time* employment?

Yes No

Explanations/Application:

— Under Labor Code section 515, California employees are exempt under the *executive* exemption if they earn at least double the state minimum wage for full-time employment and are primarily engaged in:

- Managing all or a department or subdivision of his/her place of employment.
- Directing the work of two or more other employees.
- Asserting authority to hire or fire other employees, or giving an opinion that is influential in hiring, firing or changing an employee’s status.
- Exercising discretion and independent judgment.

— To qualify under the *executive* exemption, the an executive must manage the entire enterprise or a department or subdivision of a department, defined as a unit with permanent status and function.⁴

— To qualify for the executive exemption, the manager must supervise two or more *full-time* employees. Alternatively, an employee could still qualify under this exemption if he/she supervised one (1) full-time and two (2) part-time employees.

— Employees qualifying under the *executive* exemption must either have authority to hire, fire, demote, or promote other employees, or have their suggestions and recommendations regarding such hiring, firing, promotion, or demotion given particular weight.⁵

*To qualify under the executive exemption, **all** of the above questions (3.6.1 through 3.6.3) must receive a “Yes” response. If you checked “No” to one (1) or more of the above questions/criterion, the employee will not qualify as exempt.*

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Executive Exemption test”?

Yes

No

If not, the employee is not exempt under this exemption.



⁴ While the DLSE Glossary: Executive Exemption states that the employee must be in charge of the unit, not just *participate* in the management of the unit. However, I think the DLSE would be hard pressed to find that if two (2) individuals co-headed a unit (of, say, 15 other employees), that both wouldn’t be deemed “executives” under this exemption.

⁵ An employee’s recommendations may have sufficient weight even if they are subject to review or approval, but occasional suggestions for employment action are not sufficient to meet this requirement.

4. Professional Exemption:

Learned Professionals

[If you're seeking exemption for an employee as a *creative professional*, please skip to section 4.8]

Questions:

4.1. Briefly describe the employee's job duties (specify which, if any, are primary duties):

4.2. How much time does the employee spend on each of his/her job duties?
[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

4.3. How much supervision does this employee receive with respect to each job duty?
[Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

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4.4. How much discretion and independent judgment does the employee exercise with respect to each job duty? Provide one (1) or two (2) examples.

4.5. What educational background is required for this employee's position?
[Do all employees in the same position satisfy this educational prerequisite? If not, explain.]

4.6. Does this employee's position require knowledge in a particular field of science or learning?

Yes

No

4.6.1. If so, which field? _____

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Creative Professional

[If you're seeking exemption for an employee as a *learned professional*, go back to section 4.1]

Questions:

4.8. Briefly describe the employee's job duties (specify which, if any, are primary duties):

4.9. How much time does the employee spend on each of his/her job duties?
[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

4.10. How much supervision does this employee receive with respect to each job duty?
[Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

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4.11. Does this employee's position require knowledge or experience in a particular artistic or creative field (such as music or writing)?

Yes

No

4.11.1. If so, which field? _____

4.11.2. If there are employees at this position who don't satisfy that prerequisite, please explain.

4.12. Does this employee's position require him/her to be inventive, imaginative, original, or to otherwise use his/her creative talents?

Yes

No

4.12.1. If so, explain?

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4.13. Based upon the responses you provided above, please answer the following Yes/No questions to determine whether or not the proper criteria were met:

- | | | |
|---|-----|----|
| 4.13.1. Is the employee's primary duty the performance of work requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor? | Yes | No |
| 4.13.2. Is the employee primarily engaged in work that <i>both</i> : | | |
| • Is original and creative in character in a recognized field of artistic endeavor? | Yes | No |
| • Depends primarily on the invention, imagination, or talent of the employee? | | |
| 4.13.3. Does the employee customarily and regularly exercise discretion and independent judgment? | Yes | No |
| 4.13.4. Does the employee earn a monthly salary of <i>at least</i> double the minimum wage for <i>full-time</i> employment? | Yes | No |

Explanations/Application:

— To qualify under the *professional* exemption, and must satisfy all criteria related **either** to *learned professionals* **or** *creative professionals*. Such professions typically involve:

- *For Learned Professionals* – Advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study (distinguished from general academic education, apprenticeships and training in routine mental, manual or physical processes). Advanced degrees (above a bachelors) are generally required.⁷
- *For Creative Professionals* – Work that is original and creative in character in a recognized field of artistic endeavor (as opposed to work that 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.
- *For All* – Work that is predominantly intellectual and varied in character (as opposed to routine mental, manual, mechanical or physical work) and cannot be standardized in relation to a given period of time, and work that requires the exercise of **discretion and independent judgment** to perform his/her job duties.

⁷ Pharmacists and registered nurses practicing their respective professions are excluded from the professional exemption and are not exempt employees unless they independently meet the criteria for either the executive or administrative exemption.

To qualify under the professional exemption, **all** of the above questions in either the “learned” or “creative” categories (4.7.1 through 4.7.6 **or** 4.13.1 through 4.13.4) must receive a “Yes” response. If you checked “No” to one (1) or more of the above questions/criterion, the employee will **not** qualify as exempt.

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Professional Exemption test”?

Yes

No

If not, the employee is not exempt under this exemption.



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5. Computer Professional Exemption:

Questions:

5.1. Does the employee work as a computer systems analyst, computer programmer, software engineer, or other similarly skilled position in the computer field?

Yes

No

5.1.1. If so, explain?

5.2. Briefly describe the employee's job duties (specify which, if any, are primary duties):

5.3. How much time does the employee spend on each of his/her job duties?
[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

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- 5.4.** How much supervision does this employee receive with respect to each job duty?
[Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

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5.5. Based upon the responses you provided above, please answer the following Yes/No questions to determine whether or not the proper criteria were met:

5.5.1. Is the employee paid at an hourly rate (or equivalent) of at least \$46.55 per hour?	Yes	No
5.5.2. Is the employee employed as one (1) of the following: <ul style="list-style-type: none">• A computer systems analyst?• A computer programmer?• A software engineer?• Another similarly skilled worker in the computer field?	Yes	No
5.5.3. Do the employee's primary job duties involve at least one (1) of the following? <ul style="list-style-type: none">• Applying systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications?• The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based upon user or system design specifications?• The design, documentation, testing, creation, or modification of computer programs related to machine operating systems?• A combination of any of the above duties requiring the same skill level?	Yes	No
5.5.4. Does the employee customarily and regularly exercise <u>discretion and independent judgment</u> ?	Yes	No

Explanations/Application:

— To qualify under the *Professional Computer* exemption, the employee has to be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming and software engineering, as well as be:

- Primarily engaged in duties that consist either of: (i) applying systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications; (ii) designing, developing, documenting, analyzing, creating, testing or modifying computer systems or programs, including prototypes, based on and related to user or system design specifications; or (iii) documenting, testing, creating, or modifying computer programs related to the design of software or hardware for computer operating systems.

- Primarily engaged in work that is intellectual or creative and requires the exercise of **discretion and independent judgment**.

— Such employees must also earn a minimum salary/hourly rate, and be highly skilled and proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and/or software engineering.

— Employees will **not** qualify for this exemption if they:

- Are training or in an entry level learning position.
- Lack the skill necessary to work without close supervision.
- *Primarily* engaged in the maintenance, repair, or operation of computer hardware and related equipment.
- Are not in a computer systems analysis or programming occupation.
- Are primarily working to create special effect images for use in movies, television, or theater.

— Likewise, this *computer professional* exemption does **not** cover employees *solely* because their work is highly dependent upon (or aided by) the use of computers. (Labor Code § 515.5(b)(4).) Nor is the job title very important in the determination.

*To qualify under the computer professional exemption, **all** of the above questions (5.5.1 through 5.5.4) must receive a “Yes” response. If you checked “No” to one (1) or more of the above questions/criterion, the employee will **not** qualify as exempt.*

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Computer Professional Exemption test”?

Yes

No

If not, the employee is not exempt under this exemption.



6. Outside Sales Exemption:

Questions:

6.1. Briefly describe the employee's job duties (specify which, if any, are primary duties):

6.2. How much time does the employee spend on each of his/her job duties?
[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

6.3. How much supervision does this employee receive with respect to each job duty?
[Include frequency and extent of such supervision. For example, does the employee receive daily, weekly, or minimal supervision? Is the employee micromanaged?]

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6.4. Where does the employee perform his/her job duties?

[If the employee performs job duties in multiple locations, please describe how much time and which job duties the employee performs at each location.]

6.5. Does the employee complete sales or lay the groundwork for sales by others?

Yes

No

6.5.1. If so, explain?

6.6. How much time does the employee spend concluding sales, as opposed to marketing or promotional activities supporting his/her selling activities or other duties?

[Respond with hours or percentages, and be sure they add up to an accurate weekly, monthly, or bi-monthly total.]

6.7. Based upon the responses you provided above, please answer the following Yes/No questions to determine whether or not the proper criteria were met:

6.7.1. Is the employee's primary duty selling tangible or intangible items or contracts for one of the following?

- | | | |
|----------------------|-----|----|
| • Products? | Yes | No |
| • Use of Facilities? | | |
| • Services? | | |

6.7.2. Does the employee spend more than 50% of his or her work time away from the employer's place of business performing such primary duty?

Yes No

6.7.3. Is the employee over 18?

Yes No

6.7.4. Does the employee spend over 50% of his/her time away from your place of business?

Yes No

Explanations/Application:

— To qualify under the *Outside Sales* exemption, the employee must:

- Be over 18 years old.
- Sell tangible or intangible items, or obtain orders or contracts for: (i) products; (ii) services; or (iii) use of facilities.

— There is no minimum salary requirement for salespeople located *outside* of California.

— **If you pay your employee commissions, all** of the following must be true to survive under this exemption:

- The employee must be principally involved in sales.
- The employee's total earnings must be at least 1.5x the minimum wage for each pay period.
- At least 50% of total compensation during a typical pay period must be commission based.
- The commissions must be based on a percentage of the price of the product or service being sold.

To qualify under the computer professional exemption, **all** of the above questions (5.5.1 through 5.5.4) must receive a “Yes” response. If you checked “No” to one (1) or more of the above questions/criterion, the employee will **not** qualify as exempt.

Question: Based upon your responses to the questions above, as well as the “explanations/application,” does this employee pass the “Outside Sales Exemption test”?

Yes

No

If not, the employee is not exempt under this exemption.