

Exemptions from Overtime Pay

YOUR LEGAL RIGHTS

Overtime laws do not apply to some types of employees. Those employees are known as “exempt,” and will not receive overtime pay, even if they work more than their scheduled hours, more than eight hours a day, or more than forty hours a week.

Whether or not you can receive overtime pay usually depends on the kind of work you do. Employees who are exempt from (not covered by) overtime laws usually have a lot of responsibility within a company and have significant input into how that company is run. Some employees are exempt because they work in an industry where work hours are so irregular that calculating overtime would be impossible. You are not exempt just because your employer says you are exempt or because your employer gives you a certain title (for example, “assistant manager”), or pays you in a certain way.

Exemptions from overtime law generally fall into five major categories. All five are described below. You should read through each category to see if any describe the kind of work you do. The definitions of exempt employees are very complex, and you may not be certain if a particular category applies to your work. If you have further questions, you should contact the California Department of Industrial Relations/ Division of Labor Standards Enforcement (“Labor Commissioner”) in your area for more information.

1. Exemption for Professional Employees

State or federal overtime laws do generally not cover employees who are considered “professional.” To be considered a professional employee, you must be licensed or certified in:

- Optometry;
- Law (does not include paralegals);
- Architecture;
- Medicine (does not include nurses);
- Engineering;
- Dentistry (generally does not include dental hygienists);
- Teaching; or
- Accounting (includes only certified public accountants).

You must also spend at least half of your work time performing duties that are typical of your profession.

Finally, you must also meet the “**salary basis**” test, which means that you also must receive a salary that is at least twice the minimum wage for full time work (as of January 1, 2008, \$2,733.33 per month or \$33,280 per year).

Also, under California state law, you may be considered a professional if you meet the salary basis test noted above *and* you spend at least half of your hours doing work in a field that is commonly considered a “learned or artistic profession.” For your job to be considered “learned or artistic,” you must usually have earned a college degree or pursued other paths of intellectual study. Also, your work must be original and creative in character and depend primarily on your own invention, imagination, or talent. Some high-tech and computer industry workers will fall into this category. This exception is very limited, so you should not assume you qualify just because your job involves some creativity.

2. Exemption for *administrative* employees

If the work you do is mostly administrative, you may not be protected by overtime laws. However, for your work to be considered administrative, it must meet *all* of the following qualifications:

- You meet the “salary basis” test noted in #1 above; and
- More than half your time must be spent on work that is “intellectual;” and
- You are regularly allowed to make independent decisions without direct supervision about matters that are important to the company (this means that the work you do is related to important company policy or business decisions); and
- You regularly do work that is “outside the production process”.

If you do not meet any one of these qualifications of an administrative employee, you are not exempt.

Also, to be considered an administrative employee, you must do at least one of the following:

- You must regularly and directly assist the owner of the company or another manager or administrator.
- You must perform work that requires special training, experience, or knowledge without direct supervision, or with only minimal supervision.
- You must perform special assignments that require you to make decisions that affect the company with only general supervision.

3. How Exemption for *Managerial* or *Executive* Employees

If you are a managerial or executive employee, the work you do may not be protected by overtime laws. However, you are only a managerial or executive employee if you meet all of the following qualifications:

- You meet the salary basis test noted in #1 above; and
- You spend more than half of your time either managing a distinct department or subdivision of the company or doing “managerial” work (managerial work includes doing

things like assigning work to other people, supervising work, evaluating other employees, planning work, determining techniques to be used in completing work, keeping records, handling complaints, and controlling the flow of merchandise or supplies); and

- You are regularly allowed to make independent decisions without direct supervision about matters that are important to the company (this means that the work you do is related to important company policy or business decisions); and,
- You directly supervise the work of two or more full-time employees. Supervision of these employees must be part of your regular job duties, and not just something you do when the regular supervisor is not at work; and
- You make recommendations about the hiring and firing of employees, and have enough authority within the company that your recommendations are given serious attention.

If you do not meet any one of these qualifications, you are not a manager and are not exempt.

4. Exemption for union employees

If you are a union member, you may not be protected by overtime laws because of language included in your collective bargaining agreement (CBA). If your CBA establishes a minimum wage for workers at your company that is at least 30% more than the legal minimum wage, you are exempt from overtime laws. As of January 1, 2008, minimum wage in California is \$8.0 per hour. This means that if you are paid \$10.40 or more per hour (as of January 1, 2008), overtime laws do not apply to you. You may have the right to overtime included in your CBA, but the terms set out in your CBA might be different than the law for non-union employees.

5. Industry-specific exemptions

Some other categories of jobs are exempt from California state overtime law. These jobs include:

- **Personal attendants:** Live-in employees in private households who care for people are often exempt. (Note: if you spend time less than 80% of your time actually taking care of people, you may not be exempt). This exemption also applies to workers who are employed by an agency and sent to work in private households. For more information regarding personal attendants, see our Fact Sheet titled “**Household Workers.**”
- **Certain agricultural workers:** Agricultural workers are not completely exempt from overtime pay, but there are different overtime rules depending on the kind of agricultural work they do. Agricultural workers who handle products after harvest are generally covered by regular overtime laws. Agricultural workers who harvest products are generally must work over 10 hours a day or more than 6 days a week to receive overtime pay.
- Student nurses.
- **Certain transportation workers:** includes bus drivers, taxi drivers, ambulance drivers who have agreed to 24-hour schedules, and truck drivers who drive trucks over 26,000 pounds within California or trucks over 10,000 pounds that cross state lines.

- **Employees who work on commission:** Employees whose pay is based primarily on sales and whose pay is a percentage of a product's price are exempt, but only if the employee's earnings are more than 1½ times the minimum wage. As of January 1, 2008 the employee must earn at least \$12.00 per hour.

6. What do I do if I am not exempt but am not being paid overtime?

First, you should keep a detailed record of the hours you are working and the tasks that you perform.

You should then calculate the overtime pay you are due. (See our Fact Sheet titled "**Overtime Pay**" for information on calculating an overtime claim).

If your employer refuses to give you overtime pay to which you are entitled, you can also file a claim for your overtime wages with the California Department of Industrial Relations, Division of Labor Standards Enforcement ("Labor Commissioner"). For more information, see our Fact Sheet titled "**Do-It-Yourself Recovery of Unpaid Wages: How to Represent Yourself Before the California Labor Commissioner.**"

Your employer may not "retaliate" (fire, demote, suspend, etc.) against you for asking for overtime pay you believed you have earned, or for filing a claim with the Labor Commissioner. If you believe your employer has retaliated against you, contact the Labor Commissioner. You have six months from the date of the violation (for example, the date you were fired) to file a claim with the Labor Commissioner.

This fact sheet is intended to provide accurate, general information regarding legal rights relating to employment in California. Yet because laws and legal procedures are subject to frequent change and differing interpretations, the Legal Aid Society - Employment Law Center cannot ensure the information in this fact sheet is current nor be responsible for any use to which it is put. Do not rely on this information without consulting an attorney or the appropriate agency about your legal rights in your situation.

For further information about your employment rights, please call:

The Workers' Rights Clinic

415-864-8208 (SF Bay Area) or **866-864-8208** (Toll Free in CA)

The Workers' Rights Clinic is a project of The Legal Aid Society - Employment Law Center, a non-profit organization focusing on the employment-related legal rights of low-income workers and providing free legal information on a wide range of employment-related problems.