

## SUMMARY OF CALIFORNIA AND FEDERAL LAW EXEMPTIONS

### PROPERLY CLASSIFYING EMPLOYEES



<u>EXEMPTION</u>	CALIFORNIA	FLSA
	SALARY TEST	SALARY TEST
<b>EXECUTIVE ADMINISTRATIVE PROFESSIONAL (WHITE COLLAR)</b>	<p>1. salary level = eff. 1/1/18 Large employers (26 or more employees) = \$45,760/yr., or \$880/wk. Small employers (25 or less employees) = \$ 43,680/yr., or \$ 840 per week</p> <p style="text-align: center;"><b>AND</b></p> <p>2. salary basis = true salary = a fixed sum not subject to reduction for hours missed.</p>	<p>1. salary level = minimum of \$23,660/yr. or \$455/wk.;</p> <p style="text-align: center;"><b>AND</b></p> <p>2. salary basis = a true salary not subject to reduction for quantity or quality of work for any week in which the employee performs any work.</p>
<b>EXECUTIVE ADMINISTRATIVE PROFESSIONAL (WHITE COLLAR)</b>	<p style="text-align: center;"><u>Payroll Docking Rules</u></p> <p>Employers may not dock Exempt Employees salary for absences, <i>except</i>:</p> <ul style="list-style-type: none"> <li>• Full day personal absences;</li> <li>• Full day sickness or disability if pursuant to a bona fide plan for paid benefits for illness and no accrued time on books;</li> </ul>	<p style="text-align: center;"><u>Payroll Docking Rules</u></p> <p>Exempt employees are <u>not</u> permitted to be subject to partial <i>pay</i> deductions based on the number of hours worked, <i>except</i>:</p> <ul style="list-style-type: none"> <li>• for full day personal absences other than sickness or disability; (can charge vacation account for partial day absence)</li> </ul>

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<u>EXEMPTION</u>		
	CALIFORNIA	FLSA
(WHITE COLLAR)	<ul style="list-style-type: none"> <li>• Partial day absences for hours taken as unpaid FMLA leave;</li> <li>• offsets for jury fees, witness fees and military pay; (no partial pay deductions for partial week absence)</li> <li>• Partial initial or final week of employment;</li> <li>• deductions for penalties imposed for violations of significant safety rules.</li> </ul> <p>Employer may <u>not</u> dock Exempt Employee salary for <i>partial day absences</i>, but:</p> <ul style="list-style-type: none"> <li>• Partial day absences– employer can replace salary by charging Vacation/PTO/Sick Pay benefits account ⇒ Regardless of whether absence is at least 4 hours or shorter, requiring Exempt Employee to use PTO for partial day absence is not unlawful.</li> </ul>	<ul style="list-style-type: none"> <li>• for full day sickness or disability if pursuant to a bona fide plan for paid benefits for illness and no accrued time on books; (can charge sick account for partial day absence)</li> <li>• hours taken as unpaid FMLA leave;</li> <li>• offsets for jury fees, witness fees and military pay; (no partial pay deductions for partial week absence)</li> <li>• initial or terminal week of employment;</li> <li>• deductions for penalties imposed for violations of significant safety rules; <b><u>AND</u></b></li> </ul>
(WHITE COLLAR)		<p><b><u>Effective 8/04</u></b></p> <ul style="list-style-type: none"> <li>• unpaid disciplinary suspension of one or more full days (compared to former rule of at least one full week), provided such suspension is imposed in good faith for an infraction of “serious workplace conduct” rules pursuant to written policy applicable to all employees (<i>i.e.</i>, sexual harassment, drug violation, violations of state or federal laws).</li> </ul>

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<b><u>EXEMPTION</u></b>	<b>CALIFORNIA</b>	<b>FLSA</b>
	<p><b>Window of Correction</b></p> <p>Where an impermissible deductions is either (a) inadvertent or (b) made for reasons other than lack of work, the exemption will <u>not</u> be lost if the employer reimburses the employee for such deductions and promises to comply in the future.</p>	<p><b>Effect of Improper Deductions</b></p> <p>More protection if an employer has an “actual practice” of making improper deductions, the exemption will be lost for the period in which the improper deduction(s) was made, <u>but</u> only for employees in the same job classification working for the same manager(s) responsible for the deduction. 29 CFR § 541.603 (b).</p> <p><b><u>NEW</u></b> A “safe harbor” if an employer (a) has clearly communicated a policy against improper deductions, which includes a complaint procedure, (b) reimburses any improper deductions, and (c) makes a good faith commitment to comply in the future, the exemption will not be lost for an employee unless the employer willfully continues the deductions after receiving complaints. 29 CFR § 541.603(d).</p>
<b>SKILLED COMPUTER</b>	<ul style="list-style-type: none"> <li>• salary level eff. 1/1/18 = minimum of \$90,790.07/yr.</li> </ul>	<ul style="list-style-type: none"> <li>• salary level = minimum of \$23,660/yr. or \$455/wk.;</li> <li>• <b><u>OR</u></b></li> <li>• \$27.63/hr.;</li> </ul>
<b>HIGHLY COMPENSATED EMPLOYEE</b>	Not Applicable	<p><b><u>NEW</u></b></p> <ul style="list-style-type: none"> <li>• salary ≥ \$100,000/yr.</li> </ul>

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<u>EXEMPTION</u>	CALIFORNIA	FLSA
	DUTIES TEST	DUTIES TEST
<b>EXECUTIVE</b>	<ul style="list-style-type: none"> <li>• supervise 2 or more employees;</li> <li>• customarily use discretion and independent judgment, <b>AND</b> perform <i>exempt</i> duties over 50% of the workweek.</li> </ul> <p style="text-align: center;"><u>What are “exempt” duties?</u></p> <p>The white-collar exemptions incorporate federal standards for guidance regarding the duties that will also qualify as exempt under state law. 29 C.F.R. 541.108-541.110</p> <ul style="list-style-type: none"> <li>• <u>§541.108</u>: activities performed concurrent with exempt duties because they are <i>directly and closely related</i></li> <li>• <u>§541.109</u>: emergency work</li> <li>• <u>§541.110</u>: occasional tasks</li> </ul>	<ul style="list-style-type: none"> <li>• <i>primary</i> duty managing enterprise or customarily recognized dept. subdivision;</li> <li>• regularly direct work of at least two full-time employees; <b>AND</b> authority to hire, fire, promote, etc. or suggestions of change of status must be given weight.</li> </ul>
<b>ADMINISTRATIVE</b>	<ul style="list-style-type: none"> <li>• perform office, non-manual work directly related to management policies or general business operations of the employer or customers,</li> <li>• perform, under general supervision, special assignments and tasks,</li> <li>• customarily use discretion and independent judgment, <b>AND</b></li> <li>• perform exempt work over 50% of the workweek.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>primary</i> duty performing office or non-manual work directly related to management or general business operations; (<b>NEW</b>: eliminated the word “policies”) <u>and</u></li> <li>• <i>primary</i> duty exercising discretion and judgment.</li> </ul>

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<u>EXEMPTION</u>	CALIFORNIA	FLSA
<b>PROFESSIONAL</b>	<ul style="list-style-type: none"> <li>• customarily engage in the use of discretion and independent judgment, and</li> <li>• practice and be licensed or certified by the State of California in one of eight recognized professions.</li> <li>• Law,</li> <li>• Dentistry,</li> <li>• Medicine (not nurses generally, but includes certified nurse practitioners, clinical nurse specialists, nurse anesthetists, and nurse midwives),</li> <li>• Architecture,</li> <li>• Engineering (not junior engineers or draftsmen),</li> <li>• Teaching,</li> <li>• Accounting, or</li> <li>• Learned or artistic professional (requires advanced knowledge of science or learning through prolonged course of specialized study and work that is original or creative in character.</li> </ul>	<ul style="list-style-type: none"> <li>• <i>primary</i> duty performing work requiring advanced knowledge, predominantly intellectual in character and requiring exercise of discretion and judgment;</li> <li>• primary duty performing work requiring invention, imagination, talent in recognized field of artistic or creative endeavor <b>OR</b></li> <li>• advanced knowledge in a field of science or learning; <b>AND</b></li> <li>• advanced knowledge customarily acquired by prolonged course of specialized instruction.</li> </ul>
<b>SKILLED COMPUTER</b>	<ul style="list-style-type: none"> <li>• highly skilled in theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering, <b>AND</b> <i>primarily</i> (more than 50% of the workweek) perform work that is intellectual or creative and requires the exercise or discretion and independent judgment.</li> </ul>	<ul style="list-style-type: none"> <li>• employed as computer systems analyst, programmer, software engineer, or other similarly skilled worker performing the following duties; <b>AND</b></li> <li>• <i>primary duty</i> includes:             <ul style="list-style-type: none"> <li>- the application of systems analysis techniques and procedures, including consulting with users to determine hardware, software or system functional specs;</li> </ul> </li> </ul>

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<u>EXEMPTION</u>		
	CALIFORNIA	FLSA
<p><b>SKILLED COMPUTER CONT.</b></p>	<p><u>Primarily engaged in:</u></p> <ul style="list-style-type: none"> <li>• application of system analysis techniques to determine hardware, software, or system specifications,</li> <li>• 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, <b>OR</b></li> <li>• documentation, testing, creation or modification of computer programs related to the design of the software or hardware.</li> <li>• Expressly <u>excludes</u> trainees or entry-level employees, computer employees who don't have the skills to work independently without supervision, engineers, drafters, machinists, or "other professionals" whose work is facilitated by computers, but who are not in a systems analysis or programming occupation, employees who operate, manufacture, or maintain computers and related equipment, employees who write box labels, product descriptions, and similar written materials for print or onscreen, or employees who create imagery for effects used in the motion picture, television, or theatrical industry.</li> </ul>	<ul style="list-style-type: none"> <li>• the design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specs;</li> <li>• the design, documentation, testing, creation or modification of computer programs related to machine operating systems;</li> <li>• a combination of the above duties.</li> <li>• Expressly <u>excludes</u> employees in computer manufacture or repair.</li> </ul>
<p><b>HIGHLY COMPENSATED EMPLOYEE</b></p>	<p>Not Applicable</p>	<p>customarily and regularly perform one or more exempt duties of an executive, administrative or professional employee.</p>

## Additional Exemptions



### ***Computer Professional Exemption.***

Exempt from overtime compensation if: (a) paid an hourly rate of at least \$43.58 or \$ 7,565.85 monthly (effective 1/1/18), (b) highly skilled in theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering, and (c) are “primarily engaged” in work that is intellectual or creative and requires the exercise or discretion and independent judgment.

### ***Outside Salesperson Exemption.***

The Wage Orders define this exemption stating, in essence, that to qualify for this exemption, an individual must be 18+ years of age, paid commissions, spend more than half of their working time outside company office selling or obtaining orders, be paid no later than when money is received from buyer, and is not required to meet exempt minimum salary requirement.

### ***Commissioned “Inside” Salesperson Exemption.***

Under Wage orders 4 and 7, to qualify for this *overtime only* exemption, an individual who performs the necessary exempt duties, will only be exempt from overtime laws, if.

- The employee’s earnings exceed 1 ½ x minimum wage, and
- More than half (50%) of the employee’s compensation comes from commissions (as defined by Labor Code section 204.1.)

These employees are still subject to meal and rest break and other wage and hours rules.

### ***Licensed Physicians***

To qualify for this exemption, a licensed physician must be paid at least the minimum hourly rate is \$79.39/hr.



#### **About Elizabeth J. Koumas, Esq.**

Ms. Koumas is the founder of the firm- Koumas Law Group. She has extensive experience in labor law compliance and employment litigation. For more information about proper classification of employees, or other employment law related issues, Ms. Koumas can be reached at (619) 682-4811 or via email, [ejk@koumaslaw.com](mailto:ejk@koumaslaw.com). For more information about Ms. Koumas’ background and legal experience, please visit [www.koumaslaw.com](http://www.koumaslaw.com).