



# ISSUE Insights



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## Overtime Exempt and Non-Exempt Employee Rules

### When to Pay One and One-half Times the Regular Rate of Pay

**Eight hours of labor constitutes a day's work** – For virtually all non-exempt private sector employees in California, when not covered by a collective bargaining agreement, overtime pay is based primarily upon the number of hours worked in a day. The following material provides a basic summary of current California and federal overtime pay requirements:

#### **Time-and-a-Half Pay Required**

- All hours worked beyond eight hours in a single workday; and
- The first eight hours worked on the seventh consecutive day worked by an employee in a single workweek.

#### **Double Time Pay Required**

- Double the employee's regular rate of pay is required to be paid for all hours worked beyond twelve hours in a single workday; and
- Double the employee's regular rate for hours worked beyond eight hours on the seventh consecutive day worked by the employee in a single workweek.

### Exempt Status

The California laws governing classification of employees as exempt are stricter than federal law.

An exempt employee is generally someone who is considered an executive, administrative, computer professional or professional employee, as well as the company's salespersons. All other employees are generally non-exempt and subject to wage and hour laws of the state and federal government. An employee must meet the definitions for exempt status under both state and federal law.

Job titles do NOT determine whether an employee is exempt or non-exempt. Exempt employees must generally earn a minimum monthly salary of no less than two times the state minimum wage for full-time employment. (The current minimum wage in California is \$8.00 per hour, which equates to \$2,773.33 per month.) Simply placing an employee on salary does not exempt an employee from wage and hour laws.



The exempt employee must receive a predetermined amount of salary each pay period. Such compensation cannot be subject to reduction due to variations in the quality or quantity of work performed. As a general rule, an exempt employee need not be paid for any workweek in which no work is performed, but must be paid full salary for any week in which work is performed, irrespective of the number of days worked.

To determine whether an employee is exempt, the State Labor Commissioner will evaluate work performed during the workweek, the time an employee spends on exempt work, as well as realistic expectations and requirements placed upon the employee by the employer.

Most exempt positions require the employee to customarily and regularly exercise discretion and independent judgment when performing required responsibilities. Such an employee must either:

- Have the power to make independent choices free from immediate supervision and with respect to matters of significance; or
- Be able to make a recommendation for actions subject to the final authority of a superior, as long as the employee has sufficient authority for the recommendations to affect matters of consequence to the business.

## **Breaks**

Any nonexempt employee who works more than 5 hours a day must take a break of not less than 30 minutes. The meal break may be waived with the consent of both the employer and the employee if the total work period per day is no more than 6 hours. Meal breaks may be unpaid only if:

- They are at least 30 minutes long;
- The employee is relieved of all duty; and
- The employee is free to leave the premises.

## **Alternative Work Schedule**

If proposed by the employer, the employees may adopt a regularly scheduled alternative workweek that authorizes work by the employees for no longer than 10 hours per day within a 40-hour workweek without payment at the overtime rate. An alternate workweek is defined as “any regularly scheduled workweek requiring an employee to work more than eight hours in a 24-hour period.” (Labor Code Sec. 500 (c)) At least 2/3 of the employees in a work unit must approve the alternative work schedule by secret ballot.<sup>1</sup>

## **Make-Up Work Time**

If an employee is absent from work for personal reasons, the employee may be permitted by the employer to make up some or all of the time missed without being paid overtime if all of the following conditions are met:

- Employers may inform employees of the make-up time option, but may not encourage or otherwise solicit employees to request approval for make-up time;

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<sup>1</sup> There are other legal requirements for adopting an alternative workweek schedule. See Labor Code Section 511 or consult your legal counsel for assistance when proceeding with this option.



- An employee may work no more than 11 hours on another workday and no more than 40 hours within a workweek, to make up the time off;
- The time must be made up within the same workweek; and
- The employee must provide employer a signed, written request for each occasion that the employee desires make-up time.

Employers should develop a make-up time policy that includes the requirement for advance notice, forms to be used, a system to track and manage make-up time requests, and approvals.

## **Sick Leave**

See CAA's White Paper - [California's Paid Sick Leave Law - Healthy Workplaces, Healthy Families Act of 2014](#)

## **Related Items and Information**

- [On-Site Employee/Employer Agreement Set – CAA Form Set 1.2](#)

