

Department of Industrial Relations  
DIVISION OF LABOR STANDARDS ENFORCEMENT

MANAGEMENT MEMORANDUM

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TO: All Professional Staff  
Statewide

FROM:

*Victoria L. Bradshaw*  
Victoria L. Bradshaw  
State Labor Commissioner  
San Francisco HQ

SUBJECT: Exempt Status Analysis - Managerial or Executive Employees

Attached is a copy of the final version of the *Exempt Status Analysis - Managerial or Executive Employees*. This form is to be used in those situations where there is some dispute as to whether or not an employee qualifies as exempt under the Industrial Welfare Commission (IWC) Wage Orders. The purpose of the *Analysis* is to provide a method for determining the exempt status of employees that will be consistent from deputy to deputy and from office to office.

These forms should also be made available to employers and employees to assist them in determining whether or not specific positions qualify for the IWC exemption. For the most part, the *Analysis* is self-explanatory, but if there are any questions you should contact your supervisor.

# EXEMPT STATUS ANALYSIS - MANAGERIAL OR EXECUTIVE EMPLOYEES

This analysis is meant to be only a guideline to assist in the determination of exempt or non-exempt status for a particular position and a particular employee under California state law. Since each case is different, it is important that the information used be accurate for the position and particular employee being analyzed. The results of the analysis will only be as good as the information used in it.

POSITION TITLE: \_\_\_\_\_

NAME OF EMPLOYEE: \_\_\_\_\_

PRIMARY JOB FUNCTION: \_\_\_\_\_

POSITION TITLE OF PERSON SUPERVISING THIS EMPLOYEE: \_\_\_\_\_

DEPARTMENT, STORE, FACILITY, ETC. MANAGED BY THE EMPLOYEE: \_\_\_\_\_

**YES      NO      IF YES, GIVE EXAMPLES**

## A. THE EMPLOYEE HAS THE AUTHORITY TO:

1. HIRE OR MAKE EFFECTIVE RECOMMENDATIONS  
TO HIRE EMPLOYEES

☐☐

The employee must have sufficient authority so that his or her recommendations for hiring command particularly serious attention.

2. FIRE OR MAKE EFFECTIVE RECOMMENDATIONS  
TO FIRE EMPLOYEES

☐☐

The employee must have sufficient authority so that his or her recommendations concerning employee discipline (including termination) command particularly serious attention.

3. CUSTOMARILY AND REGULARLY EXERCISES  
DISCRETIONARY AND INDEPENDENT JUDGMENT

☐☐

This involves the comparison and evaluation of alternatives by the employee and using his or her experience and judgment in selecting the best option. The terms imply that the employee has the power to make independent choices, free from immediate supervision. The decision may be implemented or may result in a recommendation subject to final authority, but the employee's recommendation must command serious attention. The decisions should pertain to matters of significance and affect matters of consequence to the business and/or its customers. The exercise of such discretion need not be constant, but should be done on a more than occasional basis.

4. CUSTOMARILY AND REGULARLY DIRECTS  
TWO OR MORE PEOPLE

☐☐

Individuals who supervise employees only in the absence of the manager or who do not customarily and regularly direct the work of others are not considered exempt management or executive employees. These employees may qualify under the administrative or professional exemption tests.

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**B. EXEMPT DUTIES:**

Any time related to management, which may be logically separated from non-exempt work, must be counted as exempt work, no matter how short the time span may be. Examples of exempt duties, when performed as a part of or in conjunction with overall management level responsibilities, include:

- Interviewing, selecting, hiring and training employees.
- Setting and adjusting pay rates and work hours or recommending same.
- Directing work.
- Keeping production records of subordinates for use in supervision.
- Evaluating employees' efficiency and productivity.
- Handling employees' complaints.
- Disciplining employees including termination, or recommendation to terminate.
- Planning work.
- Determining techniques to be used at work.
- Distributing work to others.
- Deciding on types of merchandise, materials, supplies, machinery, or tools.
- Controlling flow and distribution of merchandise, materials and supplies.
- Providing for safety of employees and property.
- Controlling revenue or expense.

**WEEKLY HOURS SPENT AT EACH DUTY**

1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____
11.	TOTAL WEEKLY HOURS SPENT AT EXEMPT DUTIES	=====

**C. NON-EXEMPT DUTIES:**

Some examples of non-exempt duties include:

- Performing the same kind of work as subordinates.
- Performing any production work, even though unlike that performed by subordinates, which is not part of a supervisory function.
- Making sales, replenishing stocks, returning stock to shelves, other than for supervisory training or demonstration purposes.
- Performing routine clerical duties, such as bookkeeping, cashiering, billing, filing and operating business machines, other than for supervisory training or demonstration purposes.
- Checking and inspection of goods as a production operation, rather than as a supervisory function.
- Performing routine maintenance work.

**WEEKLY HOURS SPENT AT EACH DUTY**

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_
4. \_\_\_\_\_
5. \_\_\_\_\_
6. \_\_\_\_\_
7. \_\_\_\_\_
8. \_\_\_\_\_
9. \_\_\_\_\_
10. \_\_\_\_\_

11. **TOTAL WEEKLY HOURS SPENT AT NON-EXEMPT DUTIES**

**D. HOURS SUMMARY:**

- |   |             |
|---|-------------|
| 1. Total Number of Weekly<br>Hours Worked<br>(Total of B.11 and C.11) | _____ Hours |
| 2. Total Number of Weekly<br>Exempt Hours (B.11)                      | _____ Hours |
| Exempt Hours as a<br>% of the Total Hours<br>(D.2 divided by D.1)     | _____ %     |

**E. MONTHLY COMPENSATION:**

\$ \_\_\_\_\_

(An employee, who is paid on a salaried basis, is not automatically exempt. However, an employee paid on an hourly basis is usually non-exempt.)

**F. SUMMARY - MANAGERIAL OR EXECUTIVE EXEMPTION**

	<u>ACTUAL</u>	<u>REQUIREMENT</u>
1. Exempt Duties (D.2)	_____ %	More Than 50 %
2. Monthly Compensation (E)		
IWC Wage Orders 1,4,5,9,10	\$ _____	\$1,150
All Others	\$ _____	\$900
3. Authority (Number of "YES" Answers in Section A 1. - 4.)	_____	4

**G. INTERPRETING THE RESULTS**

- The position is non-exempt when any one of the following occurs:
  - The percentage of exempt duties is less than 50%;
  - The monthly compensation is less than \$1,150 for positions covered by Wage Orders 1, 4, 5, 9 and 10, and \$900 for all other Wage Orders; or
  - The answer is "NO" to any one of the questions in Section A.

## H. FURTHER CONSIDERATIONS

### 1. EMERGENCIES

An executive will not lose his or her exemption because of doing non-exempt work during a bona fide emergency. However, this does not apply to non-exempt work arising out of occurrences for which the employer could reasonably anticipate the event.

### 2. TRAINEES

Employees in training for employment as an executive are not exempt unless they are actually performing the duties of the exempt job on a regular basis.

### 3. FEDERAL GUIDELINES

The requirement of the state and federal exemptions often vary in their application, even where the same exemptions are found in both laws. When a variation in the application of the state and federal exemptions exists, the exemption imposing the comparatively higher standards prevails.

### 4. DETERMINING WHICH ACTIVITY AN EMPLOYEE IS "ENGAGED IN" WHEN TWO ACTIVITIES ARE PERFORMED SIMULTANEOUSLY.

If an employee fulfills all of the other requirements of the managerial or executive exemption, the presumption is that the activity the employee is engaged in is probably exempt, unless the facts prove to contrary. Some examples include:

- (a) A manager uses a word processor to draft a document. The activity of using the word processor is incidental to the activity the employee is "engaged in," which is drafting the document.
- (b) A sales manager sends some of the sales staff to lunch during a slow time, preferring to have the sales staff at the store during the peak sales period. This leaves the sales manager on the sales floor to wait on customers. The time the sales manager actually waits on customers is non-exempt work, but the time spent waiting for customers can be exempt. The manager used independent judgment to determine the best use of staff time and would be engaged in other exempt activities during the time there are no customers to be waited on. Such other exempt activities could include such things as the consideration of how to resolve employee problems, how to maintain the proper inventory levels, how to increase customer traffic in the store, etc. The fact the manager may also be waiting for customers is incidental to the work the sales manager is actually "engaged in."