

## Avoiding Common Mistakes in Classifying Employees as Exempt

Companies often find themselves mired in an expensive lawsuit for misclassifying employees as exempt from overtime. Here are some common employer mistakes:

1. Giving your employee a fancy job title. Just calling someone a 'manager' or 'assistant manager,' doesn't make an employee exempt. I've seen many cases where employees have the 'manager' title but don't actually manage anything. It's the duties, not the title, that really matter.
2. Paying the employee a salary instead of an hourly rate does not automatically make the employee exempt. Many employers believe employees who are salaried are exempt from overtime. **Remember - it is their duties that count.**
3. Not paying the minimum salary requirement of exempt employees. California's overtime exemptions for executive, administrative and professional employees require that they are paid a minimum salary of at least twice the state minimum wage, in California in 2016, this is \$41,600 per year. Overtime exemptions for computer professionals require a minimum annual salary of \$85,981.40. Overtime exemptions for commissioned outside salespersons requires that they are paid a minimum salary of 1.5 times the minimum wage, or \$15.00. Remember- the California minimum wage just went up to \$10.00 an hour on January 1, 2016, employers should ensure they are compliant with all the minimum salary requirements.
4. Remaining ignorant of the law. Employers must know the rules for classifying employees. Private sector employers in California are covered by both state and federal law and must follow whichever rules are most beneficial to the employees. Usually, these will be California's laws. Public employers-whether federal, state or local-are covered by federal law.

Many employers mistakenly misclassify non-exempt workers as exempt. The potential consequences of misclassification can be significant and expensive. Employers may be held liable for back pay, damages, attorneys' fees, and litigation costs.

Ignoring the problem is risky. Many employers fear that if they try to correct a classification mistake by suddenly beginning to pay overtime, they will be faced with claims for past overtime-sometimes going as far back as three years. And, they may not have the records to refute these claims. Because of these concerns, some employers do nothing, hoping the problem will go away.

The best approach is to work with an expert to help develop a strategy for meeting and resolving classification errors.

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**Whenever you require HR advice or need help navigating the ever-changing landscape of California and Federal Employment Laws and Regulations, call for a no obligation consultation.**

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