

California Inside Sales Exemption

Both Federal and California law provide overtime pay exemption qualifications for certain roles depending on their duties and salary. For the Inside Sales Exemption, the California requirements differ from the federal requirements, and it is important for employers to know which qualifications to consider when determining whether or not to classify an employee as “exempt”.

As California law provides a greater extent of protection for employees, employers must follow the California requirements when determining whether or not a California position qualifies as exempt.

Inside Salesperson Exemption Requirements

An Inside Salesperson is an individual who spends the majority of their time selling the Company’s products or services from one location whether it be from their office or working remotely from home. While Inside Sales employees are typically non-exempt and entitled to overtime pay, there may be cases in which they can be classified as exempt. In order to be properly classified as an exempt employee, **all of the following** must be met:

- the employee works in the mercantile industry (California Wage Order 7) or a professional, clerical, mechanical, or technical occupation (California Wage Order 4); and
- more than half of the employee’s time is spent **selling**; and
- more than half of the employee’s total pay for the pay period is through commissions; and
- each workweek, the employee’s regular rate of pay (including commission) exceeds 1.5 times the state minimum wage.

Terms

Under California Wage Order 7, the “mercantile industry” means any industry or establishment which operates for the purpose of selling, purchasing, renting, or distributing goods or commodities. Examples of businesses in the mercantile industry include, but are not limited to, grocery stores, department stores, malls, etc. Salespeople in these and similar industries may be classified as exempt under the Inside Sales Exemption if they meet all of the above criteria.

Under California Wage Order 4, the “professional, technical, clerical, and mechanical” includes, but is not limited to, occupations such as accountants, technicians, mechanics, and clerks (all of whom must be eligible for commission pay).

Important Considerations

It is important to note the following rules for the Inside Sales Exemption:

- Commission is considered to be incentive-based compensation that is roughly proportional to an employee's productivity of sales. Earning a fixed amount for achieving a particular goal or milestone does not count as commission, but rather as a bonus, and would not qualify an employee as exempt.
- Tips and bonuses do not count toward the commission amount.
- Commissions must be paid semi-monthly, bi-weekly, or more frequently.
- Employers may not use the average commission amount in calculations to determine if the commissions paid over multiple pay periods satisfy the requirements for overtime pay and minimum wage.
- Although exempt Inside Sales employees are not eligible for overtime pay, they are still entitled to the same meal and rest breaks as non-exempt employees.
 - Employees are entitled to a thirty (30) minute unpaid meal break before the end of the fifth (5th) hour worked when working more than five (5) hours in a shift.
 - Employees are entitled to a ten (10) minute paid rest break for every four (4) hours worked.
- Exempt Inside Sales employees should still be required to keep track of their exact working hours using the Company's usual timekeeping process.