



## Exempt to Nonexempt - Employee Relations Tips

Employees in California are presumed to be hourly, nonexempt employees eligible for overtime, meal and rest breaks and other obligations. However, if the employee's job duties meet an exemption, as outlined in the applicable wage order for your organization AND they earn the minimum salary (e.g., at least two times the State's minimum wage) then the employee is exempt from these obligations. It is important to review the employee's job description and job duties regularly to ensure they still meet this test.

As the State's minimum wage may change, it is also important to review minimum salaries for exempt employees. Specifically, the minimum salary for Executive, Professional and Administrative exempt employees is equal to two times the current State minimum wage multiplied by 2080 (the number of hours used by the Labor Commissioner's office for exempt employees). [Note: Different rules may apply depending on industry. E.g., covered fast food and health care workers.]

**Example:** In 2025, the State minimum wage is \$16.50 per hour:  $\$16.50 \times 2 \times 2080 = \$68,640/\text{year}$

Note: This fact sheet is for employees who are currently being paid properly. If you determine that an exempt employee is not earning the minimum salary, consult legal counsel.

### ***Do we have to pay exempt employees \$68,640?***

If you want your exempt employees to retain their exemption and not be eligible for overtime, meal and rest breaks and other obligations, you must pay them at least \$68,640/year.

### ***What if the exempt employee doesn't work full time?***

The number of hours an employee works is irrelevant if their job duties meet an exemption. However, they must still earn the minimum salary. You cannot prorate an exempt employee's salary based on hours worked.

### ***Can we convert an exempt employee to nonexempt if we cannot, or do not want to, pay the salary for exempt employees?***

Yes. There are no restrictions on classifying an employee as nonexempt and paying them the minimum wage (or a higher rate). Weigh the potential financial "pros" for the company of not having to pay employees the higher salary (due to the minimum wage increase) against the potential morale "cons" of making this type of change. One way to keep their earnings somewhat consistent in the transition to nonexempt is to take their current salary and divide it by 2080 to come up with an hourly rate. **Example:** Employee earns \$60,000/ year.  $\$60,000/2080 = \$28.85$ .

### ***Will the employee feel like they are being demoted if we convert their employment status from exempt to nonexempt?***

Many employees do feel this way. Exempt employees exercise discretion and independent judgment not only in how they perform their work, but when they perform their work. They are not used to clocking in and clocking out or remembering to take their breaks or lunch at a specific time. It can be a challenging adjustment.

### ***Are there recommendations on how to implement this type of change?***

Yes! The primary goal of this change is to ensure your organization is compliant with California's wage and hour requirements – it isn't to punish employees. *Lead with empathy* as this is a challenging pivot for employees to make.

1. **Treat as a "New" Hire.** Provide the employee with the [new hire paperwork](#) you would provide to any nonexempt employee: Offer letter/Status change letter, Wage Theft (Labor Code 2710.5 Notice), Lactation Accommodation Notice.
2. **Clear Policies.** Update your attendance, overtime, make-up time, and meal and rest break policies to ensure they are consistent with your current practices.
3. **Communicate with Managers.** Communicate with managers all policy requirements and solicit input on proper implementation of the policies. Have managers had success or challenges with these policies? What can you learn from their experience.
4. **Review Pay Structures and Current Requirements.** Evaluate pay structures and your budget to determine whether you are able to pay the proper salary for exempt employees.
5. **Advance Notice is Key.** For employees who need to be converted to nonexempt status, provide as much advanced notice as possible.
6. **Have One-on-One Meetings.** Meet with employees one-on-one to discuss the upcoming change and why – the minimum salary has increased beyond what the budget supports. Explain to the employees that this change to nonexempt status is based solely on the position and the rate of pay and that it does not reflect any deficiencies in their performance (if there are none). Review your policies with the employee as well to review any questions they may have. In addition, explain:
  - a. In order to be compliant with California pay requirements, we need to convert you to nonexempt status.
  - b. If applicable: We determined your hourly rate by taking your current salary and dividing it by 2080 hours (the equivalent of 40 hours a week) so your pay will be similar.
  - c. In the event you work more than 8 hours in a day, 12 hours in a day, or 40 hours a week, you may end up earning more than you earn now!
  - d. There is also some freedom in being hourly - employees have to take breaks, for the meal break they can take a walk, run errands, scroll on their phone without having to work. And, you can tell them: when you clock out your day ends!
  - e. Review the timekeeping system in detail so the employee understands the functionality and it is easy to use. Someone familiar with the system should walk the employee through it, step-by-step.
7. **Ramp Up Time.** Consider having a couple of pay periods while the employee is still paid a salary to have the employee practice tracking time in your payroll system. This will also give you an opportunity to see how many hours the employee actually works and how much overtime may be implicated – review in conjunction with the exempt salary to see if you really are saving money moving the employee to nonexempt.
8. **Monitor Time Cards.** Review the time cards daily/weekly to provide the employee real time feedback as they get used to the new process.
  - a. It is always a good practice to check the time keeping system daily or weekly to correct errors, missed punches, missed meal breaks, etc. so the time keeping is accurate before the end of the payroll period. Note: When employees begin using a time keeping system, understand that they are trying to implement a new habit and it takes time. Any discussion with employees about errors should be a helpful discussion and not a disciplinary issue.
9. **Communicate Overtime Policy.** If your organization is cautious about overtime then be very clear about whether prior permission is necessary - again, these employees are likely not used to thinking about specifically when their day starts and ends. They may feel awkward asking permission to do their jobs - so keep an ongoing discussion with people about how their jobs look and feel now - and whether any job expectations have changed (deadlines etc.).
10. **Consider a Bonus.** If your budget supports it, consider setting aside a bonus for these employees that they get later in the year as a thank you for making the adjustment.