

Inside Sales Exemption Poorly Understood by Many Employers

Over the past decade, employers have faced a continuing stream of claims alleging that employees have been misclassified as exempt from overtime compensation rules, as well as state laws regarding meal periods and rest breaks. Most misclassification claims have involved the so-called “white collar” or computer professional exemptions. Claims alleging misclassification under the inside sales exemption have received less attention than most other claims, but the inside sales exemption is not well understood by many employers, resulting in frequent misclassifications and potential liability.

Both California and federal law create an exemption from normal overtime rules for employees engaged in inside sales that satisfy specific criteria. As always, an employee must satisfy the exemption criteria under both state and federal law in order to be treated as an exempt employee.

Many employers erroneously assume that employees qualify for the exemption merely by engaging in sales from the employer’s office. Under California law, however, the inside sales exemption is applicable only if (a) the employee earns more than 150% of the minimum wage, (b) more than 50% of the employee's compensation is derived from commissions, and (c) the employee works in the mercantile industry (covered by Wage Order 7) or in a professional, technical, clerical, mechanical or similar occupation (covered by Wage Order 4).

The criteria that an employee must satisfy to qualify as an exempt inside sales representative under federal law are similar, but not identical, to those applicable under state law. Under federal law, the inside sales exemption applies only to employees who (a) earn more than 150% of the minimum wage, (b) derive at least 50% of their income from commissions, and (c) work in the “retail and service industry.” Employers are engaged in the “retail and service industry” within the meaning of the Fair Labor Standards Act if they derive at least 75% of their annual sales revenue from goods or services not for resale and are recognized as a retail or service establishment in their industry.

If an employee qualifies as an exempt inside sales representative, he or she is not entitled to overtime compensation for hours worked in excess of eight in a single day or in excess of 40 in a single week, but the state laws entitling non-exempt employees to meal breaks remain applicable, meaning that employers must provide meal periods and rest breaks to otherwise exempt inside sales representatives.

Many employers have classified inside sales personnel as exempt without understanding the exemption criteria clearly. Employers who treat inside sales personnel as exempt should review the validity of their classifications in light of the criteria discussed above. In the event that an employee appears misclassified, employers should confer with counsel to discuss the courses of action available to them.



If you have questions regarding the inside sales exemption, or any other issue related to employment law, please contact one of our attorneys:

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