

## Taking your life in your hands: Exempt Status for Inside Sales People

We have previously discussed the broader issue of Exempt v Nonexempt in the California workplace (See Re-check your assumptions about Exempt vs. Non-Exempt Classifications).

An apparent trap for the unwary is the issue of classifying Inside Salespeople as exempt, when a part of their income is derived from commission.

As an employer, we think in terms of giving someone an opportunity to go forth and make rain. We provide a base income for them to subsist, plus a commission structure that will allow them to add to their income.

With the opportunity comes a certain amount of freedom to do the job, often including control over their hours worked.

According to Maureen Clark, of Clark Associates, the following requirements must be met in order for Inside Sales people to be properly classified as exempt:

- ✓ Minimum earnings (cash wages) must be **150% of the state minimum wage** (\$12/hr or \$480/wk or \$24,960/yr)
- ✓ **More than 50% of an employee's compensation must come from commissions.** The state defines "commissions" as "the sale of property or services based proportionately on the amount or value of the sale."
- ✓ An employee's **pay cannot be subject to reductions** due to the quality or quantity of work performed. You can never take a deduction from an exempt employee's salary in an increment of less than one full day, except that you may deduct four or more hours/day with accrued vacation or PTO. Deductions for sick leave must be made in full-day increments.
- ✓ An employee must receive **full salary for any week in which s/he performs any work**, without regard to the number of days or hours actually worked. The full weekly salary must be paid for any week in which work is performed.
- ✓ An employee is **not paid on an hourly basis**, with the exception of two narrowly-defined situations.
- ✓ You cannot treat an exempt employee as you would a nonexempt employee and regularly pay him only for the time actually worked.
- ✓ An employee **regularly (frequently in the course of day-to-day activities) exercises discretion and independent judgment**, which involves comparing and evaluating possible courses of action and making a decision after considering various possibilities. The decisions must **involve matters of consequence** that are of **real and substantial significance to the policies or general operations of your business or customers**. The tasks may be related directly to only a particular business segment, but still must have a **substantial effect on the whole business**. Exercising discretion and independent judgment on matters of consequence is **different than making decisions that can lead to serious loss through**

**the choice of wrong techniques, improper application of skills, neglect, or failure to follow instructions.**

Even if an inside sales person is properly classified as exempt, the **exemption applies to overtime only**. It does not apply to the requirements for meal and rest breaks.

The steps to evaluate any position for exempt/nonexempt status are:

- ✓ Ask the employee to complete a job description.
- ✓ Review and revise the job description with the employee to come to a final version.
- ✓ Have the job description evaluated by someone knowledgeable about the exemptions to establish exempt/nonexempt status.

The basis for documenting exempt/nonexempt status is the job description.

**Bottom Line:** Be careful how you handle Inside Salespeople, especially in the early stages of their development. It could take time for their commission income to exceed their base. Furthermore, you may have instances where their commission income never exceeds their base. If you have treated them as exempt workers, you could have a problem if a complaint were brought against you.