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The Basics of California's Outside Salesperson Exemption

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It is well-known that California law is often more strict than federal law. Just as California handles overtime differently than the federal Fair Labor Standards Act (FLSA), California law also treats aspects of overtime exemptions differently than the FLSA. One such difference is the Outside Salesperson exemption.

Under the FLSA, an outside sales employee is exempt if they meet the following test:

- The employee's primary duty must be making sales (as defined in the FLSA), or obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and
- The employee must be customarily and regularly engaged away from the employer's place or places of business.

California's requirements for outside salespersons are different. Under the California Labor Code and California Wage Orders, an outside salesperson is defined as follows:

- Any person, 18 years of age or over;
- Who customarily and regularly works more than half (more than 50 percent) the working time away from the employer's place of business
- Selling tangible or intangible items or obtaining orders or contracts for products, services, or use of facilities.

Essentially, unlike the FLSA's qualitative standard, California law sets a quantitative standard. Stated differently, under California law, the amount of time a salesperson spends doing various tasks, and where the activity takes place, must be considered when assessing the employee's exemption status.

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