

California Labor Code
Computer Software Exemption (2009)

<http://www.leginfo.ca.gov/cgi-bin/displaycode?section=lab&group=00001-01000&file=500-558>

515.5. (a) Except as provided in subdivision (b), an employee in the computer software field shall be exempt from the requirement that an overtime rate of compensation be paid pursuant to Section 510 if all of the following apply:

(1) The employee is primarily engaged in work that is intellectual or creative and that requires the exercise of discretion and independent judgment.

(2) The employee is primarily engaged in duties that consist of one or more of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications.

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications.

(C) The documentation, testing, creation, or modification of computer programs related to the design of software or hardware for computer operating systems.

(3) The employee is highly skilled and is proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, or software engineering. A job title shall not be determinative of the applicability of this exemption.

(4) The employee's hourly rate of pay is not less than thirty-six dollars (\$36.00) or, if the employee is paid on a salaried basis, the employee earns an annual salary of not less than seventy-five thousand dollars (\$75,000) for full-time employment, which is paid at least once a month and in a monthly amount of not less than six thousand two hundred fifty dollars (\$6,250). The Division of Labor Statistics and Research shall adjust both the hourly pay rate and the salary level described in this paragraph on October 1 of each year to be effective on January 1 of the following year by an amount equal to the percentage increase in the California Consumer Price Index for Urban Wage Earners and Clerical Workers.

(b) The exemption provided in subdivision (a) does not apply to an employee if any of the following apply:

(1) The employee is a trainee or employee in an entry-level position who is learning to become proficient in the theoretical and practical application of highly specialized information to computer systems analysis, programming, and software engineering.

(2) The employee is in a computer-related occupation but has not attained the level of skill and expertise necessary to work independently and without close supervision.

(3) The employee is engaged in the operation of computers or in the manufacture, repair, or maintenance of computer hardware and related equipment.

(4) The employee is an engineer, drafter, machinist, or other professional whose work is highly dependent upon or facilitated by the use of computers and computer software programs and who is skilled in computer-aided design software, including CAD/CAM, but who is not engaged in computer systems analysis, programming, or any other similarly skilled computer-related occupation.

(5) The employee is a writer engaged in writing material, including box labels, product descriptions, documentation, promotional material, setup and installation instructions, and other similar written information, either for print or for onscreen media or who writes or provides content material intended to be read by customers, subscribers, or visitors to computer-related media such as the World Wide Web or CD-ROMs.

(6) The employee is engaged in any of the activities set forth in subdivision (a) for the purpose of creating imagery for effects used in the motion picture, television, or theatrical industry.