

Are computer programmers exempt from overtime in California?

Q. Our company needs to hire computer programmers to create, maintain, and update internal software, and to develop apps to give to our clients. I have heard about a “computer workers” exception from overtime. What exactly is the exception and can I apply it to my computer programmers?

A. California Labor Code Section 515.5 creates an exemption from overtime for “computer software professionals.” In order for an employee to fall under this exemption he or she must: (1) spend the majority of his or her time engaged in intellectual and/or creative work that requires independent judgment, (2) spend the majority of his or her time engaged in computer software professional duties, (3) be “highly skilled and proficient in theoretical and practical application of highly specialized information to computer systems,” and (4) be paid more than a threshold amount.

The first requirement makes it clear that trainees and entry-level workers would not qualify for the exemption, nor would workers who do not possess a significant amount of independence.

As for the second requirement, the duties of a software professional include systems analysis, development, and design for both hardware and software. Not all “computer workers” are exempt. Graphic and other designers, computer operators, writers, hardware maintenance workers, and computer repair workers would not meet this requirement. Indeed, the third requirement—that an employee be highly skilled—specifically states that, “a job title shall not be determinative of the applicability of this exemption.”

The last exemption requirement—that the employee be paid more than the threshold amount—changes annually. For 2015, the employee must be paid \$41.27 or more per hour or \$85,981.40 or more per year. This threshold amount will rise in January.

If an employee does not meet the requirements under California Labor Code 515.5, he or she may still fall under another exemption.