

Payment on a Fee Basis

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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(NOTE: The U.S. District Court for the Eastern District of Texas issued a preliminary injunction preventing the implementation of the revised FLSA overtime regulations. The case was brought by 21 states. The Obama Administration appealed the decision to the U.S. Court of Appeals for the Fifth Circuit. The 5th Circuit Court of Appeals granted a motion of the Trump Administration for an additional 60 days to determine its position on the appeal of the ruling by the District Court enjoining the FLSA overtime regulation. The Administration's decision was initially due by May 1st, 2017. The 5th Circuit granted another extension until June 30th. The Labor Department filed a brief with the Fifth Circuit Court of Appeals indicating that it will not defend the \$913 salary rate and asked the Court to clarify its ability to set a salary level. The department has also issued a request for public comments. Until we hear more, continue to comply with the old salary level testing regulations.)

While uncommon in the public sector, bona fide administrative and professional employees may also be paid on a "fee basis", rather than a salary basis. "An employee will be considered to be paid on a fee basis if the employee is paid an agreed sum for a single job regardless of the time required for its completion. A fee is paid for the kind of job that is "unique" rather than for a "series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again." Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis. "To determine whether the fee payment meets the minimum salary required for exemption, the amount paid to the employee will be tested by determining the time worked on the job and whether the fee payment is at a rate that would amount to at least \$455 per week if the employee had worked 40 hours." 29 C.F.R. § 541.605.

DISCLAIMER: The letters and publications written by the MTAS consultants were written based upon the law at the time and/or a specific sets of facts. The laws referenced in the letters and publications may have changed and/or the technical advice provided may not be applicable to your city or circumstances. Always consult with your city attorney or an MTAS consultant before taking any action based on information contained in this website.

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