



Administrative Employee

Dear Reader:

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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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Administrative Employee

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An employee in a bona fide administrative capacity is an employee (1) who is compensated on a salary or fee basis at a rate of not less than \$684 per week, exclusive of board, lodging or other facilities, (2) whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers, and (3) whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance. 29 C.F.R. § 541.200(a).

An employee may qualify for the administrative exemption if the employee's primary duty is "the performance of work directly related to the management or general business operations of the employer's customers." (Employees acting as advisers or consultants to their employer's clients or customers may also be exempt.) "The phrase 'directly related to the management or general business operations' refers to the type of work performed by the employee... an employee must perform work directly related to assisting with the running or servicing of the business, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment." 29 C.F.R. § 541.201(a).

"Work directly related to management or general business includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations; government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities." 29 C.F.R. § 541.201(b).

Exempt administrative workers include not only those who participate in forming management policies or in operating the business as a whole, but it also includes a wide variety of employees who either carry out major assignments in conducting the operations of the business or whose work affects business operations to a substantial degree, even though their assignments are tasks related to the operation of a particular segment of the business. 69 Fed. Reg. 22138. The requirement that the work performed by an exempt administrative employee be "office or nonmanual work." 29 C.F.R. § 541.200(a)(2) restricts the exemption to "white-collar" employees only. The regulations state specifically that they do not apply to "blue-collar" workers who perform work involving repetitive operations with their hands, physical skill and energy. Employees who use tools to perform their work normally are considered blue-collar workers.

The exercise of discretion and independent judgment involves comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered. According to 29 C.F.R. § 541.202(b), factors to consider in determining whether an administrative employee exercises discretion and independent judgment include:

1. Whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices
2. Whether the employee carries out major assignments in conducting the operation of the business
3. Whether the employee performs work that affects business operations of the business
4. Whether the employee has the authority to commit the employer in matters that have significant financial impact
5. Whether the employee has authority to waive or deviate from established policies and procedures without prior approval
6. Whether the employee has the authority to negotiate and bind the company on significant matters
7. Whether the employee is involved in planning long- or short-term business objectives
8. Whether the employee investigates and resolves matters of significance on behalf of management

9. Whether the employee represents the company in handling complaints, arbitrating disputes or resolving grievances

“The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision ... the term discretion and independent judgment does not require that the decision made by an employee have a finality that goes with unlimited authority and complete absence of review.” 29 C.F.R. § 541.202(c).

Closely related to whether the employee exercises “discretion and independent judgment” for purposes of applying the administrative exemption is whether the employee’s decision-making ability is limited by manuals or standard operating procedures. DOL’s revised exemption regulation 29 C.F.R. § 541.704 states:

The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skill does not preclude exemption under section 13(a)(1) of the act or the regulations in this part. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee’s exempt status. The section 13(a)(1) exemptions are not available, however, to employees who simply apply well-established techniques or procedures described in manuals or other sources within closely-prescribed limits to determine the correct response to an inquiry or set of circumstances.

An administrative employee who is “highly compensated” may qualify as an exempt administrative worker if the employee receives total compensation of at least the 90th percentile and performs only one of the exempt duties or responsibilities. 29 C.F.R. § 541.601(a). Accordingly, the highly-compensated employee likely would need to exercise discretion and independent judgment in order to be exempt.

DOL’s revised regulation (29 C.F.R. § 541.708) states that “employees who perform a combination of exempt duties, as set forth for executive, administrative, professional, and computer employees, may qualify for exemption.” Thus, for example, an employee whose primary duty involves a combination of exempt executive and exempt administrative work would still qualify for exemption.

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