



Occasional and Sporadic Employment

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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When state or local government employees, at their option, work occasionally or sporadically on a part-time basis for the same agency in a capacity different from their regular employment, the hours worked in the different job do not have to be combined with the regular hours for the purpose of determining overtime liability." 29 C.F.R. § 553.30(a). DOL defines "occasional or sporadic as infrequent, irregular or occurring in scattered instances." 29 C.F.R. 553.30(b)(1). DOL has determined (29 C.F.R. § 553.30(c)(1)) that hours worked "will be excluded only where the occasional or sporadic assignment is not within the same general occupational category as the employee's regular work." Moreover, "the decision to work in a different capacity must be made freely by the employee and without concern, implicit or explicit, by the employer." 29 C.F.R. § 553.30(b)(2). The employee must be free to refuse to perform the work without fear of sanctions and without being required to explain or justify the decision.

The fact that the activity is recurring, such as at a county fair where a county employee takes tickets or provides security, does not necessarily mean that the activity will not meet the "occasional or sporadic" test. Employment in such activities may be considered occasional or sporadic for regular employees of state and local governments even though the need can be anticipated seasonally. It is important to note that "regular part-time jobs, where the employee works scheduled hours, will not qualify under the occasional and sporadic provisions. Moreover, performance of work similar to work regularly performed, even after regular working hours, will not qualify. In such cases, the hours worked in both jobs must be aggregated and overtime calculated." 29 C.F.R. § 553.30(b)(3)

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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