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Highly Compensated Executive Employees

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The Municipal Technical Advisory Service (MTAS) was created in 1949 to provide technical assistance to elected and appointed municipal officials in Tennessee. We are a resource for Tennessee municipal officials in areas of municipal government, human resources, finance, fire, legal, police, public works, water, and wastewater. We provide personal and professional knowledge growth opportunities on current issues within municipal government.

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DOL regulations (29 C.F.R. § 541.601(b)(4)) define a highly compensated employee as one having a "total annual compensation of at least \$107,432." Accordingly, a high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties.

A managerial employee who is "highly compensated" may qualify as an exempt executive employee under what DOL calls a "short-cut test." 69 Fed. Reg. 22,174. The total may include several forms of compensation including commissions, non-discretionary bonuses and other non-discretionary compensation earned during a 52 week period, provided that at least \$684 per week is paid on a salary or fee basis. (Note: Discretionary bonuses are not included in the definition of total annual compensation.) 69 Fed. Reg. 22,175.

The DOL exemption for the highly-compensated employee is applicable only to employees whose primary duties include performing executive, administrative or professional work. Therefore, "production line workers and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skills and energy" cannot be exempt as "highly-compensated employees" no matter how highly paid they are. 29 C.F.R. § 541.601(d).

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