



Municipal Technical Advisory Service  
INSTITUTE *for* PUBLIC SERVICE

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## Employees of Public Agencies

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Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](https://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,

The University of Tennessee  
Municipal Technical Advisory Service  
1610 University Avenue  
Knoxville, TN 37921-6741  
865-974-0411 phone  
865-974-0423 fax  
[www.mtas.tennessee.edu](http://www.mtas.tennessee.edu)

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## Employees of Public Agencies

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The regulations (29 C.F.R. § 541.710) also provide that an employee of a public agency who otherwise meets the salary basis requirements of 29 C.F.R. § 541.602 shall not be disqualified from exemption under 29 C.F.R. §§ 541.100, 541.200, 541.300, or 541.400 on the basis that such employee is paid according to **a pay system established by statute, ordinance or regulation, or by a policy or practice established pursuant to principles of public accountability**, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work day when accrued leave is not used by an employee because:

- Permission for its use has not been sought or has been sought and denied;
- Accrued leave has been exhausted; or
- The employee chooses to use leave without pay.

Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except in the workweek in which the furlough occurs and for which the employee's pay is reduced accordingly. As 29 C.F.R. § 541.710 states, "The special pay deduction rule for public sector employers is based on 'principles of public accountability'."

DOL explains that:

Public accountability embodies the concept that elected officials and public agencies are held to a higher level of responsibility under the public trust that demands effective use of public funds in order to serve the public interest. It includes the notion that the use of public funds should always be in the public interest and not for individual or private gain, including the view that public employees should not be paid for time they do not work that is not otherwise guaranteed to them under the pertinent civil service employment agreement (such as personal or sick leave), and the public interest does not tolerate wasteful and abusive excesses such as padded payrolls or "phantom" employees. 57 Fed. Reg. 37,676 (Aug. 19, 1992).

As a result of this rule, public sector employers may make certain types of deductions from the salary of otherwise exempt employees that a private sector employer would not be permitted. These include deductions for partial day absences when leave was not used or has been exhausted. The regulation also allows exempt employees to be furloughed for budget reasons without affecting their exempt status, except for the workweek in which the furlough occurs. 57 Fed. Reg. 37,674-75 (Aug. 19, 1992). The exceptions, however, apply only if the pay systems are established by statute, ordinance, regulation, policy or practice.

"If an employer discovers it has made deductions from the pay of an otherwise exempt employee that could potentially destroy the salary basis method or payment and, therefore, the exempt status of their employee, the employer that makes improper deductions from the salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay the employee on a salary basis." 29 C.F.R. § 541.603(a). The employer's intent is the "central inquiry" in determining whether the exemption should be forfeited. 69 Fed. Reg. 22,179.

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