

Highly Compensated Executive Employees

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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Reference Number:
MTAS-1522

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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Source URL (retrieved on 01/26/2021 - 11:26am): <https://www.mtas.tennessee.edu/reference/highly-compensated-executive-employees>

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