



## Recreational Employee Exemption

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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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## Recreational Employee Exemption

**Reference Number:** MTAS-928

The FLSA contains specific exemptions from the minimum wage and overtime provisions for amusement or recreational employees. 29 U.S.C. § 213(a)(3) and 29 C.F.R. § 553.32(e) exempt any employee who:

...is employed by an establishment which is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center, if (a) it does not operate for more than seven (7) months in any calendar year, or (b) during the preceding calendar year, its average receipts for any six (6) months of such year were not more than 33 1/3 percent of its average receipts for the other six months of such year.

In order to meet the requirements, the establishment in the previous year must have received at least 75 percent of its income within 6 months. The 6 months, however, need not be 6 consecutive months. State and local governments operate parks and recreational areas to which this exemption may apply. 29 C.F.R. § 553.32.

The key point of this test is that the employee must be employed by a seasonal amusement or recreational establishment. Since some governments operate stadiums, convention centers, amusement parks and facilities, and recreational establishments like nature centers, ice skating rinks, state fairgrounds, tennis courts, golf courses, parks, gymnasiums, outdoor and indoor swimming pools, zoos and museums, this exemption from the act can be significant. Office personnel, warehouse workers and similar employees, not employed in the recreational or amusement establishment itself but in the local central administrative office, are not exempt. A 1970 Wage and Hour opinion letter dated July 21, 1970, seems to suggest that only amusement or recreational employees who work in a distinct, separate workplace for the recreation and amusement activities would be covered.

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