

## Check Lists and Samples

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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,

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## Check Lists and Samples

Reference Number:  
MTAS-929

There are checklists provided below which will assist you in determining the correct Fair Labor Standards Act category of an employee. There is also a sample Safe Harbor Policy located on page 31.

### Executive Exemption Checklist

Reference Number:  
MTAS-930

**Employees who meet the five criteria below are bona fide executive employees under DOL's revised exemption regulations. If any of the questions below are answered in the negative, the employee is not exempt as an executive employee unless he or she is highly compensated.**

- Is the employee paid a minimum of \$684 per week exclusive of board, lodging or other facilities?
- Is the employee paid on a salary basis? With certain limited exceptions, he or she must:
  - Experience no reduction in salary for variations in the quality and quantity of work
  - Experience no deductions for partial-day absences
  - Receives each pay period a pre-determined amount constituting all or part of his or her compensation
  - Pay deductions are based on the principle of public accountability 29 C.F.R. § 541.602
- Does the employee's "primary duty" consist of managing the enterprise or a customarily recognized department or subdivision thereof?
  - The primary duty means the principle, main, major or most important duty that the employee performs
  - The primary duty must be managing a customarily recognized department or subdivision, not a mere collection of employees assigned from time to time to a specific job or series of jobs. 29 C.F.R. § 541.100
- Does the employee regularly and customarily supervise two or more employees?
  - The employee must supervise two full-time employees or the equivalent (for example, one full-time and two half-time employees)
  - Employees supervised must be employed in the department that the "executive" is managing
  - A shared responsibility for the supervision of the same two (or more) employees in the same department does not fulfill the requirement; however, a single department can have more than one manager if there is a ratio in the department of at least two full-time equivalents to each manager. 29 C.F.R. § 541.104.
- Does the employee have the authority to hire or fire other employees, or are the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any change of status of other employees given particular weight?
- To determine whether an employee's suggestions and recommendations are given "particular weight," factors to consider include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. 29 C.F.R. § 541.105.

### Highly Compensated Executive Employee

Reference Number:  
MTAS-931

**Employees who meet the four criteria below are bona fide highly compensated executive employees under DOL's revised exemption regulations.**

- Is the employee's total annual compensation at least \$107,432?
- Is the employee paid a minimum of \$684 per week exclusive of board, lodging or other facilities?

- Is the employee paid on a salary basis? With certain limited exceptions he or she must:
  - Experience no reduction in salary for variations in the quality and quantity of work;
  - Experience no deduction for partial-day absences; and
  - Receive each pay period a pre-determined amount constituting all or part of his or her compensation; or
  - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710
- Does the employee regularly and customarily perform one or more exempt duties? 29 C.F.R. § 541.601

## Administrative Exemption

Reference Number:  
MTAS-932

Employees who meet the four criteria below are bona fide administrative employees under DOL's revised exemption regulations. If any of the questions below are answered in the negative, the employee is not exempt as an administrative employee unless he/she is highly compensated.

- Is the employee paid a minimum of \$684 per week exclusive of board, lodging or other facilities?
- Is the employee paid on a salary basis? With certain limited exceptions he or she must:
  - Experience no reduction in salary for variations in the quality and quantity of work;
  - Experience no deduction for partial-day absences; and
  - Receives each pay period a pre-determined amount constituting all or part of his or her compensation; or
  - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710.
- Does the employee's "primary duty" consist of performing office or non-manual work directly related to the management or general business operations of the employer or the employer's customers?
  - The primary duty means the principle, main, major or most important duty that the employee performs.
  - The employee should not be a "blue-collar" worker or a "production worker" (except if the organization's business is producing management services or other business operations for clients, then a production worker may be exempt). 29 C.F.R. § 541.201.
- Does the employee have a primary duty that includes the exercise of discretion and independent judgment with respect to matters of significance?
  - Exercising "discretion and independent judgment" involves comparing and evaluating possible courses of conduct and acting or making a decision after the various possibilities have been considered.
  - Use of manuals and standard operating procedures does not preclude exemption if the manuals contain or relate to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills. 29 C.F.R. § 541.202.

## Highly Compensated Administrative

Reference Number:  
MTAS-933

Employees who meet the four criteria below are bona fide highly compensated administrative employees under DOL's revised exemption regulations.

- Is the employee's total annual compensation at least \$107,432.
- Is the employee paid not less than \$684 per week exclusive of board, lodging or other facilities?
- Is the employee paid on a salary basis? With certain limited exception, he/she must:
  - Experience no reduction in salary for variations in the quality and quantity of work;
  - Experience no deduction for partial-day absences;
  - Receives each pay period a pre-determined amount constituting all or part of his/her compensation; or
  - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710.

- Does the employee regularly and customarily perform one or more exempt administrative duties involving office or non-manual work either:
  - Directly related to management or general business operations of the employer or the employer's customers; or
  - That includes the exercise of discretion and independent judgment. 29 C.F.R. § 541.601(d).

## Professional Exemption

Reference Number:  
MTAS-934

**Employees who meet the criteria below are bona fide learned professionals under DOL regulations. If any of the questions below are answered in the negative, the employee is not exempt as a learned professional employee unless he or she is “highly compensated.”**

- Is the employee paid a salary or on a fee basis a minimum of \$684 per week exclusive of board, lodging or other facilities?;
  - Is the employee paid on a salary basis? With certain limited exceptions he or she must:
    - Experience no reduction in salary for variations in the quality and quantity of work;
    - Experience no deduction for partial-day absences;
    - Receive each pay period a pre-determined amount constituting all or part of his her compensation; or
    - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710.
  - Alternatively, is the employee paid on a fee basis?
  - Or, is the employee one of the professionals — physicians, lawyers, teachers and film-making industry employees — exempted from the salary or fee basis test? (If yes, then the minimum salary or fee also does not apply.) 29 C.F.R. § 541.303(d), 29 C.F.R. § 541.304(d).
- Does the employee's “primary duty” consist of performing work that requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction?
  - The primary duty means the principle, main, major or most important duty that the employee performs.
  - The employee must consistently exercise discretion and judgment — i.e., he or she must generally use his or her advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances.
  - The work must be predominately intellectual in character. 29 C.F.R. § 541.300.

## Highly Compensated Learned Professional Exemption

Reference Number:  
MTAS-935

**Employees who meet the criteria below are bona fide highly compensated learned professional employees under DOL's regulations.**

- Is the employee's total annual non-discretionary compensation at least \$107,432?
- Is the employee paid on a salary basis or on a fee basis a minimum of \$684 per week exclusive of board, lodging or other facilities?
  - Is the employee paid on a salary basis? With certain limited exceptions he or she must:
    - Experience no reduction in salary for variations in the quality and quantity of work;
    - Experience no deduction for partial-day absences;
    - Receive each pay period a pre-determined amount constituting all or part of his or her compensation; or
    - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710.
  - Alternately, is the employee paid on a fee basis?
  - Or, is the employee one of the professionals — physicians, lawyers, teachers and film-making industry employees — exempted from the salary or fee basis test? (If yes, then the minimum salary or fee also does not apply.)

- Does the employee regularly and customarily perform one or more exempt professional duties? 29 C.F.R. § 541.300.

## Creative Professional Exemption

Reference Number:  
MTAS-936

**Employees who meet the criteria below are bona fide creative professionals under DOL's regulations. If any of the questions below are answered in the negative, the employee is not exempt as a creative professional employee unless he or she is "highly compensated."**

- Is the employee paid on a salary or fee basis a minimum of \$684 per week exclusive of board, lodging or other facilities?
  - Is the employee paid on a salary basis? With certain limited exceptions he or she must:
    - Experience no reduction in salary for variations in the quality and quantity of work;
    - Experience no deduction for partial-day absences;
    - Receives each pay period a pre-determined amount constituting all or part of his or her compensation; or
    - Pay deductions are based on the principle of public accountability. 29 C.F.R. §541.710.
  - Alternately, is the employee paid on a fee basis? 29 C.F.R. §541.605.
- Does the employee's "primary duty" consist of performing work that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor? (The primary duty means the principle, main, major or most important duty that the employee performs.) 29 C.F.R. §541.302.

## Highly Compensated Creative Exemption

Reference Number:  
MTAS-937

**(Employees who meet the criteria below are bona fide highly compensated creative professional employees under DOL's regulations.**

- Is the employee's total annual non-discretionary compensation at least \$107,432? 29 C.F.R. § 541.601(a).
- Is the employee paid on a salary or fee basis a minimum of \$684 per week exclusive of board, lodging or other facilities? 29 C.F.R. § 541.601(b).
  - Is the employee paid on a salary basis? With certain limited exceptions he or she must:
    - Experience no reduction in salary for variations in the quality and quantity of work;
    - Experience no deduction for partial-day absences;
    - Receive each pay period a pre-determined amount constituting all or part of his or her compensation; or
    - Pay deductions are based on the principle of public accountability. 29 C.F.R. § 541.710.
  - Alternately, is the employee paid on a fee basis? 29 C.F.R. § 541.605.
- Does the employee regularly and customarily perform one or more exempt professional duties involving work that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. 29 C.F.R. § 541.302.

## Sample Safe Harbor Policy

Reference Number:  
MTAS-938

The Fair Labor Standards Act (FLSA) is a federal law which requires that most employees in the United States be paid at least the federal minimum wage for all hours worked and overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek.

### Salary Basis Requirement

To qualify for exemption, employees generally must be paid at not less than \$684 per week on a salary basis. These salary

requirements do not apply to teachers, and employees practicing law or medicine.

Being paid on a "salary basis" means an employee regularly receives a predetermined amount of compensation each pay period on a weekly, or less frequent, basis. The predetermined amount cannot be reduced because of variations in the quality or quantity of the employee's work. Subject to exceptions listed below, an exempt employee must receive the full salary for any workweek in which the employee performs any work, regardless of the number of days or hours worked. Exempt employees do not need to be paid for any workweek in which they perform no work. If the employer makes deductions from an employee's predetermined salary, i.e., because of the operating requirements of the business, that employee is not paid on a "salary basis." If the employee is ready, willing and able to work, deductions may not be made for time when work is not available unless due to public accountability issues.

#### **Circumstances in Which the Employer May Make Deductions from Pay**

Deductions from pay are permissible when an exempt employee: is absent from work for one or more full days for personal reasons other than sickness or disability; for absences of one or more full days due to sickness or disability if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for salary lost due to illness; to offset amounts employees receive as jury or witness fees, or for military pay; or for unpaid disciplinary suspensions of one or more full days imposed in good faith for workplace conduct rule infractions (see Company Policy on penalties for workplace conduct rule infractions) unless required due to public accountability issues.

Also, the city is not required to pay the full salary in the initial or terminal week of employment; for penalties imposed in good faith for infractions of safety rules of major significance, or for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. In these circumstances, either partial day or full day deductions may be made.

It is the city's policy to comply with applicable wage and hour laws and regulations. The improper pay deduction specified in Title 29 of the Code of Federal Regulations § 541.603 may not be made from the pay of employees who are subject to the salary basis test under the Fair Labor Standards Act.

If you believe that any deduction has been made from your pay that is inconsistent with your salaried status, you should immediately contact \_\_\_\_\_ at \_\_\_\_\_.

Every complaint will be resolved within a reasonable time given all the facts and circumstances. If an investigation reveals that you were subjected to an improper deduction from pay, you will be reimbursed, and the city will take whatever action it deems necessary to ensure compliance with the salary basis test in the future.

*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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