



Executive Exemption Checklist

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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Executive Exemption Checklist

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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.

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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