

Professional Exemption

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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(NOTE: The U.S. District Court for the Eastern District of Texas issued a preliminary injunction preventing the implementation of the revised FLSA overtime regulations. The case was brought by 21 states. The Obama Administration appealed the decision to the U.S. Court of Appeals for the Fifth Circuit. The 5th Circuit Court of Appeals granted a motion of the Trump Administration for an additional 60 days to determine its position on the appeal of the ruling by the District Court enjoining the FLSA overtime regulation. The Administration's decision was initially due by May 1st, 2017. The 5th Circuit granted another extension until June 30th. The Labor Department filed a brief with the Fifth Circuit Court of Appeals indicating that it will not defend the \$913 salary rate and asked the Court to clarify its ability to set a salary level. The department issued a request for public comments. Until we hear more, continue to comply with the old salary level testing regulations.)

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 \$455 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.

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