



# County Technical Assistance Service

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## The Primary Duty Requirement

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Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county 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 county 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 e-Li material.

Sincerely,

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## Table of Contents

The Primary Duty Requirement .....	3
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## The Primary Duty Requirement

**Reference Number:** CTAS-139

In addition to the salary basis test, each of the white-collar exemptions contains a primary duty requirement, which varies with the exemption. "Primary duty" is defined as "the principal, main, major or most important duty that the employee performs" and it "must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole."<sup>[1]</sup> The regulations set out the following factors that may be considered, among other things, as a guide to determining whether an employee satisfies the primary duty requirement:

- The relative importance of the exempt duties as compared with other types of duties;
- The amount of time spent performing exempt work;
- The employee's relative freedom from direct supervision; and
- The relationship between the employee's salary and the wages paid other employees for the kind of non-exempt work performed by the employee.

The amount of time spent performing exempt work is considered a "useful guide" under the regulations, but it is not the determining factor. The regulations have eliminated any absolute requirement that an employee spend more than 50 percent of his or her time performing exempt work, stating instead that employees who spend more than 50 percent of their time performing exempt work generally will satisfy the primary duty requirement but time alone is not the sole test. Employees who spend less than 50 percent of their time performing exempt duties can still be exempt if the other factors warrant that conclusion.<sup>[2]</sup> Executive employees who perform both exempt and non-exempt work generally will not be disqualified from exemption as long as the executive makes the decision regarding when to perform non-exempt duties and the executive remains responsible for the success or failure of the business operations under his or her management while performing non-exempt duties.<sup>[3]</sup>

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<sup>[1]</sup> 29 C.F.R. § 541.700(a).

<sup>[2]</sup> 29 C.F.R. § 541.700.

<sup>[3]</sup> 29 C.F.R. § 541.106.

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