



County Technical Assistance Service

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Executive Employee Exemption

Dear Reader:

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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 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

Executive Employee Exemption	3
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Executive Employee Exemption

Reference Number: CTAS-140

The executive exemption applies to managerial employees. To be classified as a bona fide executive employee under the FLSA regulations, all of the following requirements must be met:^[1]

1. The employee must be compensated on a salary basis at a rate not less than \$684 per week (\$35,568 per year);
2. The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise;
3. The employee must customarily and regularly direct the work of two (2) or more other full-time employees, or their equivalent; and
4. The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.

The regulations give the following examples of "management" functions: interviewing, selecting, and training employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; appraising their productivity and efficiency for the purpose of recommending promotions or other changes in their status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among employees; determining the type of materials, supplies, machinery or tools to be used; and providing for the safety of the workers and the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.^[2]

The requirement that an executive employee direct the work of two or more employees is satisfied when the executive supervises at least two full-time employees or the equivalent. For example, the executive could supervise one full-time employee and two part-time employees, or four part-time employees.^[3] The phrase "customarily and regularly" as used in the regulations signify a greater frequency than occasional, but may be less than constant.^[4]

The regulations also contain factors that may be considered in determining whether the executive employee's suggestions and recommendations are given "particular weight." These factors include: whether it is part of the employee's job to make suggestions and recommendations; the frequency with which they are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. The employee's suggestions and recommendations may have "particular weight" even if a higher level manager's recommendation has more importance or even if the employee does not have the ultimate decision making authority.^[5] Evidence that an employee's recommendations are given particular weight could include the employee's job description, testimony that the recommendations were made and considered, and performance reviews that show the employee's role in other Workers' promotions or other change in status.

^[1] 29 C.F.R. § 541.100.

^[2] 29 C.F.R. § 541.102.

^[3] 29 C.F.R. § 541.104.

^[4] 29 C.F.R. § 541.701.

^[5] 29 C.F.R. § 541.105.

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