



# County Technical Assistance Service

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## Occasional or Sporadic Employment

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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,

The University of Tennessee  
County Technical Assistance Service  
226 Capitol Blvd. Suite 400  
Nashville, TN. 37219  
615-532-3555 phone  
615-532-3699 fax  
[ctas@tennessee.edu](mailto:ctas@tennessee.edu)  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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## Occasional or Sporadic Employment

**Reference Number:** CTAS-967

Where county employees, solely at the employee's option, work occasionally or sporadically for the county in a different capacity from their regular employment, the hours worked in the different jobs are not combined for the purpose of determining overtime liability. However, two major restrictions apply to this exception: (1) the additional work may be done only on an occasional or sporadic basis; and (2) the work must be in a different capacity from the employee's regular work.<sup>[1]</sup>

"Occasional or sporadic" means infrequent, irregular, or occurring in scattered instances. However, the mere fact it is a recurring activity does not necessarily mean it fails to be occasional or sporadic. The regulations suggest that part-time work that is regularly scheduled is not sufficiently irregular to qualify for the exception.

"Solely at the employee's option" means freely and without coercion, implicit or explicit, from the employer. A suggestion that the employee is free to refuse is allowed. Examples of such activities include taking tickets or providing security for special events, officiating youth sporting events and concession work at special events.

Under the "different capacity" prong of the test, DOL will rely primarily on whether the two jobs are classified as different occupations under the three-digit classification system established by the U.S. Department of Commerce's Dictionary of Occupational Titles (DOT). If they are in the same three-digit occupational category, then they will be deemed not to be sufficiently different. If, however, they fall into separate three-digit occupational classifications, they are likely to be considered sufficiently different to qualify for the exception. The three-digit classifications tend to be relatively broad (e.g., secretaries, stenographers, and typists represent a single occupational category) and, consequently, certain jobs, even though clearly different in a practical sense, will not qualify as "different capacity" jobs for purposes of the exception.

Public safety employees taking on any kind of security or safety function within the same local government are never considered to be employed in a "different capacity," nor are teachers doing coaching or career counseling. It is not clear, however, that this provision is of any real significance as teachers are generally exempt from the FLSA under the exemption for professional employees.

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[1] See 29 C.F.R. § 553.30.

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