



County Technical Assistance Service

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Elected Officials and Their Personal Staff

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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Elected Officials and Their Personal Staff

Reference Number: CTAS-133

Elected county officials are not covered by the FLSA. Also not covered are political appointees to policymaking positions, legal advisors, and the personal staff of elected officials, as long as these persons are not under civil service protection. The exclusions for an elected official's personal staff and political appointees are very narrowly applied, and great care should be exercised in relying on those exclusions.

To determine whether someone meets one of these exclusions, the definition of "employee" under the FLSA must be examined, together with the administrative interpretations of that definition. The definition of "employee" does not include an individual who:

1. Holds a public elective office of that state, political subdivision, or agency;
2. Is selected by the holder of such an office to be a member of the official's personal staff;
3. Is appointed by the office holder to serve on a policymaking level;
4. Is an immediate adviser to such an office holder with respect to the constitutional or legal powers of the office; or
5. Is an employee of the legislative branch of that state, political subdivision, or agency;

as long as such individuals are not subject to civil service laws of the state, political subdivision, or interstate governmental agency which employs them.^[1]

The exclusion for personal staff of an elected official is construed very narrowly by the DOL. As explained by the DOL in a Wage and Hour Opinion Letter dated November 27, 1998 (1998 WL 1147737), the exception applies only to individuals who are in a "highly intimate and sensitive position of responsibility" on the staff of the elected official. It generally includes only persons who are hired by and under the direct supervision of the elected official and who have regular direct contact with the official. See Wage and Hour Opinion Letter, September 12, 1997 (1997 WL 971910).

When a publicly elected official appoints an individual to serve on a policymaking board or commission, such an appointed individual is not covered by the FLSA. The most obvious examples of these policymaking appointees are appointed members of planning and zoning commissions, recreation boards, or other boards and commissions that have specific policymaking or advisory responsibilities.

[1] 29 U.S.C. § 203(e)(2)(C).

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