



Department of Management Services  
Division of Human Resource Management

# PROGRAM GUIDELINES

<b>SUBJECT:</b> <i>Exempting Employees from the Career Service as Confidential</i>	
<b>STATUTORY/RULE REFERENCE:</b> s. 110.205(2)(x), F.S., s. 447.203(4) and (5), F.S., s. 110.2035(1), F.S., s. 110.2035(4) and Rule 60L-31.001(6), F.A.C.	<b>EFFECTIVE DATE:</b> April 10, 2007 Rev. October 15, 2008
<b>FORMS:</b> N/A	<b>REFERENCE MATERIAL:</b> Position Exemption Worksheet Position Description Examples

## **I. SCOPE AND PURPOSE**

To clarify the criteria and methodology to approve/disapprove requests to exempt employees from the Career Service who are performing duties and responsibilities that are confidential.

## **II. DEFINITIONS**

A. "Managerial employees" are defined in Section 447.203(4)(a), F.S., as those employees who:

(a) Perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies:

1. They formulate or assist in formulating policies which are applicable to bargaining unit employees.
2. They may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations.
3. They have a role in the administration of agreements resulting from collective bargaining negotiations.
4. They have a significant role in personnel administration.
5. They have a significant role in employee relations.
6. They are included in the definition of administrative personnel contained in Section 1012.01(3), F.S.

7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.”
- B. “Confidential employees” are defined in Section 447.203(5), F.S., as those employees who:  
  
“are persons who act in a confidential capacity to assist or aid managerial employees as defined in subsection (4).”

### **III. APPLICABLE STATUTORY/RULE PROVISIONS**

- A. Section 110.205(2)(x), F.S., in part, provides exemptions from the Career Service for “*Managerial employees, as defined in s. 447.203(4)(a), and confidential employees, as defined in s. 447.203(5);*”
- B. Section 110.2035(4), F.S., in part, states “*each confidential, managerial, and supervisory employee shall be included in the Selected Exempt Service;*”
- C. Section 110.602, F.S., in part, states; “*The department shall designate all positions included in the Selected Exempt Service as either managerial/policymaking, professional, or nonmanagerial/nonpolicymaking,*” and
- D. Rule 60L-31.001, F.A.C., in part, states “*the Department shall assign positions to the selected exempt service and senior management service in accordance with the specific designations under Section 110.205, Florida Statutes.*”

### **IV. POLICY**

All classification actions to exempt employees from the Career Service must be approved by the Department of Management Services.

### **V. PROCEDURE**

- A. Agencies must submit requests to the Department with supporting documentation to exempt an employee from the Career Service as confidential. Included in the documentation shall be a current description of the position for which the request is being made, a current description for the position of the supervisor of the position for which the request is being made, and current organizational charts that shows both positions of the supervisor and employee in the organization structure.

The Position Exemption Worksheet is only intended to assist agencies in determining whether an employee meets the statutory requirement for exemption from the Career Service. Agencies may require program areas to complete the worksheet and submit it to the Personnel Office when requesting an exemption. It does not have to be included in the documentation materials submitted to the Department supporting confidential exemption requests.

**Note:** Merely having access to sensitive or confidential information is **NOT** sufficient to designate an employee as exempt. In order to be designated as exempt, the confidential information must regard labor relations in such a manner that it can give one party an advantage over the other at the collective bargaining table **or** the proposed confidential employee must assist the managerial employee “in a confidential capacity” with the performance of the duties listed in II. A. listed above.

**Reference:** School Board of Polk County v. Polk Education Association, Inc. and the Florida Public Employees Relations Commission, 480 So.2d 1360 (1<sup>st</sup> DCA 1985)

- B. The Department will review the documentation and the position descriptions to ensure:
1. The duties and responsibilities being performed by the supervisor of the employee meet the managerial criterion defined in Section 447.203 (4)(a), F.S., and,
  2. The duties and responsibilities assigned to the position for which the request is being made meet the confidential criterion defined in Section 447.203(5), F.S.

Based on the review, a determination will be made whether the statutory requirements necessary to exempt the employee from the Career Service as confidential are present in the duties and responsibilities of both the supervisor’s and the employee’s positions.

**Department of Management Services  
Division of Human Resource Management  
Position Exemption Worksheet**

**SUPERVISORY EMPLOYEES**

**Section 110.205(2)(x), Florida Statutes, provide that:**

**“Supervisory employees”** are those who spend the **majority of their time\*** communicating with, motivating, training, and evaluating employees, and planning and directing employees’ work, and who have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline subordinate employees or effectively recommend such action, including all employees serving as supervisors, administrators, and directors.

\* In accordance with the provisions of the Fair Labor Standards Act, in the State Personnel System a supervisory employee must customarily and regularly direct the work of two or more other full-time employees or their equivalent.

**Does this employee meet the above supervisory criteria and are these duties outlined in the position description?**

Yes  No  If no, please explain.

**MANAGERIAL EMPLOYEES**

**Note:** A Manager is different than a Supervisor.

As outlined in section 447.203(4), F.S., **Managerial employees** are those employees who perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs **and** to whom one or more of the following applies:

1. **Does this employee formulate or assist in formulating policies which are applicable to bargaining unit employees?** Yes  No  If yes, please explain.
  
2. **Is this employee reasonably required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations?** Yes  No  If yes, please explain.
  
3. **Does the employee have a role in the administration of agreements resulting from collective bargaining negotiations?** Yes  No  If yes, please explain.
  
4. **Does the employee have a significant role in personnel administration?** Yes  No  If yes, please explain.
  
5. **Does the employee have a significant role in employee relations?** Yes  No  If yes, please explain.
  
6. **Is this position included in the definition of administrative personnel contained in s. 1012.01(3), F.S. (K-20 EDUCATION CODE)**
  
7. **Does this employee have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof?** Yes  No  If yes, please explain.

## Program Guidelines

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### CONFIDENTIAL EMPLOYEES

Section 447.203(5), Florida Statutes, provides that:

"Confidential employees" are persons who act in a confidential capacity to assist or aid managerial employees who perform jobs that are not of a routine, clerical, or ministerial nature and require the exercise of independent judgment in the performance of such jobs and to whom one or more of the following applies: 1. They formulate or assist in formulating policies which are applicable to bargaining unit employees. 2. They may reasonably be required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations. 3. They have a role in the administration of agreements resulting from collective bargaining negotiations. 4. They have a significant role in personnel administration. 5. They have a significant role in employee relations. 6. They are included in the definition of administrative personnel contained in s. 1012.01(3). 7. They have a significant role in the preparation or administration of budgets for any public agency or institution or subdivision thereof.

**Note:** A Confidential designation deprives an employee of his constitutional right to bargain collectively. The Public Employees Relations Commission **narrowly construes** the confidential definition by applying the "labor nexus" test. Pursuant to the labor nexus test, an employee will be designated as confidential **only if** he or she aids or assists in a confidential capacity a managerial employee who formulates, determines, and effectuates management policies in the field of labor relations, or who regularly has access to confidential information concerning anticipated changes resulting from collective bargaining negotiations.

1. **Does this employee assist a managerial employee in formulating policies which are applicable to bargaining unit employees?** Yes  No  If yes, please explain.
  
2. **Is this employee reasonably required on behalf of the employer to assist in the preparation for the conduct of collective bargaining negotiations?** Yes  No  If yes, please explain.
  
3. **Does the employee have a role in the administration of agreements resulting from collective bargaining negotiations?** Yes  No  If yes, please explain.
  
4. **Does the employee have a significant role in personnel administration?** Yes  No  If yes, please explain.
  
5. **Does the employee have a significant role in employee relations?** Yes  No  If yes, please explain.
  
6. **Is this position included in the definition of administrative personnel contained in s. 1012.01(3), F.S. (K-20 EDUCATION CODE)**
  
7. **Does this employee have a significant role in the final preparation or administration of budgets for any public agency or institution or subdivision thereof?** Yes  No  If yes, please explain.

\_\_\_\_\_  
Immediate Supervisor

\_\_\_\_\_  
Date

\_\_\_\_\_  
Human Resource Manager

\_\_\_\_\_  
Date

**EXAMPLES**

**Administrative Assistant II - Requesting "Confidential" Exemption**

Reports to the Department's Budget Officer.

- This position performs highly professional and independent administrative duties for the Budget Management Unit.
- Processes a variety of correspondence for the Budget Management Unit. Reviews records and reports which require action and disseminates to appropriate Budget Analysts for handling. Provides assistance to budget staff in compiling information necessary to prepare agency budget. Establishes and maintains internal and external Budget Amendment Logs.
- Responsible for prompt and accurate payment of P-Card purchases by the Budget Management Unit and the Controller. Serves as back-up to Administrative Assistant III (Director's Office), on approving payment of purchases and goods obtained by associates in the Director's Office and provides technical assistance as needed. Reconciles monthly invoices of P-Card purchases for Budget Management and the Director's Office, ensuring purchasing and P-Card rules and procedures are adhered to.
- Responsible for all major purchases for the Director's Office and Budget Management and maintenance of all office machines except desktop computers; includes requesting purchase quotes, securing vendor, purchasing items, receiving purchased items and completing all purchasing and fiscal paperwork. Inspects items received and resolves any purchasing disputes. Completes electronic invoices in system to pay vendors.
- Responsible for the Budget Management Unit's Correspondence Control, leave requests, timesheets, and personnel issues and performance evaluation information. Acts as records custodian. Responsible for controlling the purging and preparation of records for storage. Reviews all requests to destroy stored files, researches policies and procedures and regulations.

**Findings:**

Chapter 447, Labor Organizations, is the statutory basis for exempting employees as confidential. This statute provides a very narrow definition as to the type of work that would permit a confidential exemption to be granted. Employees must be assisting managerial employees who have a significant role in the agency's employee relations or collective bargaining activities and have access to information that, if disclosed, would provide an employee organization (union) with an advantage at the bargaining table or in the administration of collective bargaining agreements. These managerial activities include such things as: adjusting grievances under collective bargaining agreements; preparing for and participating in collective bargaining negotiations; formulating a working budget document that serves as the final budget document for the agency involved and having the authority to select alternative expenditures; or setting departmental personnel policies related to employees.

A confidential exemption cannot be applied to a position simply because an employee has access to confidential and sensitive information such as client or medical records, personnel actions, performance reviews, or attendance and leave records. Further, the confidential exemption for budget preparation can only be granted in a very limited circumstance that is defined in the preceding paragraph.

Although this position has access to sensitive materials including departmental budget documents, this position does not assist a managerial position in formulating a department's final budget documents. This position **does not** meet the legal standards (labor nexus) required for a confidential exemption as specified in Section 110.205(2)(x), Florida Statutes.

## ***Program Guidelines***

### **Administrative Assistant II – Requesting to be designated as “Confidential”**

#### **Reports to Deputy General Counsel**

- Performs highly responsible administrative work for the Office of the General Counsel.
- The incumbent in this position may have direct access to agency managerial employees and information of a confidential nature which has been determined to relate to either employer/employee relations, collective bargaining and /or other personnel issues or budget development, preparation /or impact as defined in Section 447.203(4) & (5), F.S.
- Based on direct assignment by the General Counsel, Deputy General Counsel or assigned attorney, specific duties may include, but are not limited to:
  - Prepares notices of hearings, notices of appearance, notices of taking depositions, subpoenas for production of documents and appearance of witnesses, routine legal actions and pleadings, and memoranda and correspondence associated therewith in final form based upon information obtained from the General Counsel, Deputy General Counsel, or assigned attorney.
  - Assists attorneys in preparation of union mediation documents, correspondence related to union grievances, employer/employee relations documents, collective bargaining agreements, etc.
  - Maintains current records of all matters handled by the Office of the General Counsel. Records description of matter, persons involved, date received, description and date of developments affecting disposition thereof, date closed and nature and extent of legal services rendered in connection therewith.
  - Schedules court or administrative hearings and secures services of certified court reporters for hearings and for depositions. Develops agenda of matters to be discussed. Validates citations of legal authority reflected in opinions, memoranda and briefs developed by the General Counsel, Deputy General Counsel, or assigned attorney.
  - Acts as the approver/reconciler for P-card travel purchases for the Office of the General Counsel. Confers with Finance and Accounting relative to any problems arising in regard to the travel purchases.
  - Schedules and coordinates all travel arrangements for the General Counsel, Deputy General Counsel, and assigned attorney. Serves as back-up to receive, open, date stamp, review and distribute all incoming mail addressed to the Office of the General Counsel.
- Performs other related duties as assigned.

#### **Findings:**

Chapter 447, Labor Organizations, is the statutory basis for exempting employees as confidential. This statute provides a very narrow definition as to the type of work that would permit a confidential exemption to be granted. Employees must be assisting managerial employees who have a significant role in the agency’s employee relations or collective bargaining activities and have access to information that, if disclosed, would provide an employee organization (union) with an advantage at the bargaining table or in the administration of collective bargaining agreements. These managerial activities include such things as: adjusting grievances under collective bargaining agreements; preparing for and participating in collective bargaining negotiations; formulating a working budget document that serves as the final budget document for the agency involved and having the authority to select alternative expenditures; or setting departmental personnel policies related to employees.

Based upon the role this position has in assisting an attorney in the preparation of confidential collective bargaining documents, this position **meets** the legal standards (labor nexus) required for a confidential exemption as specified in Section 110.205(2)(x), Florida Statutes.

## ***Program Guidelines***

### **Accountant III – Requesting to be exempted as “Confidential”**

Reports to a Agency Finance Director

This position performs professional accounting work involving independent application of a variety of accounting skills.

- Maintains the general account ledger of an agency with the responsibility for handling a wide variety of funds or maintains subsidiary ledgers. Maintains controls and performs balancing operations on a large number of accounting activities.
- Prepares in-depth fiscal analyses.
- Assist finance director in collective bargaining negotiation activities by preparing financial reports and costing out union proposals relating to increases for bargaining unit employees.
- Assist in budget preparation and management.
- Conducts special studies and makes recommendations.
- Analyzes accounting functions to determine their legality, propriety, and effectiveness.
- Recommends changes to accounting procedures and assists in the development of new accounting procedures.
- Performs related work as required.

#### **Findings:**

Chapter 447, Labor Organizations, is the statutory basis for exempting employees as confidential. This statute provides a very narrow definition as to the type of work that would permit a confidential exemption to be granted. Employees must be assisting managerial employees who have a significant role in the agency’s employee relations or collective bargaining activities and have access to information that, if disclosed, would provide an employee organization (union) with an advantage at the bargaining table or in the administration of collective bargaining agreements. These managerial activities include such things as: adjusting grievances under collective bargaining agreements; preparing for and participating in collective bargaining negotiations; formulating a working budget document that serves as the final budget document for the agency involved and having the authority to select alternative expenditures; or setting departmental personnel policies related to employees.

Based upon a review of the duties performed, this position assists in costing collective bargaining proposals and therefore, **meets** the legal standards (labor nexus) required for a confidential exemption as specified in Section 110.205(2)(x), Florida Statutes.

## ***Program Guidelines***

### **Operations and Management Consultant II - Requesting to be designated as "Confidential"** Reports to a Division Director

#### ***Duties and responsibilities:***

- The employee serves as the personnel liaison for the Division and has access to information regarding hiring and disciplinary decisions and reports in the People First System.
- Maintains personnel files on each Division employee. Reviews and/or assists with the preparation of all personnel paperwork for the Division.
- Serves as Budget Officer for the Division. Monitors all financial activities while ensuring compliance with Florida Statutes as well as state and department goals, policies and procedures.
- Assists in the preparation and review of the Division's final legislative and operating budget amendments as well as the planning and coordination of the annual plan of operations for the release of appropriations.
- Assist in preparing Division's budgeting policy and financial analysis. Coordinates the collection, analysis, and integration of program data into the Division's legislative budget and program budget documents. Reviews and monitors legislative bills pertaining to a specific budget entity within the Department.

#### ***Findings:***

Chapter 447, Labor Organizations, is the statutory basis for exempting employees as confidential. This statute provides a very narrow definition as to the type of work that would permit a confidential exemption to be granted. Employees must be assisting managerial employees who have a significant role in the agency's employee relations or collective bargaining activities and have access to information that, if disclosed, would provide an employee organization (union) with an advantage at the bargaining table or in the administration of collective bargaining agreements. These managerial activities include such things as: adjusting grievances under collective bargaining agreements; preparing for and participating in collective bargaining negotiations; formulating a working budget document that serves as the final budget document for the agency involved and having the authority to select alternative expenditures; or setting departmental personnel policies related to employees.

A confidential exemption cannot be applied to a position simply because an employee has access to confidential and sensitive information such as employee information, personnel actions, performance reviews, or attendance and leave records. Further, the confidential exemption for budget preparation can only be granted in a very limited circumstance that is defined in the preceding paragraph.

Although this employee has access to hiring and disciplinary actions and performs budgeting activities at a Division level, this position does not have the final decision making authority for personnel or budgetary actions. Therefore, the duties ***do not meet*** the legal standards (labor nexus) required for a confidential exemption as specified in Section 110.205(2)(x), Florida Statutes.