

SUPERVISORY AND CONFIDENTIAL EMPLOYEE EXEMPTIONS FROM THE BARGAINING UNIT

The act of exempting an employee from a collective bargaining unit requires a determination if the position held by the employee is supervisory or confidential. The determination on exemption is made by the County on a case-by-case basis and is subject to review by the Employment Relations Board (ERB). This memo outlines the criteria the Employment Relations Board uses to determine such exemptions and explains the process used by the County to accomplish an exemption.

The definitions of a supervisory or confidential employee, as defined by the Oregon Revised Statutes are as follows:

Supervisory Employees: “Any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or having responsibility to direct them, or to adjust their grievances or effectively recommend such action, if in connection therewith, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.” It should be noted that the determination of a supervisory exemption places the heaviest reliance on whether the employee possesses the authority to hire, fire, promote, or discipline employees. Employees may act as “leadworkers”, making work assignments and directing the work of employees, without falling under the definition of a “supervisory” employee.

Confidential Employees: “One who assists and acts in a confidential capacity to a person who formulates, determines and effectuates management policies in the area of collective bargaining.” Confidential employees are those employees whose job responsibilities include accessing management bargaining policies, recording or participating in collective bargaining sessions for management, accessing documents used in responding to employee grievances and preparing cost analysis of bargaining proposals. A confidentiality test is whether the employee is privy to confidential, sensitive information, which if prematurely divulged, could have a serious adverse impact on labor relations and collective bargaining negotiations. “Confidential” does not mean confidential in relation to one’s supervisor, department policies, or employee and client records, but rather confidential status is determined by access to collective bargaining information.

The procedure for determining if a position is to be exempt from a bargaining unit is as follows:

1. A position may be identified as potentially exempt by Personnel Division staff, department management, or a direct request from the employee. The Personnel Division is responsible for reviewing the duties and authority assigned to the position and recommending the appropriate bargaining unit or management group.

2. The Personnel Division advises the department, bargaining unit, and employee of its findings. The Personnel Division may consult with County Counsel on determinations.
3. If the union or department management does not object to the recommendation of the Personnel Division, the findings shall be implemented. If the union disagrees with Personnel's findings they have the right to challenge the recommendation before the Employment Relations Board.

If you have any questions regarding bargaining unit exemption status, please contact Personnel.

INTERNET LINKS

County Ordinance (<http://www.clackamas.us/code/documents/title2.pdf>)