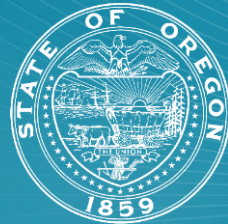


Department of Administrative Services



Management Service Designations



Agenda

- 01 Evaluating the PD
- 02 Supervisory
- 03 Confidential
- 04 Managerial
- 05 Analysis



Management Service Designations

Show where the trainings are located on the CNC website.

Management Service



Management Service, ORS 240.212: The management service comprises all positions not in the unclassified or exempt service that are confidential employees, supervisory employees or managerial employees, as defined in ORS 243.650(6)(16)(23).

So, how do you figure out if a position is confidential, supervisory, or managerial?

This will be a discussion and overview of the Management Service designations. We are not covering Executive service today.

The goal is to understand when a position is appropriate to be considered Management Service and understand the distinctions of the service types.

Evaluating the Position Description



- All positions are considered represented by default.
- Management Service designation is the exception.
- Evaluating the Position Description
 - Section 2b - Position Summary
 - Section 3 – Duties
 - Section 5 - Guidelines
 - Section 7 – Decision Making
- Requires an evaluation/analysis that supports the determination.

You start with evaluating the position description.

Remember that all positions at the state are considered represented by default. They must meet management service criteria to be excluded from the bargaining unit (some agencies may not have represented staff – so in those situations, the default is unrepresented – but they still would need to meet the management service criteria to be designated as management service, or executive service).

Everything starts with the PD. The PD has to demonstrate that the position is performing work that fits into one of the management service designations.

When you're evaluating the PD look at the following sections closely to determine if the position meets the management service criteria.

- Position Summary – what's the primary purpose of the position?
- Duties – What are the duties, scope of impact, and authority?
 - Are there duties or responsibilities that would create a conflict of interest if the position was represented?
 - What are they?
- Guidelines – What policies, processes, procedures, regulations, statutes,

laws, etc. does the position use? Are the position's only guidelines "the indomitable will of the American people?" or does it have a list of very specific procedures and processes that are detailed and outlined in a procedure manual that guides the position's daily activities? These are *very* different levels of guidelines.

- Decision Making – What's the scope, authority, and impact of the position? Does the position have independent decision-making authority about matters of significance to the agency? What are the impacts of those decisions?
 - This needs to match up with Section 2b and Section 3 – as we discussed in previous PD evaluating training.
- When you make the evaluation on the analysis, you have to show how the position fits into the requested management service designation – remember these are exemptions that must be justified. It's not enough to simply click a checkbox or say the position "meets the requirements to be designated as management service – managerial." That's not an evaluation, it's a conclusion. Where's the evaluation, the analysis of how the position meets the exemption criteria. This requires the same evaluation that you would do for a classification, you don't say "after review, we've determined that the position fits into the OPA3." You need to provide the how and why to support your evaluation.

Evaluating the Position Description – Independent Judgment



Judgment and Independent Judgment are different.

Independent – not influenced or controlled in any way by other people, events, or things.

Judgment – the ability to make considered decisions or come to sensible conclusions.



DOL defines the term Independent Judgment when discussing FLSA.

In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources.

The exercise of discretion and independent judgment implies that one has authority to make an independent choice, free from immediate direction or supervision. However, discretion and independent judgment can be exercised even if the decision or recommendation is reviewed at a higher level.



What's not Independent Judgment:

- Applying well-established techniques, procedures, or specific standards described in manuals or other sources to determine the correct response to an inquiry or set of circumstances.
- Clerical or secretarial work.
- Recording or tabulating data.
- Performing mechanical, repetitive, recurrent, or routine work.
- An employee who simply tabulates data is not exempt, even if labeled as a "statistician."

Before we move on to the specific designations, let's talk about Independent Judgment for a bit. This is a term we see a lot of different PDs, and I have a feeling that it's misunderstood by a lot of people.

There's a difference between judgment and Independent Judgment. Everyone uses judgment to a greater or lesser extent throughout their jobs. Determining where to alphabetically file the document that starts with "T" in the file cabinet requires some level of judgment.

Now, when the DOL is discussing Independent Judgment, they're referring to the FLSA, not our Management Service designations, but, as you'll see in a bit, there are some connections and as analysts, you need to be aware of what this term means when you're reviewing PDs because you're going to come across it and need to evaluate if the position actually has Independent Judgment, or if it's just using judgment. This is important for management service examinations as well as FLSA examinations.

A position can still have a high level of independent judgement and not be Management Service. This is not the determining factor.

Evaluating the Position Description – Independent Judgment



Questions to Consider

- Does the employee have authority to formulate, affect, interpret, or implement management policies or operating practices?
- Does the employee carry out major assignments in conducting the operations of the business?
- Does the employee perform work that affects business operations to a substantial degree?
- Does the employee have authority to commit the employer in matters that have significant financial impact?
- Does the employee have authority to waive or deviate from established policies and procedures without prior approval?
- Does the employee have authority to negotiate and bind the agency on significant matters?

Let's go over some questions to consider about the position's decision making and impact.

If you can answer "yes" to these types of questions the position will be using independent judgement. This is not an exhaustive list of questions, just examples to analyze the type of decision making a position is required to exercise.

The phrase independent judgement and independent decision making are often seen in position descriptions and used as justification for classification level, service type determinations and FLSA designations. It is important to be clear in what is and is not independent judgement and decision making in the context of a position's responsibility.

Management Service - Supervisory



ORS 243.650 (23)(a)

“Supervisory employee” means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Failure to assert supervisory status in any Employment Relations Board proceeding or in negotiations for any collective bargaining agreement does not thereafter prevent assertion of supervisory status in any subsequent board proceeding or contract negotiation.

Management Service - Supervisory



- The person in the position has the authority to do **ONE OR MORE** of the following in the interest of the employer:

Hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibility to direct them, or to adjust their grievances, or to effectively recommend such action(s).

AND

- The exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment.

The supervisory designation can be straight forward. Is the position responsible for the direct supervision of subordinate employees? Do they hire, terminate, provide employee reviews and discipline?

Management Service - Confidential



ORS 243.650 (6)

“Confidential employee” means 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.

Management Service - Confidential



- The person in the position makes decisions in the collective bargaining process
- The person in this position is required to assist a decision maker(s) in the collective bargaining process in areas such as:
 - Research bargaining concepts
 - Develop bargaining concepts
 - Compiles bargaining concepts
 - Prepares materials for bargaining concepts
 - Computes costs to agency's bargaining concepts
 - Makes recommendations regarding bargaining concepts
 - Takes notes during collective bargaining

It is important to note that if position handles “confidential” information and/or materials, this does not make the position’s designation Management Service Confidential. May represented positions throughout the State work with confidential information. This designation is specific to positions that work directly with the collective bargaining process.

Address misconceptions of what “confidential” means.

Employee is involved at the bargaining caucus level. You are privy to information before it has been passed on to the Union in the bargaining process.

Management Service - Managerial



ORS 243.650 (16)

"Managerial employee" means an employee of the State of Oregon or a public university listed in ORS 352.002 who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties. A "managerial employee" need not act in a supervisory capacity in relation to other employees. Notwithstanding this subsection, "managerial employee" does not include faculty members at a community college, college or university.

Management Service - Managerial



- Determine the service or product to be produced by the agency, such as:
 - Policy
 - Implement or discontinue programs
 - Institute or change fees

OR

- Determine the terms upon which the service or product to be offered

OR

- Determine who the service or product will serve

OR

- Is a non-supervisory Human Resource employee who advises and makes recommendations to management and supervisory staff or an Appointing Authority

Managerial is the service type that may be the least straight forward and applying the analytical determination of independent decision making comes most into play.

Considerations of the scope and impact of the position's decision are key to determining Managerial service type.

Management Service - Managerial



- An Employee who possesses authority to formulate and carry out management decisions or who represents management's interest by taking or effectively recommending discretionary actions that control or implement employer policy, and who has discretion in the performance of these management responsibilities beyond the routine discharge of duties.
- A "managerial employee" need not act in a supervisory capacity in relation to other employees.

Further definition from ORS 243.650.

Management Service - Managerial



Considerations for Managerial Designation

- Definition – one who possess authority to formulate or carry out management policy or someone who can effectively recommend management policy.
- Must exercise discretion beyond routine duties.
- It is expected that on a day-to-day basis, the position is exercising independent judgement and discretion in their duties.
- It's not enough that the position investigate and then provide management or leadership with their report, it must recommend consequences or action.
- Recommend discretionary actions that control or implement employer policy.

When submitting an analysis, it is important to not just check the box for the Service Type designation. There must be reasons provided an argument/analysis of why a position is the recommended service type. Give examples from the position description that support your decision.



Management Service designations are the exception. In your analysis show what this exception is based on, in other words “show your work”.

Understand the distinction between policy that determines how a program is run versus how the business/agency is run. Example HR policies are policies that affect the agency business not program operations.

Consider if there is a potential conflict of interest in the exercise of a position’s duties and decisions if the position were to be represented.

Making the Argument/ Your Analysis



- ❑ **Management Service – Supervisory:** This position meets the criteria for management service – supervisory as defined in ORS 243.650(23). This position has the authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection therewith, the exercise of the authority is not of a merely routine or clerical nature but requires the use of independent judgment. Therefore, management service – supervisory (MMS) is appropriate.
- ❑ **Management Service – Managerial:** This position meets the criteria for management service – managerial as defined in ORS 243.650(16). This position has the authority to formulate and carry-out management decisions or represent management’s interest by taking or effectively recommending discretionary actions that control or implement employer policy and has discretion in the performance of these management responsibilities beyond the routine discharge of duties. Therefore, management service – managerial (MMN) is appropriate.
Types of duties and decisions that support this include:
Click or tap here to enter text. 
- ❑ **Management Service – Confidential:** This position meets the criteria for management service – confidential as defined in ORS 243.650(6). This position has the authority to formulate, determine, and effectuate management policies in the area of collective bargaining. Therefore, management service – confidential (MMC) is appropriate.
Types of duties and decisions that support this include:
Click or tap here to enter text. Click or tap here to enter text. 

Reminder that the default is for positions to be Classified and the Management Service designations are the exception. You must provide justification for the exception, providing details from the position description.

The Union has the right to claim positions if they feel like the position does not meet Managerial service.

Thank you!

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