

Introduction:

This fact sheet provides assistance to state human resources professionals and managers who work with elected officials and personal appointed staff within the executive branch. These individuals may be excluded from human resources policies located in the Montana Operations Manual (MOM) as well as specific state and federal regulations. This fact sheet discusses the basic requirements for determining who qualifies as personal staff and the corresponding exclusions under policy and law.

Federal Law Exclusions and Exemptions:

The Fair Labor Standards Act (FLSA):

- sets minimum wage levels;
- establishes requirements for overtime pay;
- establishes requirements for recordkeeping;
- sets equal pay for equal work; and
- restricts child labor.

The FLSA excludes elected public officials, their immediate advisors, and certain individuals they appoint from all provisions of the FLSA. These individuals are excluded from all requirements set forth under the FLSA. The method for determining salary levels for elected officials is outlined in statute under 2-16-404, MCA.

Personal appointed staff, while excluded from the FLSA, are not excluded from Montana’s wage and hour laws. Therefore, these individuals must be paid minimum wage and overtime unless they qualify for an exemption under Title 39, MCA.

A qualifying exemption such as executive, administrative, or professional only exempts employees from minimum wage and overtime requirements. All other provisions of state wage and hour laws still apply.

Each agency should evaluate the duties and reporting status of each personal appointed employee on a case-by-case basis. You will need to

designate the employee as exempt or non-exempt under state law and apply the regulations accordingly.

State Law Exclusions:

Elected officials include the governor, lieutenant governor, secretary of state, attorney general, superintendent of public instruction, and the state auditor. “Personal staff” are defined in state statute as those positions occupied by employees appointed by the elected officials or by the public service commission as a whole.

Both elected officials and appointed personal staff are excluded from Title 2, chapter 18, parts 1 through 3 and 10 of the Montana Code Annotated (MCA). State statute specifically excludes these individuals from:

- general human resources policy setting authority of the Department of Administration;
- salary schedules, the broadband pay plan and the classification system;
- longevity allowances;
- hiring preferences for residents of Indian reservations for jobs within reservations;
- permanent employment status;
- job-sharing and telework positions as defined in 2-18-107 and 120, MCA; and
- Department of Transportation grievance procedures.

Section 2-18-104(2), MCA, states the department must approve any personal appointed staff exceeding 10 with a maximum number not to exceed 15. The criteria for approving these staff are:

1. the employee has duties assigned directly by the elected official;
2. the appointment or dismissal of the employee may be without cause and is the sole prerogative of the elected official;

3. the employee is responsible for formulating policy recommendations for the elected official; and
4. the employee has authority to represent the elected official or make commitments on behalf of the elected official, subject to final approval by the elected official.

MOM Policy Exclusions:

As mentioned earlier, elected officials and appointed staff are exempted from the general policy setting authority of the Department of Administration. These individuals are not subject to the state policies outlined in MOM.

Elected officials may apply some or all of the human resources (MOM) policy provisions to personal appointed staff in an effort to maintain consistency within the agency; however, it is not required. If MOM policies are not adopted, it is a best practice to establish some form of written policies for personal appointed staff and elected officials.

Statutory Benefits:

State statute extends some leave, retirement, and other employee benefits to elected officials and appointed staff.

Elected officials are not granted leave benefits under state statute. The limited list of benefits guaranteed by state law to elected officials includes:

- Public Employee Retirement System;
- Employee Incentive Program;
- State Group Health Plan; and
- Voluntary Employees' Beneficiary Association (VEBA) benefits

Benefits statutorily guaranteed by state law to personal appointed staff include:

- Public Employee Retirement System;
- holidays;
- annual vacation leave;
- parental leave;

- military leave;
- sick leave;
- jury duty;
- Employee Incentive Program;
- State Group Health Plan, and
- VEBA benefits

Summary:

Elected officials are excluded from most federal and state laws as well as all MOM policies.

Personal appointed staff may qualify as exempt from state wage and hour laws depending upon their job duties and responsibilities. These exemptions are usually classified as administrative, executive, or professional. These individuals are also excluded from state MOM policies.

If they qualify as exempt and are excluded from MOM, these individuals:

- are not required to be paid minimum wage or overtime;
- need not be hired through a competitive process;
- do not complete a probationary period;
- have no MOM policy grievance rights; and
- are not subject to the MOM human resources policies established by the Department of Administration.

Simply stated, personal appointed staff serve at the discretion of the elected official and are entitled to employee benefits only as extended by statute or by agreement with the elected official.

Alternative accessible formats of this Fact Sheet will be provided on request. Persons who need an alternative format should contact the State Human Resources Division, Department of Administration, 125 N. Roberts St., P.O. Box 200127, Helena, MT 59620-0127. Telephone 406-444-3871. Those using a TTY may call through the Montana Relay Service at 711.