

Bargaining Unit Exemptions

Michael Duco, Deputy Director
Office of Collective Bargaining
Department of Administrative Services

Last Updated: February 13, 2014

Table of Contents

Exemption Quick Guide.....	2
Exemptions Defined and Explained.....	2
Confidential Employees.....	4
Management Level Employees.....	5
Fiduciary Employees.....	6
Supervisory Employees.....	7
Process for Exempting Positions from the Bargaining Unit.....	9
Process for Returning an Exempted Position to Bargaining Unit.....	11
Analysis Tools for Each Exemption.....	16

BARGAINING UNIT EXEMPTIONS

Exemption Quick Guide

Confidential Employees

Employee works in personnel offices, **and** deals with information used by the employer in collective bargaining;

OR,

Employee has a close and continuing relationship with officers or representatives directly participating in collective bargaining for the employer.

Management Level Employees

Employee formulates management level policy or responsibly directs implementation of such policy;

OR,

May be reasonably required to assist in the preparation of the conduct of collective negotiations;

OR,

Has a major role in personnel administration.

Fiduciary Employees

Employee appointed pursuant to O.R.C. § 124.11 **and** has a high degree of trust and confidence necessary for his or her job.

Supervisory Employees

Employee has authority to do at least one of the items listed in the bullets below. However, the exercise of that authority cannot be merely routine or clerical in nature; rather, the supervisor must use independent judgment.

- hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees;
- to responsibly direct other public employees;
- to adjust their grievances;
- or to effectively recommend such action

Exemptions Defined and Explained

“Public employees” as defined in Ohio Revised Code (O.R.C.) § 4117.01(C) are guaranteed certain rights including the right to join, assist, or participate in a union and engage in collective bargaining. Those employees who are not “public employees” under the statutory

definition are not guaranteed any rights under O.R.C. § 4117. Therefore, an employer has no obligation to engage in collective bargaining with those employees who do not fit the definition of public employee. However, the party seeking the exclusion carries the burden of establishing an exclusion from a bargaining unit under O.R.C. § 4117.01. *In re Franklin Local School District Bd. of Ed.*, SERB 84-008 (reversed on other grounds in the Franklin Co. Ct. C.P. (4-3-87)). Additionally, the State Employment Relations Board (SERB) has stated that the exclusions set forth in Chapter 4117 must be narrowly construed to facilitate employees' rights to organize and bargain collectively. *In re University of Cincinnati*, SERB 86-023 (6-5-86). The relevant portions of O.R.C. § 4117.01 under which disputes arise are as follows:

“(C) ‘Public employee’ means any person holding a position by appointment or employment in the service of a public employer, including any person working pursuant to a contract between a public employer and a private employer and over whom the national labor relations board has declined jurisdiction on the basis that the involved parties are employees of a public employer, except:

(6) **Confidential** employees;

(7) **Management** level employees;

(9) Employees of a public official who act in a **fiduciary** capacity, appointed pursuant to section 124.11 of the Revised Code;

(10) **Supervisors**[.]” (emphasis added).

The Code provides the following definitions for Supervisors, Confidential employees, and Management level employees:

“(F) **Supervisor** means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment...

(K) **Confidential** employee means any employee who works in the personnel offices of a public employer and deals with information to be used by the public employer in collective bargaining; or any employee who works in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer.

(L) **Management** level employee means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration....” (emphasis added)

Each of these exceptions above has been further examined in SERB opinions. A more detailed analysis of each exemption is discussed below.

Confidential Employees

The confidential employee exception has been read very narrowly by SERB. O.R.C. § 4117.01(K) provides that an employee is exempt from collective bargaining in two circumstances. An employee who meets either of these tests is a confidential employee. *In re Ohio Dept. of Admin. Serv.*, SERB 2002-002 (3-14-02).

The first circumstance is where the employee (1) works in the **personnel offices** of the employer, **and** (2) **deals with information** used by the employer in collective bargaining. The employee must have access to information such as bargaining proposals or the background information used to formulate those proposals. If the only personnel information to which an employee has access is public information, then the employee probably does not meet the definition of a confidential employee. *In re Mahoning County Dept. of Human Services*, SERB-HO 1992-BD-016. Access to such documents as personnel files or confidential medical information will not necessarily exclude an employee from the bargaining unit. *Taft Broadcasting Co.*, 226 NLRB No. 87, 94 LRRM 1089 (1976).

The second circumstance is where an employee works in a close continuing relationship with public officers or representatives who directly participate in collective bargaining on behalf of the employer. Under the second exception, the employee **may**, but need not, participate in collective bargaining or be directly responsible for collective bargaining material. *Id.* at ¶ 17.

SERB has interpreted the phrase “directly participating in collective bargaining on behalf of the employer” to exclude only those employees participating in collective bargaining negotiations, and not those employees who merely administer a collective bargaining agreement. *In re University of Cincinnati*, SERB 86- 023.¹ As such, this exemption only applies to employees who work in a close continuing relationship with those who are participating in collective bargaining negotiations on behalf of the employer.

Although few employees will fit the definition for confidential employees, those that do satisfy the definition tend to hold positions like executive assistant or chief of staff. *See generally Fields*, 2009-Ohio-4388 at ¶¶ 20–22. For example, a secretary who worked directly for a Board Superintendent, the public officer who participated in collective bargaining on behalf of the employer, and who was responsible for managing all the business functions of the superintendent’s office, maintaining employee records, handling incoming and outgoing correspondence for the superintendent, and was authorized to open documents entitled “confidential, . . . [including] collective bargaining related materials contained therein met the confidential employee definition. *Fields v. Fairfield County Bd. of MR/DD*, No. 09AP-208, 2009-Ohio-4388 ¶¶ 20–22 (10th Dist. App. Aug. 27, 2009).²

Management Level Employees

O.R.C. § 4117.01(L) defines the management level employee exemption from collective bargaining, but it does not give much guidance in making the determination. SERB first clarified the definition in 1985 when it stated that this exemption applies to high-level management officials and their assistants. *In re City of Gahanna*, SERB 85-052 (9-30-85). Since then, SERB

¹ It should be noted that those who merely administer a collective bargaining agreement may still be excluded from the bargaining unit as management level employees.

² Although this case came to the 10th Appellate District through SPBR the court analyzed the language of R.C. §4117.01(K).

has adopted the National Labor Relation Board's ("NLRB") interpretation of the managerial exemption. The following passage from the NLRB in *General Dynamics Corp.*, 87 LRRM

1705, is instructive:

The Board has defined managerial employees as those who formulate and effectuate management policies by expressing and making operative the decisions of their employer, and those who have discretion in the performance of their jobs independent of their employer's established policy. It is clear from the legislative history of the Taft-Hartley Act of 1947 and prior and subsequent Board and court decisions that managerial status is not conferred upon rank-and-file workers, or upon those who perform routinely, but rather is reserved for those in **executive-type positions**, those who are **closely aligned with management as true representatives of management**.

(emphasis added)

The standard is narrow, and very few employees will qualify as management level. SERB has elaborated on this standard by stating that a management level employee must possess and exercise a level of authority and independent judgment such that he or she can affect the organization's purposes or affect how the organization achieves its mission. SERB has not been apt to find that employees are management level employee when the employees must clear decisions with a higher ranking employee or official. An employee possesses management-level authority when the employee individually decides between different options in pursuit of the organization's mission, or participates in the process that results in such decisions. *In re Univ. of Cincinnati*, SERB 98-003 (2-26-98). Effectively making recommendations regarding policy that the Employer often follows qualifies as formulating policy. *In re City of Wilmington*, SERB 94-007 (4-27-94).

For example, an earlier SERB opinion found captains in the Twinsburg Fire Department to be management level employees because the chiefs had delegated tasks to the captains involving the formulation, implementation, or enforcement of department-wide policy. Examples of the tasks included recommending changes to the Standard Operating Procedures

(which were adopted), updating the personnel manual, re-writing the driver's training manual with no approval of the content, enforcing discipline, and being in charge of fire safety programs and safety committees. SERB noted that "Little, if any approval beyond rubber-stamping is required to carry out [the captains'] changes in existing, or creation of new, policies and procedures." *Twinsburg Fire Fighters v. State Employment Relations Bd.*, 00CVF11-10059, 2001 WL 1823007 (Ohio Com. Pl. Oct. 23, 2001).

In contrast, SERB found that Assistant Fire Chiefs in the Cincinnati Fire Department were not management level employees because the Assistant Fire Chiefs needed approval of the Fire Chief to make changes in policy and the Fire Chief often did not even take the recommendations of the Assistant Fire Chiefs. *Cincinnati v. State Emp. Relations Bd.*, 2009-Ohio-5782 (Ohio Ct. App. Nov. 3, 2009).

An employee responsibly directs the implementation of policy when the employee "is charged with developing the methods, means, and extent of reaching a policy objective and thus oversees or coordinates policy implementation by line supervisors." *In re University of Cincinnati*, SERB 98-003 (2-27-1998). Actual supervision is not required. For example, a Facilities Construction Coordinator for a school district was found to have responsibly directed the implementation of policy because the employee was overseeing and coordinating the implementation of the policy decisions made by the School District to construct or renovate certain buildings. *Aronhalt v. Castle*, 2012-Ohio-5666 (Ohio Ct. App. Dec. 4, 2012) appeal not allowed, 2013-Ohio-1622, 135 Ohio St. 3d 1414, 986 N.E.2d 30 (2013).

Along with the level of autonomy required to qualify as a management level employee, SERB has also examined what type of policies rise to that level. To qualify as a management level policy, the policy must (1) "significantly affect the mission of the Employer;" (2) "by its

nature identify its creator as a member of the management team;” and (3) “have employer-wide implication.” *In re University of Cincinnati*, SERB 98-003 (2-27-1998). In looking at the second prong, it must be considered whether only members of the management team would have the authority to formulate the type of policy in question. *Id.* For example, SERB found that policies created by a Senior Library Associate Supervisor on shelving library materials and logging items in circulation did not confer management status. Other examples that did not rise to the management-level included policies on the use of copy charge cards, processing telephone and e-mail requests, and ordering business cards. *Id.*

Courts have also found it persuasive, though not required, that employees who met the management level definition were involved in personnel administration or collective bargaining. See e.g. *Twinsburg Fire Fighters v. SERB* 2001. However, in subsequent opinions, SERB has considered factual situations where the employees did not have any role in personnel administration or collective bargaining and solely examined the formulation and implementation of policy. Although not explicitly stated, this leads to the conclusion that SERB does not interpret ORC 4117.01(L) to require both policy formulation/implementation and a role in personnel administration. See also *In re University of Cincinnati*, SERB 98-003 (2-27-1998).

Fiduciary Employees

In order to meet the fiduciary exemption, an employee must be appointed pursuant to O.R.C. § 124.11 and act in a fiduciary capacity. The mere designation of an employee as fiduciary will not qualify an employee as exempt; actual duties and not titles or position descriptions control the analysis. Therefore, the employer must consider the employee’s job duties and responsibilities in determining whether he or she is a fiduciary.

Chapter 4117 does not define “fiduciary capacity”, but SERB has adopted the analysis used by the State Personnel Board of Review and the Ohio courts in determining fiduciary status under O.R.C. § 124.11(A)(9). That section states as follows:

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter.

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relationship to that agency

SERB analyzed the fiduciary exemption by looking at both the statute’s plain meaning and Ohio court cases discussing the definition of fiduciary. *In re SERB v. Fulton County Engineer*, SERB 96-008 (citing to *In re Termination of Employment*, 40 Ohio St. 2d 107 (1974); *Rarick v. Bd. of County Comm’rs.*, 63 Ohio St. 2d 34 (1980); *State ex rel. Charlton v. Corrigan*, 36 Ohio St. 3d 68 (1988)). In particular, SERB adopted the following passage from *Corrigan* as a reference:

Cases which have analyzed the nature of the fiduciary relationship exception to classified civil service requirements have invariably characterized the relationship as one of trust and confidence. See, e.g., In re Termination of Employment, 40 Ohio St. 2d 107 (1974); Yarosh v. Becane, supra [63 Ohio St. 2d 7]; Rarick v. Bd. of County Commr’s, 63 Ohio St. 2d 34 (1980). It is “more than the ordinary relationship of employer and employee.” In re Termination of Employment, supra, at 114; and exists where “special confidence ... is reposed in the integrity and fidelity of another,” Id. at 115, citing 5 BOGERT, TRUSTEES, 119-132; see also Yarosh v. Becane, supra at 11.³

SERB determined that the focus is whether the assigned job duties require a **high degree of trust, confidence, reliance, integrity, and fidelity**. “A great degree of discretion in carrying out one’s assigned duties may indicate a trust relationship” as the “trust relationship” is among the

³ SERB also noted that an employee who accepts a promotion knowing the position to carry fiduciary status, the employee may be estopped from later denying fiduciary status. SERB stated, however, that the employee in this case could not be estopped because he was never told he was a fiduciary. Additionally, SERB stated that the cases in which estoppel is found are those in which the employee receives a benefit from the designation. The employee in this case did not receive a benefit.

highest of fiduciary relationships. *Ohio Civ. Serv. Employees Ass'n, AFSCME Local 11 v. State Empl. Rels. Bd.*, 144 Ohio App. 3d 96, 102 (Ohio Ct. App., Franklin County 2001). These characteristics must be above and beyond whatever technical competence the position may require and the employee must possess a high degree of discretion in performing his or her duties—not simply engaging in routine duties that could be delegated to the average employee. For example, “the mere handling of money or balancing an account does not, by itself, demonstrate a fiduciary relationship,” while the authority to “make discretionary investment and banking decision,” negotiate payment plans, or investigate particular taxpayers is indicative of a fiduciary relationship. *Id.*.

Courts also look to whether employees have access to “confidential and sensitive” information and whether employees make daily discretionary decisions as to resolving problems of individuals who contact the agency. *Id.* at 102–03. For example, trustees, lawyers, accountants, and guardians **may** qualify as fiduciaries. *Smith v. Sushka*, 103 Ohio App.3d 465, 471 (Ohio Ct. App., Washington County 1995). However, SERB will also look to whether the employee acted in good faith on behalf of the employer and not merely because of legal obligations. *Corrigan*, 36 Ohio St. 3d at 71. For example, the Franklin County Court of Common Pleas has held that the Assistant Public Defenders for the State of Ohio are not fiduciaries because they exercise individualized discretion on behalf of their clients, **not on behalf of their employer**. *Ohio Civil Service Employees Assoc'n, AFSCME Local 11 v. SERB*, 2001 SERB 4-1 (CP, Franklin, 1-16-01) (emphasis added).

Supervisory Employees

O.R.C § 4117.01(F) lists several duties that will exempt an employee as a supervisory employee: the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign,

reward, or discipline any other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action.⁴ SERB has held that an employee must have the authority to perform one or more of the functions listed in that section, must actually exercise that authority, and use independent judgment in doing so. *In re Mahoning County Dept. of Human Services*, SERB 92-006. “Independent judgment is the opportunity to make a clear choice between two or more significant alternative courses of action with plenary review or approval.” *In re Fraternal Order of Police*, SERB 99-REP-03-0060 (citing California Dept. of Forestry and Fire Prevention, 21 PERC ¶ 28144 (CA PERB 1997)). Accordingly, to prove supervisory status of an employee, the employer must demonstrate the following:

1. The employee at issue has the authority to perform one or more of the supervisory functions listed in O.R.C § 4117.01(F), which may be evidenced by the employee’s job description.
2. The employee must actually exercise this authority, which may be illustrated by specific incidents in which the employee performed the relevant function; and,
3. The exercise of this function cannot be routine and clerical, but must involve independent judgment.

Whether or not an employee is a supervisor is a question of fact to be determined on a case-by-case basis with the burden of establishing the exclusion resting on the party seeking it. *In re Lucas County Recorder’s Office*, SERB 85-061.

A key factor in the analysis is whether the employee at issue actually exercises his or her supervisory authority. However, “recognition must be given to the basic reality in the public sector that final decisions regarding areas such as discipline and salaries are reserved to persons far removed from the employee’s immediate supervision.” *In re Ohio Attorney General*, SERB 2000-002. For example, Special Agent Supervisors met the exemption because they had discretion in assigning cases, counseling employees, evaluating performance, and approving

⁴ “Effectively recommend” is defined as a recommendation, “which, under normal policy and circumstances, is made at the chief executive level or below and is adopted by a higher authority without independent review or de novo consideration as a matter of course.”

leave. *Id.* Although these actions were reported up the chain of command in this case, the Special Agent Supervisors satisfied the requirements of the exemption because their decisions were not subject to independent review. *Id.* Therefore, an appropriate analysis examines whether the employee can provide an “effective recommendation:” one “which under normal policy and circumstances, is made at the chief executive level or below and is adopted by a higher authority without independent or de novo consideration as a matter of course.” *Id.*

In some cases, employees have lost their status as supervisors over time because they failed to exercise that authority. For example, SERB found that the duties of State Highway Patrol Sergeants were routine and clerical and not supervisory in function because anything out of the ordinary or which called for independent judgment was decided by higher-ranking personnel within the Patrol. Specifically, Patrol Sergeants could investigate trooper complaints but so could fellow troopers; they were the first step in the grievance process but had to call higher-ranking personnel within the Patrol in order to resolve formal grievances; and they were part of the evaluation team but the final determination was left to the Lieutenant. *In re Office of Collective Bargaining*, SERB 89-016. For this reason, employers should verify that employee supervisors exercise the authority required to maintain the exemption.

PROCESS FOR EXEMPTING POSITIONS FROM THE BARGAINING UNIT

The unilateral removal of work from a bargaining unit constitutes an unfair labor practice under O.R.C. §§ 4117.11(A)(1) and (A)(5). *In re Ohio Board of Tax Appeals*, SERB HO 1994-HO-005 (3-3-94). Once SERB has certified the composition of a bargaining unit, the parties can only lawfully change that unit by filing an Amendment to Certification Petition or a Unit Clarification Petition. *In re Office of Collective Bargaining*, SERB 91-008. Therefore, agencies

must follow an established procedure for exempting positions from the bargaining unit. This procedure is as follows:

1. The agency shall send a written request for exemption to the Deputy Director of the Office of Collective Bargaining (OCB).
 - a. Such a request should include a detailed statement of the rationale behind the exemption, the current position description of the person, and any other documents which would support the exemption.
 - i. The position must be one that is currently filled as SERB will not make a determination on a vacant position.
2. Upon reviewing such request, OCB may ask the agency for additional information if necessary.
3. After review of the agency's request for exemption has been completed, OCB may follow either of the two following routes:
 - a. If a valid basis for the exemption exists, OCB will proceed with seeking an exemption.
 - b. If OCB believes that no valid basis exists for the exemption, then OCB will communicate with the agency and explain the reasoning behind its conclusion.
 - i. If the agency disputes the determination made by this office, the agency should contact OCB in writing.
 - ii. Upon receipt of such letter, OCB will arrange for the Attorney General's office to review the request for exemption.
4. If the exemption appears valid, OCB will draft a letter requesting that the union review the agency's request. The union will review the request, and will either concur or dissent with the exemption.
5. Once the union responds, OCB takes the following action:
 - a. If the union **concurs**, OCB prepares a joint Petition for Amendment of Certification to be filed with SERB. OCB sends this Petition to the union for signature, and then files with SERB.
 - b. If the union does **not concur**, OCB will contact the agency to reevaluate the importance of exempting the position. If the agency decides to litigate the issue, OCB will prepare a unilateral Petition for Amendment of Certification and file with SERB.

6. The parties must then wait for SERB to take action on the petition.
 - a. SERB almost always approves joint petitions without review.
 - b. Because a dispute exists on unilateral petitions, SERB will generally set the matter for a hearing.
 - i. Upon the matter being set for hearing, OCB will request representation from the Attorney General's office, and will assist as necessary in the processing of the matter.

NOTE: While the agency is waiting for a SERB determination, the employee will continue to be a part of the bargaining unit, and should be treated no differently than other bargaining unit employees.

- ii. The agency will be actively involved in the preparation and presentation of the case to SERB. Often, agency personnel will have to appear as witnesses in the case to testify to the job duties of the positions at issue.
- iii. Once SERB makes its decision, OCB or the Attorney General's office will notify the agency of the decision.

NOTE: SERB's bargaining unit determinations are generally final and not appealable to a court.

PROCESS FOR RETURNING AN EXEMPTED POSITION TO BARGAINING UNIT

Once SERB has certified the composition of a bargaining unit, the parties can only lawfully change that unit by filing an Amendment to Certification Petition or a Unit Clarification Petition. *In re Office of Collective Bargaining*, SERB 91-008. Therefore, agencies must follow an established procedure for returning exempted positions to the bargaining unit. This procedure is as follows:

1. The agency shall send a written request to the Deputy Director of OCB.
 - a. Such a request should include a detailed statement of the rationale behind the return, the current position description of the person, and any other documents which would support the return.

- i. The position must be one that is currently filled as SERB will not make a determination on a vacant position.
2. Upon reviewing such request, OCB may ask the agency for additional information if necessary.
3. After review of the agency's request for return has been completed, OCB may follow either of the two following routes:
 - a. If a valid basis for the return exists, OCB will proceed with seeking the return.
 - b. If OCB believes that no valid basis exists for the return, then OCB will communicate with the agency and explain the reasoning behind its conclusion.
 - i. If the agency disputes the determination made by this office, the agency should contact OCB in writing.
 - ii. Upon receipt of such letter, OCB will arrange for the Attorney General's office to review the request for return.
4. If the return appears valid, OCB will draft a letter requesting that the union review the agency's request. The union will review the request, and will either concur or dissent with the return.
5. Once the union responds, OCB takes the following action:
 - a. If the union **concurs**, OCB prepares a joint Petition for Amendment of Certification to be filed with SERB. OCB sends this Petition to the union for signature, and then files with SERB.
 - b. If the union does **not concur**, OCB will contact the agency to reevaluate the importance of returning the position. If the agency decides to litigate the issue, OCB will prepare a unilateral Petition for Amendment of Certification and file with SERB.
6. The parties must then wait for SERB to take action on the petition.
 - a. SERB almost always approves joint petitions without review.
 - b. Because a dispute exists on unilateral petitions, SERB will generally set the matter for a hearing.
 - i. Upon the matter being set for hearing, OCB will request representation from the Attorney General's office, and will assist as necessary in the processing of the matter.

NOTE: While the agency is waiting for a SERB determination, the employee will continue to be exempted from the bargaining unit, and should be treated no differently than other exempt employees.

- ii. The agency will be actively involved in the preparation and presentation of the case to SERB. Often, agency personnel will have to appear as witnesses in the case to testify to the job duties of the positions at issue.
- iii. Once SERB makes its decision, OCB or the Attorney General's Office will notify the agency of the decision.

NOTE: SERB's bargaining unit determinations are generally final and not appealable to a court.

ANALYSIS TOOLS FOR EACH EXEMPTION

During the analysis of a position to determine if it should be included or excluded in the bargaining unit, the following quick reference questions may be helpful. These questions can also provide a guide for preparing the rationale submitted to the Office of Collective Bargaining. For assistance with this process, contact an HRD/OCB Policy Analyst.

Confidential Exemption

1. Does the employee work in the personnel office of a public employer?
2. Does the employee deal with information used by the public employer in collective bargaining?
 - a. If yes, what type of information does the employee deal with and in what capacity?
 - b. Does the employee work in a close continuing relationship with public officers or representatives directly participating in collective bargaining on behalf of the employer?
 - i. If yes, what positions do those public officers hold and what role do those public officers play in collective bargaining?
3. Does the employee have a role in the grievance or disciplinary process in the agency?
 - i. If yes, what is the employee's role?

Management Level Exemption

1. Is the employee considered an executive in the agency? Consider where the position falls on the table of organization.
2. Does the employee assist in the preparation for collective bargaining negotiations?
 - a. If yes, please describe.
3. Does the employee administer one or more collective bargaining agreements?
 - a. If yes, please describe.
4. Does the employee have a major role in personnel administration?
 - a. If yes, please describe.
5. Does the employee formulate policy (i.e. develops new policy or makes significant changes to existing policy)?
6. Does the employee responsibly direct the implementation of policy (i.e. develop the method, means, and extent of reaching a policy objective and oversee or coordinate policy implementation by line supervisors)?
7. If the employee formulates or directs the implementation of policy, does the policy:
 - a. Significantly affect the mission of the Employer?
 - b. Have Employer-wide application?
8. If the employee formulates or directs the implementation of policy, is the policy of a type that only members of the management team would have the authority to formulate?
9. Does the employee regularly make recommendations regarding policy changes that are often followed by the decision makers?
10. What approval is required in order for the employee to implement new policy or changes to existing policy?

Fiduciary Exemption

1. Is the employee considered an executive in the agency? Consider where the position falls on the table of organization.
2. Do the duties require personal qualities of a highly subjective nature in which test results cannot be expected to provide a proper basis for appointment of the position?
3. Can the employer be expected to delegate these duties to the average employee possessing the required technical knowledge?
4. Does the employee regularly exercise a great degree of discretion and independent judgment?
 - a. If so, who is the ultimate decision maker?
 - b. How does the employee's degree of discretion and exercise of independent judgment impact the employer?
5. Are the employee's assigned duties of a routine nature?
6. Does the employer have a special confidence, reliance, and trust in the integrity and fidelity of the employee?
 - a. If yes, please describe.

7. Does the employee act in the place of the employer?
 - a. If yes, please describe.
8. Does the employee have access or control to confidential and sensitive information?
 - a. If yes, please describe.
9. Does the employee make daily discretionary decision as to resolving problems of individuals who contact the agency?
 - a. If yes, please describe.

Supervisory Exemption

1. Does the employee have the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees?
 - a. Where is the employee's position in the table of organization?
2. If the employee does not have final authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, does the employee have the ability to "effectively recommend" these actions?
 - a. If so, please describe.
3. Does the employee exercise their authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees?
4. If the employee has authority to act in the place of a supervisor, does the employee have the authority to exercise such authority if such authority became necessary?
 - a. If so, please describe.
5. Does the employee have authority to responsibly direct other employees?
 - a. If so, please describe.
6. Does the employee have authority to adjust their grievances or recommend action?
 - a. If so, please describe.
7. Does the employee use independent judgment with little or no review or approval from management?
8. Are these supervisory functions limited and routine?