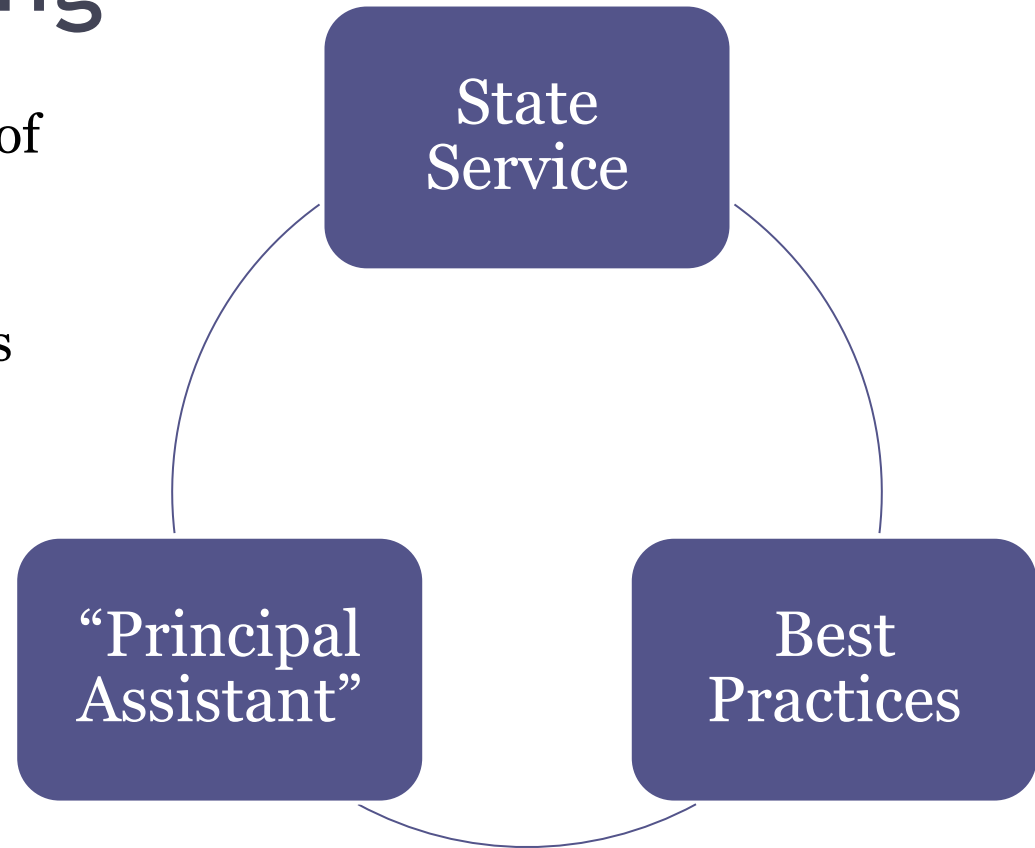


# Class and Compensation: Unclassified Service Designation

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# Goals for Training

- Identify the four categories of state service;
- Apply the four requirements under ORS 240.205(4) to designate a “principal assistant”;
- Best practices to support and defend this designation.



# State Service:

ORS 240.195 divides all of state service into four categories:

1. Classified service;
2. **Unclassified Service**;
3. Exempt service; and,
4. Management service.

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# ERB lacks jurisdiction over positions in the unclassified service:

The Employment Relations Board (ERB) does not have jurisdiction to hear appeals of employment actions for positions in the executive/unclassified service. ORS 240.240(1) states:

“The unclassified service or, except as provided in ORS 240.250 (Rules applicable to management service), the management service shall not be subject to this chapter, except that employees and officers in the unclassified or management service shall be subject to the laws, rules and policies pertaining to any type of leave with pay [and] to salary plans \* \* \*.”

For positions designated as “unclassified”, they must satisfy a specific subsection in ORS 240.205:

**\*Excerpt from:**

**ORS 240.205 Unclassified service.** The unclassified service shall comprise:

- (1) One executive officer and one secretary for each board or commission, the members of which are elected officers or are appointed by the Governor.
- (2) The director of each department of state government, each full-time salaried head of a state agency required by law to be appointed by the Governor and each full-time salaried member of a board or commission required by law to be appointed by the Governor.
- (3) The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

\* See text of statute for complete listing of positions designated as unclassified.

Alternatively, an agency's enabling statutes may designate specific positions as unclassified:

**Example:** Deputy director, assistant directors, et al, at ODHS.

**ORS 409.150 Deputy director and assistant directors in unclassified service; other employees; expenses.** The deputy director and any assistant directors appointed under ORS 409.130 shall be in the unclassified service of the state. With the approval of the Director of Human Services, each assistant director may appoint deputies and principal assistants as necessary to conduct the work of the department. Notwithstanding ORS 240.205, deputies and principal assistants appointed by an assistant director shall be in the unclassified service of the state and shall serve at the pleasure of the director. In addition to their salaries, they shall, subject to the limitations otherwise provided by law, be reimbursed for all expenses actually and necessarily incurred in the performance of official duties. [Formerly 184.765; 2001 c.900 §66; 2007 c.307 §2]

## Today's focus: ORS 240.205(4):

(4) Principal assistants and deputies and one private secretary for each executive or administrative officer specified in ORS 240.200 (1) and in subsections (1) to (3) of this section. “Deputy” means the deputy or deputies to an executive or administrative officer listed in subsections (1) to (3) of this section who is authorized to exercise that officer’s authority upon absence of the officer. “Principal assistant” means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in subsections (1) to (3) of this section or deputy and who is designated as such by that executive or administrative officer with the approval of the Director of the Oregon Department of Administrative Services.

## Specifically: Requirements for “principal assistant” as set out in ORS 240.205(4).

A “principal assistant” is an employee who:

- 1) Is a manager of a major organizational component;
- 2) Reports directly to a specified executive or administrative officer or deputy;
- 3) Is ‘designated as such’ by the officer; and,
- 4) Has the designation approved by the Director of the Oregon Department of Administrative Services (DAS).



## Intent of Subsection (4)

The ERB has held that all four requirements of ORS 240.205(4) must be met to effectively designate an employee to be a “principal assistant” in the executive/unclassified service.

*Lopez v. State of Oregon*, Dept. of Human Services, Case No. MA-2-04 (July 2005)

# Requirement 1: Manager of “a major organizational component”

Consider the following factors:

- The program, division or department managed by the principal is a significant part of the agency’s responsibilities;
- The size, budget, and structure of the unit managed (recognizing that smaller agencies may comparably have units with fewer employees/budget/etc.);

## Requirement 1: Manager of “a major organizational component” (continued)

- An organizational chart is a necessary component of this analysis demonstrating where the position and functional unit resides in the agency’s structure.

## **Requirement 2: Reports directly to a specified executive or administrative officer or deputy**

The listed positions are identified in ORS 240.200(1) and subsections (1)-(3) of ORS 240.205, meaning:

- Officers elected by popular vote and appointees to vacancies.
- An executive officer for a board or commission, the members of which are elected officers or appointed by the Governor.

## **Requirement 2: Reports directly to a specified executive or administrative officer or deputy (continued)**

- The director of each department of state government, and each full-time salaried head of a state agency, board, or commission required by law to be appointed by the governor.
- The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

## Requirement 3: Is ‘designated as such’ by the officer.

Board case law states that the phrase “designated as such” by the executive or administrative officer is ambiguous when read in its statutory context. What does this mean?

The ambiguity is whether the employee must be designated by the executive or administrative officer as:

- a) A manager of a major organizational component; or instead;
- a) A principal assistant.

## **Requirement 3: Communicate and document both conditions, that is:**

The subject employee holds a position designated by the executive or administrative offer as:

- a) A manager of a major organizational component; and,
- b) Meeting the requirements to be a “principal assistant” in the executive service.

## Requirement 4: The designation is approved by the Director of DAS.

Board precedent establishes that the employer must demonstrate “by evidence in the record” that the Director of DAS has approved the designation. What steps are required to request this approval from DAS:

- A written analysis submitted to DAS that explains why the position meets the four requirements for the principal assistant designation.
- Supporting documents (Position description, org chart showing reporting relationships, and scope of the program/division as major organizational unit.)



## Additional Considerations

- If the DAS director approves a principal assistant designation, it is filed at CHRO and a copy provided to the agency. **KEEP TRACK OF THIS RECORD**. It must track with the position and remains applicable even if the person holding the position changes.
- You may issue discipline to unclassified employees. However, do NOT cite to the provisions in ORS chap. 240 that govern appeal rights. These apply to management, not unclassified, employees. Unclassified employees are at will.

## Additional Considerations (continued)

- A reminder that when unclassified employees are identified as the subject of an investigation into alleged violation of state policies, an agency is required to promptly notify CHRO for investigation consultation and oversight. See DAS policy [40.035.01](#) Unclassified Service Employment, Investigation and Termination.

ORS 240.205(4) also covers **one** private secretary for the following positions

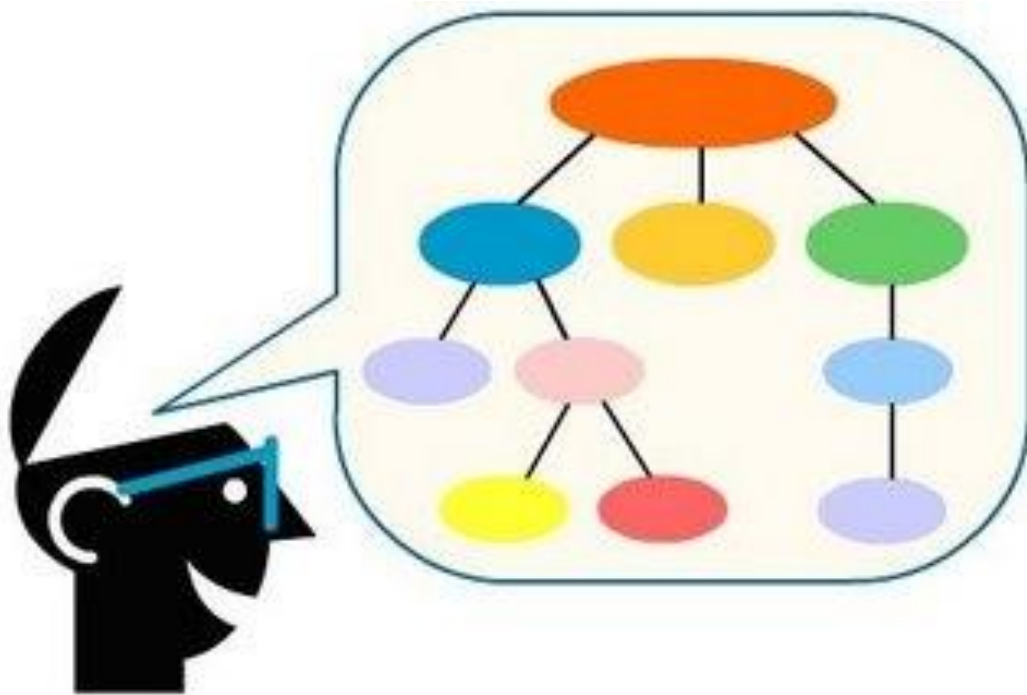
- Officers elected by popular vote and appointees to vacancies.
- An executive officer for a board or commission, the members of which are elected officers or appointed by the Governor.

## ORS 240.205(4) also covers **one** private secretary for the following positions (continued)

- The director of each department of state government, and each full-time salaried head of a state agency, board, or commission required by law to be appointed by the governor.
- The administrator of each division within a department of state government required by law to be appointed by the director of the department with the approval of the Governor.

## Resources:

- a) Staff in the DAS class/comp. unit;
- b) DOJ Labor and Employment section where there is question of statutory interpretation or application to inform agency and DAS determinations;
- c) DAS publication, [“Position Evaluation for the Unclassified Service”](#), May 2024.



**Questions?**