



# Position Evaluation for Unclassified Service

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## Position Evaluation for Unclassified Service

### Purpose and Background

The purpose of this guide is to assist in identifying positions in the unclassified service. There are very few unclassified positions in state service.

All positions in state service, including in the Executive Branch, are divided into four groups:

- (1) The classified service (ORS 240.210)
- (2) The unclassified service (ORS 240.205)
- (3) The exempt service (ORS 240.200)
- (4) The management service (ORS 240.212)

To be a part of the unclassified service (commonly known as the executive service or the unclassified, executive service), positions must satisfy the specific requirements defined in ORS 240.205. If a position does not satisfy these specific requirements, it is not in the unclassified service. Rather, the position is in the classified service or the management service.

Positions in the unclassified, executive service serve at the pleasure of the Governor, the agency director or appointing authority. In other words, positions in the unclassified service do not have a right of appeal of personnel actions to the Oregon Employment Relations Board (which management service positions and unrepresented classified positions have), nor do they have grievance rights under a collective bargaining agreement (which union-represented classified positions have). Note: There are a few unclassified positions that are in union-represented bargaining units, though not many.

Some unclassified positions are identified in an agency's enabling statute, found in the Oregon Revised Statutes. Enabling statutes describe the authority granted to state agencies and how they are to make certain appointments to positions. This guide describes how to find and interpret an agency's enabling statute. It is important to understand an agency's enabling statute before determining whether a position satisfies the specific requirements in ORS 240.205.

#### QUICK LINKS

- [Agency Head Appointments](#)
- [Unclassified Service ORS 240.205](#)

This guide will assist agency analysts on how to give clear, defensible arguments of the scope, authority, and accountabilities of these types of positions. At the end of this document, there is a glossary of terms used throughout this document, and a helpful checklist to help guide the evaluation process.

This document does not address the specific unclassified positions detailed in ORS 240.205 (5) through (16). If there are questions about these sections of the statute, please contact the CHRO Classification and Compensation Unit or the Oregon Department of Justice, Labor and Employment Section.

## Position Evaluation for Unclassified Service

This guidance document is intended to provide general guidance related to analyzing and identifying positions in the unclassified service. It is not intended to provide legal advice. If you have specific questions related to interpretation of ORS 240.205 or other legal questions, please contact the Labor and Employment Section of the Oregon Department of Justice.

The CHRO Policy Unit has developed a list of enabling statutes by agency to help find the correct ORS. Note: Not all agencies have the same enabling statute language. Please give careful consideration to the entire enabling statute related to position appointments before moving to Step 1 of the Evaluation Steps section.

### QUICK LINK

[Agency Head Appointments](#)

## Evaluation Steps

### Step 1 – Identify which section of ORS 240.205 applies

Once you understand your agency's enabling statute, then the State Personnel Relations Law can be applied. As explained above, the position you are evaluating will be in the unclassified service **only** if it satisfies the specific requirements of one of the sections in ORS 240.205. Therefore, Step 1 is to understand which section or sections of ORS 240.205 you believe could apply to the position.

### Step 2 – Apply the correct section of ORS 240.205

This step addresses the application of the sections of ORS 240.205 to the position you are assessing. Each section of the statute addresses a particular type of position or positions. To determine if the position you are assessing is in the unclassified service, you will need to (a) identify which section of the statute applies, and (b) determine if the position you are assessing satisfies the criteria in that section.

Following are the distinct sections of ORS 240.205, key criteria to consider and the questions to ask during a position assessment.

#### **ORS 240.205 (1)**

The first section of ORS 240.205 addresses the executive officer and the secretary of certain boards and commissions. This section provides that the unclassified service shall include:

**ORS 240.205 (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.**

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The consideration here is that this section applies only when a board or commission's members are elected or appointed by the Governor. If so, one executive officer and one secretary to the board/commission are in the unclassified service. The executive officer (often used as the agency director) and one secretary (reporting to the executive officer) serve in the unclassified service.

### 240.205 (1)

Is this position appointed by a board or commission?

Are the board or commission members elected or appointed by the Governor?

### **ORS 240.205 (2)**

The second section of ORS 240.205 generally addresses department and agency heads. It provides that the unclassified service shall include:

**ORS 240.205 (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.**

This section provides that these **three** categories of employees are in the unclassified service:

- (1) The director of each department of state government.
- (2) Each full-time salaried head of a state agency required by law to be appointed by the Governor.
- (3) Each full-time salaried member of a board or commission required by law to be appointed by the Governor.

### 240.205 (2)

Is the position a department director?

Is the position a full-time salaried head of a state agency or a full-time salaried board or commission member required by law to be appointed by the Governor?

For the first category, the director of "each department" of state government is in the unclassified service. Examples of these departments include the Department of Human Services, the Department of Administrative Services, and the Department of Transportation.

For the second two categories, it is necessary to understand the enabling statute of the agency, board, or commission. Specifically, to determine whether a full-time salaried head of a state agency or a full-time salaried board or commission member is in the unclassified service, determine whether the agency head or board/commission member matches all these criteria:

- (a) Full-time
- (b) Salaried
- (c) Required to be appointed by the Governor

### **ORS 240.205 (3)**

The third section of ORS 240.205 addresses certain division administrators. It provides that the unclassified service shall include:

**ORS 240.205 (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.**

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The consideration here is that an agency division director must be appointed by the director of the agency *with the approval of the Governor*. Not all agencies require Governor approval for the appointment of division directors. Please note: Thoroughly read the enabling statute on how the agency director is appointed and what authority the director is given related to staffing the agency.

### 240.205 (3)

Is the division administrator required by law to be appointed by the department director with the approval of the Governor?

### **ORS 240.205 (4)**

The fourth section covers *three* categories of employees: principal assistants, deputies, and certain private secretaries. The fourth section provides that the unclassified service shall include:

**ORS 240.205 (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 a 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.**

This section covers certain deputies. A job title that includes the word "deputy" is not sufficient to place the position in the unclassified service. Rather, the position must satisfy the criteria in the statute. **Only** the deputy or deputies to the following employees are in the unclassified service:

- (1) The deputy or deputies to an executive officer for a board or commission, if the board or commission members are elected officers or are appointed by the Governor (that is, the unclassified executive officer referred to in ORS 240.205(1), discussed above).
- (2) The deputy or deputies to the director of each department of state government, and to each full-time salaried head of a state agency or full-time salaried board or commission member required by law to be appointed by the Governor (that is, the unclassified agency heads and board and commission members referred to in ORS 240.205(2)).
- (3) The deputy or deputies to the administrator of a division within a department required by law to be appointed by the director of the department with the approval of the Governor (that is, the division administrators referred to in ORS 240.205(3)).

In addition to meeting one of the criteria above, to be in the unclassified service the deputy must be authorized to exercise the executive or administrative officer's authority upon absence of the officer. In larger agencies, division directors, identified in statute as serving at the pleasure of the agency director with approval from the Governor, may appoint a "division deputy" to assist in administering the functions of the division. The position description must specify that the deputy is authorized to exercise the director's or division

### 240.205 (4)

Is the deputy appointed by an executive or administrative officer referenced in sections 1-3?

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administrator's authority during their absence. When placing a position in the unclassified service under this part of the statute, the agency must describe and document how the agency, board, or commission head is appointed, any other statutorily defined positions, and how the position is subject to the State Personnel Relations Law. The deputy position does not require approval from the DAS Director.

This section also covers principal assistants, which is another common use of section (4). An employee qualifies as a "principal assistant" only if the employee satisfies all these criteria:

- (1) Manages a major agency organizational component.
- (2) Reports **directly** to a deputy or an employee listed in subsections (1) through (3) of ORS 240.205, meaning:
  - a. An executive officer for a board or commission if the board or commission members are elected officers or are appointed by the Governor.
  - b. The director of each department of state government or the full-time salaried head of a state agency, board or commission required by law to be appointed by the Governor.
  - c. The administrator of a division within a department required by law to be appointed by the director of the department with the approval of the Governor.
- (3) And is designated as a principal assistant by the executive or administrative officer listed in paragraph (2), above, with the approval of the DAS Director.

Managing a major agency organizational component, such as a division tied directly to the agency's directive or mission, means that the principal manages a part of the agency that has significant responsibilities. Whether an agency is a "major" organizational component is a nuanced inquiry and requires an assessment of the component's responsibilities, significance, and accountability to the public. The analysis of the position must articulate where the position resides in the organizational structure, and importantly, what major organizational component is being managed and why that component is "major."

### 240.205 (4)

Is this a principal assistant reporting directly to an executive or administrative officer referenced in sections 1-3?

What is the major organizational component?

The fourth section of ORS 240.205 also covers **one** private secretary for the following four types of positions:

- (1) Officers elected by popular vote and persons appointed to fill vacancies in elective offices.
- (2) An executive officer for a board or commission, if the board or commission members are elected officers or are appointed by the Governor.
- (3) The director of each department of state government or the full-time salaried head of a state agency or full-time salaried member of a board or commission required by law to be appointed by the Governor.

### 240.205 (4)

Does the one private secretary report to either (a) an officer elected by popular vote, or (b) an executive or administrative officer referenced in sections 1-3?

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- (4) The administrator of a division within a department required by law to be appointed by the director of the department with the approval of the Governor.

Positions that do not serve in the unclassified service are positions reporting to those who are in the deputy/principal assistant role under ORS 240.205(4). As the law states in this section, a position must report directly to the director or board/commission *and meet the other criteria in the statute, such as, for principal assistants, managing a major organizational component.*

### Step 3 – Identify the Essential Elements of the Position Description

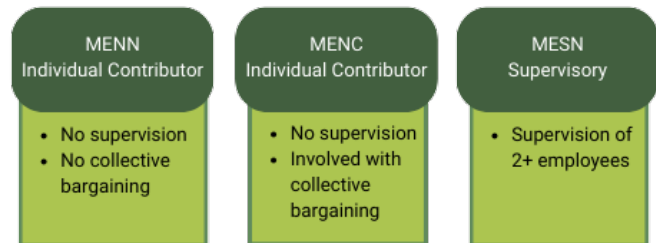
Positions meeting the statutory criteria for unclassified service must contain a condition of employment statement in the position description. The statement informs the employee of special circumstances associated with their employment in that position. Select the appropriate condition of employment statement located at the end of this guide, modified as appropriate, that is applicable to how an employee is appointed to the position and place it in the position description, typically in Section 10 – Additional Information.

### Step 4 – Write the Analysis

When writing the analysis, include the citation to the applicable section of ORS 240.205 and, if applicable, the agency’s enabling statute. The analysis is usually short, except for those who serve as a principal assistant. The analysis for principal assistant positions requires identifying the major organizational component for which the position has oversight. It is recommended to begin with how the agency director is appointed, what their authority is to structure the agency, and identify any specific positions that may be called out in statute. Tip: search “at the pleasure of” in statutes to find at-will appointments.

For the principal assistant analysis, the agency must identify the major organizational component that the position is managing, including how it is related to the agency’s overall mandates and mission, its responsibilities, and its accountability to the public. It is important to include a detailed organizational chart demonstrating the reporting relationship to the agency executive or administrative officer. Once the agency has developed its analysis, including a description of how a position meets the principal assistant criteria, the CHRO will make the request to the DAS Director for approval. When an approval is provided by the DAS Director, it is filed at the CHRO, and a copy is provided to the agency for the agency’s position files.

### Relevant Representation Codes





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### Additional Notes

When an agency is merged, established, or abolished, a review of positions that are created or moved to another agency must occur to determine appropriate categories of state service. For additional guidance, please contact the CHRO Classification and Compensation Unit or the Labor and Employment Section of the Oregon Department of Justice.

### Misallocation

Because positions in the unclassified service serve in an at-will capacity, ensuring the correct category of service is critical. Employees that are misallocated in an unclassified service position still maintain their rights, either through management service or through their appropriate collective bargaining agreement. Refer to CHRO Policy: *Unclassified Service Employment and Termination*, [40.035.01](#).

A common misallocation to unclassified service includes clerical or other staff who support specific unclassified service managers. The key to knowing whether a position is unclassified service is in the details of the enabling statute, application of the State Personnel Relations Law, and the position's reporting lines.

### Glossary

**Appointing authority** means an officer or agency having power to make appointments to positions in the state service.

**At the pleasure of** means appointees serve in office until removed by the appointing authority with or without cause or a reason for the removal. Except for the private secretaries mentioned in ORS 240.205, these appointees have overall management accountability for a body of work. They serve at-will, meaning they can be removed from office with or without cause or a reason. No rule or policy of the CHRO is applicable to these employees unless the rule or policy specifically indicates.

Unlike management service or represented staff, they have no rights or recourse to an appeal to the Employment Relations Board or a labor arbitrator—although they, like all employees, may assert civil claims (such as claims for whistle blower retaliation or discrimination based on race, sex, or other protected class). Therefore, it is very important to get the service type correct for these positions.

**Conditions of Employment** are statements in position descriptions that inform the employee of the position's unclassified category of service and stipulations.

**Major organizational component** means a division or part of an agency that is responsible for an agency directive and mission-related body of work.

**Not subject to State Personnel Relations Law** means employees who are not subject to ORS Chapter 240. There are various levels of this described in some enabling statutes that indicate where positions are not subject, in full or in part, to compensation plans, classification, or categories of service. Evaluation must be made on the whole of the section of the enabling statute.

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**Principal Assistant** means a manager of a major agency organizational component who reports directly to an executive or administrative officer listed in ORS 240.205 subsections (1) to (3) of this section or a 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.

These positions are not identified in an agency's enabling statute as serving in an at-will capacity with the approval of the Governor. Positions serving as principal assistants have accountabilities for a major organizational component (typically the head of an agency division).

**Subject to State Personnel Relations Law** means employees who are subject to ORS Chapter 240. This law's purpose is to establish for the state a system of personnel administration based on merit principles. This includes, among other things, the classification, compensation, and categories of service.

**With the approval of the Governor** means position appointments requiring the approval of the Governor of the State of Oregon.

# Position Evaluation for Unclassified Service

## State of Oregon – Unclassified Service Checklist

Agency #	Agency Name	Enabling Statute
WD Position #	Classification Title & Number	
Employee Name (or Vacant)	Working Title	

This form can be used for reference for each position under study in the unclassified service.

<b>ORS 240.205-related questions.</b> <i>Be sure to complete "[text]" if requested.</i>	<b>Check appropriate box</b>
<b>240.205 (1)</b> Is this position appointed by a board or commission?  Are the board or commission members elected or appointed by the Governor?	<input type="checkbox"/>
<b>240.205 (2)</b> Is the position a director of a department of state government? Or is the position a full-time salaried head of a state agency or a full-time salaried member of a board or commission required by law to be appointed by the Governor?  If not, who appoints the position?	<input type="checkbox"/>
<b>240.205 (3)</b> Is the division administrator required to be appointed by the director of the department with the approval of the Governor?	<input type="checkbox"/>
<b>240.205 (4)</b> Does this one private secretary report to an executive or administrative officer who is elected, or to one of the positions in ORS 240.205(1) to (3)?	<input type="checkbox"/>
<b>240.205 (4)</b> Is the deputy appointed by one of the positions in ORS 240.205(1) to (3) and does the deputy have the authority to exercise that officer's authority upon absence of the officer?	<input type="checkbox"/>
<b>240.205 (4)</b> Is this a principal assistant who reports directly to one of the positions in ORS 240.205(1) to (3) or a deputy, who manages a major organizational component, and who has been designated as a principal assistant by the appointing executive with the approval of the Director of DAS?  What is the major organizational component? When did the Director of DAS approve the designation of the position as a principal assistant:	<input type="checkbox"/>
<b>240.205 (5)</b> Is this position in the Governor's Office?	<input type="checkbox"/>
<b>240.205 (5)</b> Is this position a principal assistant or private secretary in the Secretary of State's division?	<input type="checkbox"/>
<b>240.205 (6)</b> Is this position a director, principal, instructor, or teacher serving Oregon School for the Deaf?	<input type="checkbox"/>
<b>240.205 (7)</b> Is this position an apprentice trainee?	<input type="checkbox"/>
<b>240.205 (8)</b> Is this position a licensed physician or dentist employed in their professional capacity?  Is this position in a collective bargaining unit, if so, which one?	<input type="checkbox"/>
<b>240.205 (8)</b> Is this position a student nurse, intern, or patient or adult in custody helping in a state institution?	<input type="checkbox"/>
<b>240.205 (9)</b> Is this position a lawyer employed in their professional capacity?	<input type="checkbox"/>

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<p align="center"><b>ORS 240.205-related questions, continued</b>  <i>Be sure to complete "[text box]" if requested.</i></p>	<p align="center"><b>Check appropriate box</b></p>
<p><b>240.205 (10)</b> Is this position a member of the Oregon State Police appointed under ORS 181A.050?</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (11)</b> Is this position the Deputy Superintendent of Public Instruction or an associate superintendent in the Department of Education?</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (12)</b> Is this position a temporary seasonal farm laborer?</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (13)</b> Is the employee employed and paid from federal funds received under a federal program intended primarily to alleviate unemployment?</p> <p>Note: employees employed under this section shall be treated as classified employees for purposes of ORS 243.650 to 243.809.</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (14)</b> Is this position a manager, department head, director, producer or announcer of the state radio and television network?</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (15)</b> Is the employee a member of the foreign trade offices of the Oregon Business Development Department located outside the country?</p>	<p align="center"><input type="checkbox"/></p>
<p><b>240.205 (16)</b> Is this position designated by law in the unclassified service?</p> <p>What is the citation in the ORS?</p>	<p align="center"><input type="checkbox"/></p>

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### State of Oregon – Conditions of Employment Statements

Serving in an unclassified service capacity for the State of Oregon comes with conditions of employment. These conditions are laid out in Oregon Revised Statute 240.205. Not all positions in unclassified service will have a position description, however, all position descriptions designated as unclassified service must include a “condition of employment” statement in Section 10. Below are conditions of employment statements. Select the appropriate ORS 240.205 section statement based on the position’s unclassified evaluation result, then modify, as appropriate, and incorporate into the position description, typically in Section 10 – Additional Information.

#### **Unclassified Service positions appointed by the Governor (ORS 240.205 (1 or 2)):**

This position meets the unclassified service criteria in ORS 240.205 [(1) or (2)] and the incumbent is appointed by and serves at the pleasure of the Governor. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

#### **Unclassified Service positions appointed by the Department Director with Governor approval (ORS 240.205 (3)):**

This position meets the unclassified service criteria in ORS 240.205 (3). The incumbent in this position serves at the pleasure of and is appointed by the Department Director with approval from the Governor. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

#### **Unclassified Service Principal Assistant (ORS 240.205 (4)):**

This position meets the unclassified service criteria in ORS 240.205 (4) and is a principal assistant that manages a major agency organizational component. The position reports directly to an **executive or administrative officer**. As such, pursuant to ORS 240.205(4), this position has the approval of the Director of Department of Administrative Services to be placed in unclassified service (DAS CHRO Policy 30.000.01) and serves at the pleasure of the agency appointing authority. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

#### **Unclassified Service Deputy (ORS 240.205 (4)):**

This position meets the unclassified service criteria in ORS 240.205 (4) and serves at the pleasure of the agency appointing authority. The incumbent in this position has the authority to exercise the **[Director or Division Administrator]**’s authority in the absence of that **[Director or Division Administrator]**. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

#### **Unclassified Service positions in the Governor’s office, or the principal assistant and private secretary in the Secretary of State’s division (ORS 240.205 (5)):**

This position meets the unclassified service criteria in ORS 240.205 (5) and serves at the pleasure of and is appointed by the department appointing authority. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

#### **Unclassified Service – Oregon State Police:**

This position meets the unclassified service criteria in ORS 240.205 (10) Oregon State Police appointed under ORS 181A.010. The incumbent serves at the pleasure of the agency appointing authority.

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### Unclassified Service – All others:

This position meets the unclassified service criteria in ORS 240.205 [(#)] and serves at the pleasure of the agency appointing authority. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).

- ORS 240.205 (6) Director, principals, instructors and teachers in school operated under ORS 346.010
- ORS 240.205 (7) Apprentice trainees during prescribed length of training
- ORS 240.205 (8) Licensed physician or dentist
- ORS 240.205 (9) Lawyer employed in professional capacity
- ORS 240.205 (11) Deputy Superintendent of Public Instruction appointed under ORS 326.300 or associate superintendents in the Department of Education
- ORS 240.205 (12) Temporary seasonal farm laborer
- ORS 240.205 (15) Employee of the foreign trade office of the Oregon Business Development Department located outside the country

**Unclassified Service** – ORS 240.205 (16) Any other position designated by law as unclassified.

This position meets the unclassified service criteria in ORS 240.205 (16) and is designated as such through ORS [###.###]. This appointment may be terminated at any time (DAS CHRO Policy 40.035.01).