



September 7, 2004

FLSA2004-8

Dear **Name***,

This is in response to your letter dated May 24, 2004, written on behalf of your constituent, **Name*** requests guidance under the FLSA concerning the use of non-exempt school system employees to assist as volunteers with extra-curricular activities such as coaching sports, sponsoring clubs, etc., or to perform other duties for the school system. He seeks clarity as to how the FLSA applies to these activities because the schools indicate that Fair Labor Standards Act (FLSA) regulatory provisions are not clear or are interpreted differently in other jurisdictions.

The FLSA recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. Please be assured that this Administration fully supports volunteerism and is committed to work to ensure that citizens are able to freely volunteer their services for charitable and public purposes within the legal constraints established by Congress. Wage and Hour Division (WHD) staff is prepared to work with and offer assistance to school districts on FLSA compliance.

Section 3(e)(4)(A) of the FLSA and 29 CFR 553.101 and 553.103, copies enclosed, indicate that individuals qualify as volunteers, and are not employees of a public agency, when they meet the following criteria:

- A. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered. The statute clarifies that a volunteer performing such service can either receive no compensation or be paid expenses, reasonable benefits or a nominal fee to perform such services.
- B. Offer their services freely and without coercion, direct or implied, from the employer.

Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer. In other words, individuals can qualify as volunteers if they either volunteer for different agencies or perform different services than they are otherwise employed to perform.

The WHD recently considered the application of the FLSA volunteer provisions to schools and described the relevant considerations necessary to determine whether an individual who volunteers to provide services for a public entity is a bona fide volunteer in different factual situations. The letter is attached for your consideration.

Name* is employed as a technology and media assistant and is performing tasks described in O*NET as a computer support specialist, 15.1041.00, <http://online.onetcenter.org/report?r=0&id=195>. The services performed by a person employed in this occupational category differ substantially from those provided by a volleyball and baseball coach, as described in the O*NET coaching occupational category at 27.2022.00, <http://online.onetcenter.org/report?r=0&id=396>. Applying the criteria set out in the attached letter to the description of duties performed as a technology and media assistant and as a volleyball and baseball coach, **Name*** is not providing services that are the same or similar to those he is employed by the school to provide. Therefore, no FLSA violation would occur when he volunteers to coach volleyball and baseball teams.

However, if **Name*** provides services that are the same or similar to those he is employed to perform and provides these services for his employer, **Name*** such work may not be done as a volunteer but rather are considered hours worked for which he must be compensated. For example, **Name*** is employed to "schedule and perform routine maintenance" on computers and has also, without compensation, "spent the last two summers working on the computers in the school cleaning them and bringing the software up to date..." Applying the test used to determine that his work as a volunteer coach



is permitted, under the FLSA, in upgrading and maintaining computers for the school system, may not be provided as a volunteer. **Name *** is performing services that are the same or similar to those he is employed to provide and to the extent he continues to do so, he must be paid according to the requirements of the FLSA.

We trust you will find the above discussion and analysis responsive to your request.

Sincerely,

Alfred B. Robinson, Jr.
Acting Administrator

Enclosure

*Note: * The actual name(s) was removed to preserve privacy.*