



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

March 2, 2009

Dear **Name***:

Enclosed is the response to your request for an opinion letter signed by the then Acting Wage and Hour Administrator Alexander J. Passantino on January 15, 2009 and designated as Wage and Hour Opinion Letter FLSA2009-10. It does not appear that this response was placed in the mail for delivery to you after it was signed. In any event, we have decided to withdraw it for further consideration by the Wage and Hour Division. We will provide a further response in the near future.

The enclosed opinion letter, and this withdrawal, are issued as official rulings of the Wage and Hour Division for purposes of the Portal-to-Portal Act, 29 U.S.C. § 259. See [29 C.F.R. §§ 790.17\(d\), 790.19](#); *Hultgren v. County of Lancaster, Nebraska*, 913 F.2d 498, 507 (8th Cir. 1990). Wage and Hour Opinion Letter FLSA2009-10 is withdrawn and may not be relied upon as a statement of agency policy.

Sincerely,

John L. McKeon
Deputy Administrator for Enforcement



FLSA2009-10

This Opinion Letter is withdrawn.

January 15, 2009

Dear **Name***:

This is in response to your letter regarding the application of the Fair Labor Standards Act (FLSA) to community members who coach athletic teams for a public school. First, you ask how to calculate the amount that can be paid as a stipend to these coaches if they are volunteers under the FLSA. Second, you ask whether these coaches, if not volunteers, are eligible for the exemption for teachers in section 13(a)(1) of the FLSA and [29 C.F.R. § 541.303](#).¹ It is our opinion that the coaches you describe qualify as teachers under the Act and are exempt from the FLSA's minimum wage and overtime pay provisions. Because of this conclusion, we do not address your first question about the stipends paid to the coaches.

In this case, the school employs no full-time coaches, but relies on community members to meet its coaching needs. Coaches spend most of their time instructing student athletes in the rules and fundamentals of their respective sports. Head coaches and assistant coaches share those teaching duties, although head coaches are responsible for determining the fundamental philosophy, skills, and techniques for each team. When not instructing players, coaches devote the balance of their time to activities such as recruiting students to play sports, supervising team members during trips to and from games, disciplining team members when necessary, and accounting for all equipment in their care.

Section 13(a)(1) of the FLSA and its implementing regulations exempt "any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed." 29 C.F.R. § 541.303(a). Coaches whose primary duties are not related to teaching—for example, performing general clerical or administrative tasks for the school unrelated to teaching, including the recruitment of students to play sports, or performing manual labor—do not qualify for the teacher exemption. *See* Wage and Hour Opinion Letter August 24, 1998 (copy enclosed). For purposes of this response, we assume that the coaches are not employed in any other capacity by the school or the school district. We also assume the school meets the definition of an educational establishment under [29 C.F.R. § 541.204\(b\)](#).

Coaches qualify for the exemption if their primary duty is teaching and imparting knowledge to students in an educational establishment. "Those faculty members who . . . spend a considerable amount of their time in extracurricular activities such as coaching athletic teams . . . are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student." 29 C.F.R. § 541.303(b).

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

Section 541.303(c) specifies that possession of a teaching certificate provides a clear means of identifying employees who qualify for the exemption. There is no requirement, however, that the employee possess a teaching certificate to qualify for the exemption.

[P]rivate schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.

29 C.F.R. § 541.303(c). Moreover, there is no minimum education or academic degree required under the regulations for the teacher exemption. The application of the exemption is not dependent upon possession of a bachelor's degree. *See* Wage and Hour Opinion Letter [FLSA2006-41 \(Oct. 26, 2006\)](#); Wage and Hour Opinion Letter [FLSA2005-39 \(Oct. 13, 2005\)](#). Having a primary duty of teaching generally involves, "by its very nature, exercising discretion and judgment." Wage and Hour Division [Fact Sheet #17D](#). Thus, coaches whose primary duty is teaching qualify for the exemption whether or not they hold a teaching certificate or an academic degree.

Assuming that the coaches are not also employed by the school or school district in a different, nonexempt capacity, we believe they qualify for exemption as teachers under the FLSA. Unlike other exempt professional employees, teachers are not subject to the salary requirements in [29 C.F.R. § 541.300](#) or [29 C.F.R. §§ 541.600-.606](#). The FLSA itself imposes no minimum wage or overtime pay requirements for employees exempt under section 13(a)(1), including teachers. Therefore, the school may pay its coaches who are exempt teachers as it deems appropriate.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issue addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**