



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

FLSA2008-7

September 26, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether substitute teachers qualify for the professional exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA) and regulations, 29 C.F.R. Part 541.* It is our opinion that a substitute teacher may qualify for the professional exemption if the duties test is met.

Your State does not require substitute teachers to have a college degree or teaching certificate. Instead, they only need a substitute teaching permit issued by the State Professional Teaching Standards Board. To qualify for the permit, a substitute teacher must:

1. Complete at least 65 college semester hours or obtain an associate's degree from a regionally or nationally accredited institution; or
2. Obtain a high school diploma or G.E.D. certificate and complete 24 hours of in-service training and ten hours of classroom observation.

You indicate that these substitute teachers' primary responsibility is teaching the same subjects as the everyday teacher for whom they substitute.

Substitute teachers must be evaluated on an individual basis to determine whether they qualify for the teacher exemption under the applicable regulations, [29 C.F.R. § 541.303](#). These regulations exempt from minimum wage and overtime pay "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." *Id.* § 541.303(a). Having a primary duty of teaching generally involves "by its very nature, exercising discretion and judgment." Wage and Hour Division [Fact Sheet #17D](#).

Substitute teachers qualify for the professional exemption if their primary duty is teaching and imparting knowledge in an educational establishment. On the other hand, substitute teachers whose primary duties are not related to teaching—for example, performing general clerical or administrative tasks for the school unrelated to teaching

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

their assigned students, or manual labor—do not qualify for the professional exemption. *See* Wage and Hour Opinion Letter [FLSA2005-39](#) (Oct. 13, 2005). The term “educational establishment” includes “an elementary or secondary school system, an institution of higher education or other educational institution.” [29 C.F.R. § 541.204\(b\)](#).

A substitute teacher with a teaching certificate clearly qualifies for the professional exemption. However:

private 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.

Id. § 541.303(c).

Further, there is no minimum educational or academic degree requirement for bona fide teaching professionals in educational institutions. Employees working as substitute teachers are within the teaching professional exemption whether or not they possess an advanced academic degree so long as teaching is their primary duty. *See* Wage and Hour Opinion Letter [FLSA2006-41](#) (Oct 26, 2006); and Wage and Hour Opinion Letter [FLSA2005-39](#) (Oct. 13, 2005).

We conclude that the substitute teachers’ primary duty is teaching in an educational establishment, and thus they qualify for the professional exemption under 29 C.F.R. § 541.303.

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 issues 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).**