



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

FLSA2008-11

December 1, 2008

Dear **Name***:

This is in response to your request for an opinion on whether certain Assistant Athletic Instructors (AAIs) at institutions of higher education qualify as teachers who are exempt from the minimum wage and overtime pay requirements of the Fair Labor Standards Act (FLSA). We believe the AAIs you describe qualify for exemption as teachers under section 13(a)(1) of the FLSA and [29 C.F.R. § 541.303](#).¹

According to the information you furnished, the AAIs teach proper skills and skill development to student-athletes and are required to have a bachelor's degree with a master's degree (or additional experience) preferred. You indicated that their teaching responsibilities encompass at least 50% or more of their time and include instruction of physical health, team concepts, and safety. The AAIs, who work under the supervision of a head coach, are responsible for designing instructions for individual student-athletes and for specific team needs, and thus have a great deal of independent discretion and judgment as to the manner and method of teaching. Students receive academic credit for their participation in collegiate team sports.

Section 13(a)(1) of the FLSA exempts from the Act's minimum wage and overtime pay requirements any employee employed in a bona fide executive, administrative, or professional capacity. The term "employee employed in a bona fide professional capacity" also includes "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).

There is no minimum education or academic degree required under the regulations for the teacher exemption. See Wage and Hour Opinion Letter [FLSA2006-41](#) (Oct. 26, 2006); Wage and Hour Opinion Letter [FLSA2005-39](#) (Oct. 13, 2005). Athletic instructors whose primary duty is teaching in an educational establishment would qualify for the exemption whether or not they have a particular academic degree. By contrast, athletic instructors whose primary duty is not related to teaching would not qualify for the teacher exemption. Also, the regulations do not require that exempt teachers be paid on a salary basis. See 29 C.F.R. § 541.303(d). Having a primary duty of teaching generally

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.

involves, “by its very nature, exercising discretion and judgment.” Wage and Hour Division [Fact Sheet #17D](#).

The AAI position description you sent us includes a number of duties that are not related to teaching, such as developing effective recruitment strategies, recruiting and following up on prospective students, researching and targeting high schools and athletic camps as sources for potential student-athletes, and visiting high schools and athletic camps to conduct student interviews. As mentioned above, however, you stated that these AAIs spend more than 50% of their time on teaching activities. This proportion is significant because “employees who spend more than 50% of their time performing exempt work will generally satisfy the primary duty requirement.” [29 C.F.R. § 541.700\(b\)](#).

Although not fully described in your letter, we believe the institutions of higher education you inquired about are colleges that would qualify as educational establishments for purposes of the teacher exemption. An “educational establishment” is defined as “an elementary or secondary school system, an institution of higher learning or other educational institution.” [29 C.F.R. 541.204\(b\)](#). Accordingly, based on your representation that the AAIs spend more than 50% of their time teaching in an educational establishment, we believe that they would qualify for exemption from the FLSA’s minimum wage and overtime pay requirements.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit or implied, that you have provided a full and fair description of all the facts and circumstances which would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your request might require a different conclusion 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).**