



FLSA UPDATE



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Today's Outline

1. FLSA - "Old" Rules
2. FLSA - New Letter
3. Coaches
4. Volunteers

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Three Tests for Exemption



- Salary Level
- Salary Basis
- Job Duties

FLSA - "Old" Rules

- How Do We Avoid OT?
 1. Limit hours to 40 per week
 2. Find an exemption



We Don't Have to Worry About:

- **Teachers**
 - **Automatically exempt**
 - **No salary basis**



Teacher exemption:

- Exempt teachers **include, but are not limited to: Regular academic teachers**; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children
- The **possession of an elementary or secondary teacher's certificate** provides a **clear means of identifying the individuals contemplated** as being within the scope of the exemption for teaching professionals




Teacher exemption:

- Are coaches teachers under the FLSA?
 - **Dec. 2008:** WHD said “yes”
 - **2009:** WHD said “maybe”

** - On March 2, 2009, these letters were withdrawn for further consideration.






January 5, 2018

FLSA2018-6

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



New Opinion Letter

- Are “community coaches” considered “teachers” under the FLSA?
- WHD: **Yes**, because “coaching” is “teaching”



New Opinion Letter

- “Coaches qualify for the exemption if their primary duty is teaching and imparting knowledge to students in an educational establishment.”



New Opinion Letter

- “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.”



New Opinion Letter

- The one problem?
 - “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.”



New Opinion Letter

- But see:
 - Primary duty test
 - Number of hours
 - Amount of pay
 - Relative importance



Coaches

- What this means for schools:
 - Identify employees with primary duty of coaching
 - Dual employment
 - Community coaches
 - Multi-sport coaches



Coaches

- What this means for schools:
 - Revise coaching contracts
 - Position is exempt
 - No minimum wage or overtime
 - Not for a definite term
 - At-will



Coaches

- What this means for schools:
 - Still need to track hours?
 - ACA
 - NPERS



Volunteers

- Is a person truly a “volunteer?”
 - “Individuals shall be considered volunteers only where their services are offered freely and without pressure or coercion, direct or implied, from an employer.”



Volunteers

- Is a person truly a “volunteer?”
 - “no promise expectation, or receipt of compensation for the services rendered, except for reimbursement for expenses, reasonable benefits, and nominal fees”



Volunteers

- Is a person truly a “volunteer?”
 - Such individuals would not lose their volunteer status because they are reimbursed for the approximate out-of-pocket expenses incurred incidental to providing volunteer services, for example, payment for the cost of meals and transportation expenses.



Volunteers

- Is a person truly a “volunteer?”
 - Individuals do not lose their volunteer status if they receive a nominal fee from a public agency.
 - 20% of employee’s compensation



Issues

OT for Dual Positions

- 1. Weighted Average**
- 2. Alternative Rate**
- 3. Montana Approach**



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