

I. Staff Members and School Board Members Serving as Volunteer Coaches

A. Staff Members – Is the staff member a bona fide “volunteer.”

1. Under the Fair Labor Standard Act (FLSA), the term “employee” does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State (e.g., school district), or an interstate governmental agency, if:
 - a. The individual receives no compensation, and
 - b. such services are not the same type of services which the individual is employed to perform at such public agency.
2. Therefore, for school districts, non-exempt employees (e.g., support staff) may not volunteer to perform services on behalf of the school system if the volunteer duties involve the same types of duties they regularly perform. Furthermore, in order to be a bona fide volunteer, an employee must freely and voluntarily (i.e., without any direct or implied coercion or requirement) agree to perform the volunteer duties for no compensation.
 - See attached Volunteer Agreement.

B. School Board Members – See attached article.

II. Non-Exempt Staff Members Working as Coaches

A. The issues:

1. If a para-professional (non-exempt position) wishes to work as a coach (exempt position), can the school district treat the positions separately and therefore pay the employee for each position separately? **No**
2. Because the positions cannot be treated separately, will the employee be due overtime pay if he or she works more than 40 hours in a workweek between the two positions? **Yes**, if the **primary duty** of the staff member is the performance of non-exempt work.
3. If overtime must be paid, which position is used to compute overtime pay? Two options...see below.

B. Primary Duty Test.

1. Under the FLSA Regulations, an employee’s “primary duty” must be the performance of exempt work for the FLSA’s overtime exemption to apply.

2. The term “primary duty” means the “principal, main, major or most important duty that the employee performs.
3. Determination of an employee’s primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee’s job as a whole.
4. Factors to consider when determining the primary duty of an employee include, but are not limited to:
 - the relative importance of the exempt duties as compared with other types of duties;
 - the amount of time spent performing exempt or non-exempt work;
 - the employee’s relative freedom from direct supervision; and
 - the relationship between the employee’s salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.

C. Computing Overtime Pay: Two Options.

1. Earnings for the two rates of pay are added together and this total is divided by the total number of hours worked at both jobs.
 - 40 hours at \$15 per hour = \$600 + 10 hours at \$10 per hour = \$100, for a total of **\$700 divided by 50 hours = \$14 per hour as an overtime rate.**
2. Alternatively, an employer may pay an employee overtime at one-and-one half time the bona fide rate applicable to the type of work being performed during the overtime hours.