



October 1, 2004

FLSA2004-12

Dear *Name**,

This is in response to your letter dated August 10, 2004 written on behalf of your constituent, *Name**. You request guidance under the FLSA concerning the use of non-exempt school system employees to assist as volunteers with extra-curricular activities such as coaching sports, sponsoring clubs, etc. or to perform additional duties. You seek clarity as to how the FLSA applies to these activities because the schools indicate that Fair Labor Standards Act (FLSA) regulatory provisions are not clear or are interpreted differently in other jurisdictions.

The FLSA recognizes the generosity and public benefits of volunteering, and does not seek to pose unnecessary obstacles to *bona fide* volunteer efforts for charitable and public purposes. Please be assured that this Administration fully supports volunteerism and is committed to work to ensure that citizens are able to freely volunteer their services for charitable and public purposes within the legal constraints established by Congress. Wage and Hour Division (WHD) staff is prepared to work with and offer assistance to school districts on FLSA compliance.

Section 3(e)(4)(A) of the FLSA and 29 CFR 553.101 and 553.103, copies enclosed, indicate that individuals qualify as volunteers, and are not employees of a public agency, when they meet the following criteria:

- A. Perform hours of service for civic, charitable or humanitarian reasons without promise, expectation, or receipt of compensation for the services rendered. The statute clarifies that a volunteer performing such service can either receive no compensation or be paid expenses, reasonable benefits or a nominal fee to perform such services.
- B. Offer their services freely and without coercion, direct or implied, from the employer; and,
- C. Are not otherwise employed by the same public agency to perform the same services as those for which they propose to volunteer. In other words, individuals can qualify as volunteers if they either volunteer for different agencies **or** perform different services than they are otherwise employed to perform.

The WHD recently considered the application of the FLSA volunteer provisions to schools and described the relevant considerations necessary to determine whether an individual who volunteers to provide services for a public entity is a *bona fide* volunteer in different factual situations. The letter is attached for your consideration.

The correspondence from *Name** to your office raises two specific issues concerning volunteers in public schools, both addressed in the attached letter. The first concerns school employees who seek to volunteer in activities in which their children participate. The second concerns whether or not the payment of a stipend or other money for volunteer services is permitted as a "nominal" fee. Please review the consideration of both issues in the attached letter at pages 3 and 6, respectively.

We trust you will find the above discussion and analysis responsive to your request. We stand ready to work with you at any time to support the wonderful spirit of volunteerism that sustains this country.

Sincerely,

Alfred B. Robinson Jr.
Acting Administrator

Enclosure

Note: * The actual name(s) was removed to preserve privacy.