



**New York State Department of Labor**  
David A. Paterson, *Governor*  
M. Patricia Smith, *Commissioner*

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October 2, 2009



**Re: Request for Opinion  
Exemption Status Inquiry  
RO-09-0107**

Dear [Redacted]:

This letter is written in response to yours dated July 29, 2009 in which you request an opinion regarding the status, under the New York State Labor Law, of part-time athletics coaches employed at a private university. The coaches are in charge of various athletic teams and their responsibilities include managing the teams and team schedules while instructing and mentoring their students. Your letter asserts that these individuals are typically viewed as exempt from the Fair Labor Standards Act (FLSA) under the professional exemption applicable to teachers for which there are no minimum salary or pay requirements. You ask whether the coaching positions would be similarly found exempt under the New York State Labor Law.

As a preliminary matter, it must be noted that since the Fair Labor Standards Act is a federal law enforced by the United States Department of Labor, it would be inappropriate for this Department to provide interpretations of federal law as we have no jurisdiction over such law. Accordingly, no definitive opinion is offered as to whether coaches are "typically viewed as exempt from the FLSA under the professional exemption applicable to teachers." The following opinion is based on this Department's interpretation the New York State Labor Law.

Subpart 2.2 of the Minimum Wage Order for Miscellaneous Industries and Occupations (12 NYCRR §142-2.2) provides, in relevant part, that all "employees" must be paid at a rate not less than one and one half times their regular rate of pay in accordance with the provisions and exceptions of the FLSA. However, that Subpart

Tel: (518) 457-2621, Fax: (518) 485-1819  
W. Averell Harriman State Office Campus, Bldg. 12, Room 509, Albany, NY 12240

provides that employees exempted under Section 13 of the FLSA must nevertheless be paid overtime at a rate not less than one and one half times the minimum wage. In short, "exempt" employees under Section 13 of the FLSA must be paid at an overtime rate of not less than one and one half times the minimum wage for overtime hours worked unless such employees fall outside of the New York Minimum Wage Act's definition of "employee."

This Department recognizes that teachers are exempt from both the minimum wage and overtime pay requirements in the FLSA by Section 13(a)(1) of that Act. See also 29 C.F.R. §541.303. That exemption, however, does not include a blanket exemption for athletic coaches at educational institutions as your letter asserts. The exemption for teachers, as it relates to coaches, in the FLSA merely extends to "[t]hose faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams." (29 CFR §541.303(b).) While your letter indicates that these individuals spend some time "instructing" the student athletes, no details are provided as to the nature and extent of such instruction, e.g. whether such instruction primarily involves the proper techniques, rules, and requirements of the sport in which the student is being coached and is merely incidental to the coaching duties or whether it involves instruction in other subjects. Moreover, nothing in your letter indicates that the coaches are also employed by the school as teachers; rather they appear to be employed by the school solely as part-time athletics coaches.

While your letter does not provide sufficient factual criteria upon which to evaluate the applicability of the teacher exemption under the FLSA, as would be required to correctly apply the New York State Labor Law, such an exemption, should it in fact apply, may only operate to reduce the amount required to be paid to such an employee for overtime hours not the individual's entitlement to overtime pay. If the exemption applies, the coaches would be entitled to one and one half times the minimum wage rate under the provisions of the State Minimum Wage Act for hours worked in excess of forty hours per week. Such employees may also still be subject to the remaining requirements of the State Minimum Wage Act including, but not limited to, minimum wage, and spread of hours pay. Furthermore, an employee who qualifies for that exemption may still be covered by all of the protections found in the Labor Law outside of the State Minimum Wage Act including, but in no way limited to, the payment of wages, that he or she be paid in accordance with the agreed terms of employment, and that he or she receive proper meal and rest periods.

It is worth noting that this Department has previously opined that a teacher may be excluded from the definition of "employee" in the New York State Minimum Wage Act as teachers may be employed in a "bona fide professional capacity," thereby excluding them from the coverage of that Act. A copy of that opinion is enclosed for your review. However, while a definitive determination may not be made based on the content of your letter, as you can see from a reading of the criteria set forth in that letter, part-time athletics coaches are not likely to be individuals that are employed in a bona fide professional capacity.

This opinion is based on the information provided in your letter dated July 29, 2009. A different opinion might result if the circumstances stated therein change, if the facts provided were not accurate, or if any other relevant fact was not provided. If you have any further questions, please do not hesitate to contact me.

Very truly yours,

Maria L. Colavito, Counsel

By: 

Jeffrey G. Shapiro  
Associate Attorney

JGS:mp  
cc: Carmine Ruberto  
Enclosure