

Volunteers "Cut From The Team" Get Labor Department Aid

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In an effort to quell mounting dissatisfaction from non-exempt school employees left "off the team" of volunteer coaches and sponsors in their districts, the U.S. Department of Labor's ("DoL") Wage and Hour Division issued a guidance letter describing when such employees may volunteer without becoming entitled to overtime pay under the Fair Labor Standards Act ("FLSA").

Two U.S. Congressmen from North Carolina asked for the DoL's guidance, in the wake of a wave of FLSA lawsuits claiming overtime violations by dozens of school districts in the U.S. To avoid the prospect of liability, some districts have simply adopted the singularly unpopular remedy of forbidding non-exempt employees from volunteering.

A less drastic alternative emerges from the DoL's guidance letter: a case-by-case look at the volunteer, the nature of the work she performs as an employee of the District, and the nature of the volunteer service at issue.

Further, a careful District will comply with FLSA's mandate that nonexempt volunteers (1) receive only a nominal fee, if anything; (2) not be coerced into volunteering; and (3) not perform services similar to those they perform in their regular jobs for the same district.

So, for example, a bus driver for the school district could not volunteer to drive the basketball team to away games, because bus driving is the very function he performs for the school district, for pay. If he drives the basketball team to away games, the activity does not qualify as "volunteer" activity under the FLSA and the employee would be entitled to pay - including overtime pay if the circumstances warranted - for transporting the team. That same employee bus driver, however, would be perfectly entitled to volunteer - without risk to the District under the FLSA - if the driver were a parent of a student on the basketball team. And, because his duties as an employee would be dissimilar to his volunteer duties, the bus driver could volunteer to be an assistant coach for the basketball team.

The DoL guidance letter describes acceptable - and unacceptable - volunteer situations involving teaching assistants, secretaries, cafeteria workers and bookkeepers. Its clear message is that school districts can never require or coerce non-exempt employees to perform volunteer services; they must be cautious in accepting such services and they should examine each situation on its own merits.

To discuss any questions or issues related to education law, please contact our Labor Group, Beverly Hall Burns at (313) 496-7508, email: burns@millercanfield.com, Michael A. Alaimo at (313) 496-8447, email: alaimo@millercanfield.com, or Christopher Trebilcock at (313) 496-7647, email: trebilcock@millercanfield.com. This message is for general information only and should not be used as a basis for specific action without obtaining further legal advice