



Overtime Issues for Employees Performing Coaching or Other Duties

In many school districts, it is common for employees to perform additional duties as coaches, advisors, event staff, ticket takers, etc., beyond their “regular” job. Under both state and federal law,¹ all hours of work performed for a single employer must be counted toward an employee’s work in a given work-week and, unless an exemption from the wage and hour laws regarding overtime applies, must be counted and calculated in determining whether or not overtime wages are due to an employee. This area of the law is complicated and can be confusing. Additionally, some districts have long-established practices or policies of compensating individuals who work in more than one capacity that might not comply with state and federal wage and hour law.

Much of the confusion on this issue centers around coaches or other extracurricular advisors, so those positions will be the focus of this Legal Comment (although the same concerns can arise with respect to event staff, ticket takers, or other people who help with school-related events). Board members might be involved in selecting who will serve in an extra duty position, or they might be involved in decisions to modify the district’s approach to compensating employees who serve in multiple positions. Therefore, it is important that board members have a general understanding of these legal issues.

This Legal Comment will: (1) review how the law addressing this situation varies based on an employee’s eligibility for overtime pay; (2) explain some legally compliant methods for calculating overtime; and (3) discuss volunteers and other potential applicable exceptions to the general rules.

As an initial matter, employees generally fall into one of three categories with respect to overtime pay: (1) exempt employees (who are not eligible for overtime pay); (2) outside employees who are employed by a district solely as coaches or extracurricular advisors (who generally are not eligible for overtime pay); and (3) non-exempt employees (who are eligible for overtime pay).

■ Exempt employees

Many employees within a school district are considered “exempt” from the minimum wage and overtime obligations of state and federal wage and hour laws. These include the district administrator, principals and teachers. If an advisor/coach is an employee whose position is already exempt under the Fair Labor Standards Act, there is no overtime calculation required if the employee works an additional position or works more than 40 hours in a workweek because the position of advisor/coach is, in and of itself, considered exempt from overtime as a form of “teacher.”² This means, for example, if a high school math

teacher also coaches the girls’ softball team, it does not matter how many hours that individual works in either position because all of their time is considered exempt work under the Fair Labor Standards Act. Even if those exempt individuals performed other non-exempt tasks, such as performing as an event supervisor or ticket taker, their primary duty would still be considered teaching. Therefore, those additional duties, whether paid a flat rate stipend or at an hourly rate, would not affect their exempt status and can just be paid out to employees as additional compensation.

■ Outside employees

Most individuals who don’t work in any other capacity for a school district but are hired to coach or act as an advisor do not work more than 40 hours per week in this capacity for the school district. Therefore, overtime considerations normally do not come into play. However, some of these individuals could put in more than 40 hours of work in some weeks. For example, a football coach might work more than 40 hours a week during the playoffs. In this situation, the Department of Labor has held that as long as the advisor/coach is not employed in any other capacity in the school district, the advisor/coach is a “teacher,” and, therefore, not bound by minimum wage and overtime requirements.³

Some districts have long-established practices or policies of compensating individuals who work in more than one capacity that might not comply with state and federal wage and hour law.”

Where an hourly employee, in a single workweek, works at two or more rates, and the employee works more than 40 hours per week for the same employer, the employer has [only] two choices on how to calculate overtime.

■ Non-exempt employees

For an employee whose primary job with a district is non-exempt (e.g., custodian, secretary, paraprofessional, food service, transportation, usually paid at an hourly wage rate) and who also acts in an additional capacity as an advisor/coach, all hours worked, including those worked as an advisor/coach, both onsite and offsite, must be compensated as hours worked. If such a non-exempt employee works more than 40 hours in a workweek in a non-exempt position, including time worked as event staff or ticket taker, a school district would need to pay overtime for any hours worked over 40 in a week.

If the advisor/coach is paid an hourly wage as an advisor/coach and paid a different hourly wage for primary duties as a regular non-exempt employee (custodian, secretary, etc.), the overtime calculation must consider the difference in hourly rates and the total hours worked in the workweek to arrive at the correct overtime rate. Both state and federal law provide that where an hourly employee, in a single workweek, works at two or more rates, and the employee works more than 40 hours per week for the same employer, the employer has two choices on how to calculate overtime: (1) the weighted average (or blended rate); or (2) pay one and a half times the hourly rate in effect when the overtime work is performed.⁴

The weighted average method is the default method for both federal and state law. This method requires totaling all the compensation received by a given employee during the workweek at all applicable wage rates and then dividing that amount of compensation by the total number of hours worked at all jobs. That number is then divided by two to get the employee's overtime premium

rate for that week. The number of hours worked over 40 that workweek is then multiplied by that overtime premium rate and added to the employee's earnings for that week. This additional amount constitutes the employee's overtime pay for that week.

For example, if an employee worked 40 hours as a custodian at \$18 per hour (for a total of \$720 that week) and also worked 10 hours as an assistant swim coach at the rate of \$12 per hour (for a total of \$120 that week), they would have earned \$840 in regular time pay. To determine the overtime owed, the employer must divide \$840 by 50 (the total hours worked that week) to get the weighted average of \$16.80 for that week. Then, the employer divides the \$16.80 by two to get an overtime premium of \$8.40. That premium is multiplied by the 10 overtime hours for the workweek to get \$84 in overtime pay. That \$84 gets added to the \$840 to arrive at \$924 in total compensation owed to the employee for the week. [Note: this calculation must be performed for every workweek and will obviously vary if the number of hours in either category changes].

The second method, rate-in-effect, is also permissible under the law, but employers must first have an agreement with the employee to use that method of compensation before the work is performed. Such agreement could be set forth in a letter of appointment for the position, in a board policy, or in an employee handbook. Here is an example of using the rate-in-effect method. An employee's regular position pays them \$18 per hour, but an event staff supervisor position pays them \$12 per hour. The overtime rate that would have to be paid to the employee at time and a half (i.e. paid out multiplied by 1.5) is the rate established for the duties at

the time the employee works their overtime hours (their 41st hour, their 42nd hour, and so on). Depending on the number of hours worked in a particular week and when those hours are worked, the employee might earn overtime pay based on both the \$18-an-hour and the \$12-an-hour rates.

Regardless of the method a school district has selected to calculate overtime, if the advisor/coach is paid on a stipend basis for those duties, the school district must convert the stipend to an hourly rate for the advising/coaching duties that is at least \$7.25 per hour (the current minimum wage). This established hourly rate for the advising/coaching duties can then be used in the weighted average (blended rate) formula or in the rate-in-effect formula.

A major concern of allocating an hourly rate to the stipend paid to an advisor/coach is that the actual hours worked by the employee in the role of the advisor/coach might realistically be much greater than anticipated when the district established the converted hourly rate for the stipend. For example, if the stipend is \$2,500 and the allocated rate is the minimum wage of \$7.25 per hour, that limits the advisor/coach to working 345 hours in the position. If this is fewer than the number of hours actually performed by the employee in the advisor/coach position for that season or activity, the district owes the employee wages, including overtime, on those additional hours worked. The legal risk is greater in districts where advisors/coaches do not track their hours.

Because of the complexity and uncertainty involved in utilizing a stipend method, districts should be cautious in allowing non-exempt employees to perform advising/coaching duties on a stipend basis.

■ What about coaches who volunteer?

Some districts allow coaches/advisors to volunteer. In those cases, the volunteer hours do not count towards the overtime calculation. However, in order for this to apply, the volunteer must be “a bona fide” volunteer. This means the individual: (1) performs hours for civil, charitable, or humanitarian reasons without promise, expectation or receipt of compensation; (2) offers their service freely and without pressure or coercion, direct or implied, from the employer; and (3) does not perform the same type of service for the public agency as an employee as those for which they propose to volunteer. The Department of Labor has, however, allowed bona fide volunteers to be paid certain expenses or a nominal fee. In general, the department has allowed the fee or expenses that a district may pay a volunteer to be up to 20% of what the district would normally pay an employee for working in that position.⁵ Again, before districts pay a volunteer any amount, districts may wish to consult legal counsel.

■ Other exceptions

There is an exception to counting hours toward overtime for school district employees who voluntarily perform only “occasional or sporadic work.” In those situations, an employee’s occasional or sporadic work does not need to be combined with regular hours to determine potential overtime liability.⁶ Occasional or sporadic work is defined as infrequent, irregular or occurring in scattered instances.⁷

The key under the occasional or sporadic work exception is that employees are freely and solely at their own option agreeing to perform any such activities. The work also cannot be within the same general occupational category as the

employee’s regular work. For example, a district bus driver cannot volunteer to drive district sports teams to away events. However, a bus driver could occasionally and sporadically volunteer for an elementary reading program. The employee must be free to refuse to perform such work without sanction and without being required to explain or justify their decision for not agreeing to do the work. Caution must be taken with respect to employees who regularly agree to perform these duties without compensation. For example, if there is an annual holiday concert and an employee volunteers to be an event worker, that one-day activity would likely be considered occasional and sporadic. However, if an employee volunteers to be the PA announcer at every boys’ home basketball game or agrees to be a ticket taker at every home football game, that would probably not be occasional and sporadic. Districts should exercise caution in attempting to use the occasional and sporadic exception to paying overtime wages.

■ What about using compensatory time off?

Under certain conditions, employees of school districts may receive compensatory time off, at a rate of not less than one and a half hours off for each overtime hour worked, instead of providing cash overtime pay. Generally, school districts that wish to utilize this plan may allow employees to accrue up to 240 hours of compensatory time off. An employee must be permitted to use compensatory time off on the date requested unless doing so would “unduly disrupt” the operations of the district. Compensatory time must be established by agreement between the district and the employee, but such an agreement can generally be made via the inclusion of a compensatory time policy in board policy or in an employee handbook.

Thus, districts could use compensatory time for a non-exempt employee’s overtime rather than paying them cash overtime. But remember, the employee must get one and a half times the overtime hours worked off for this to be valid.

■ Summary

Complying with state and federal wage and hour laws can be time consuming and complicated. In no area is this truer than when it comes to paying employees for working in additional positions such as coaches/advisors or where employees wish to work additional duties such as event staff workers, ticket takers, etc. Understanding the various options is the first task. The second, and more complicated task, is implementing those options particularly in districts that might have long-standing practices or policies that are not consistent with existing law. Because there are many variables and each situation may be unique, districts are advised to get specific legal advice with respect to their situation. ■

■ Endnotes

1. Wisconsin law generally follows federal law in this area. See Wis. Admin. Code DWD s. 274.08(2).
2. U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter 2018-6 (Jan. 5, 2018).
3. *Id.*
4. 29 C.F.R. s. 778.419; U.S. Dep’t of Labor, Wage & Hour Div., Fact Sheet No. 23: Overtime Pay Requirements of the FLSA.
5. U.S. Dep’t of Labor, Wage & Hour Div., Opinion Letter 2005-51 (Nov. 10, 2005).
6. 29 U.S.C. s. 207(p)(2).
7. 29 C.F.R. s. 553.30(b)(1).

This Legal Comment was written by Michael Julka, Brian Goodman, and Doug Witte of Boardman Clark, WASB Legal Counsel. For related articles, see Wisconsin School News: “Overtime Issues Under the Fair Labor Standards Act” (Apr. 2021); and “Select Issues Regarding Wage and Hour Laws” (March 2011).