



FLSA Fact Sheet #1: Applying the FLSA Teacher Exemption to Athletics Coaches in the UNC system

Introduction

The federal Fair Labor Standards Act (FLSA) presumes that all employees are eligible for overtime compensation in certain circumstances, unless an exemption applies. One way in which employees are exempt from overtime pay under the FLSA is if their “primary duty is teaching, tutoring, instructing or lecturing in the activity of imparting knowledge, and if they are employed and engaged in this activity as a teacher in an educational establishment.”¹ This “teacher” exemption applies regardless of the employee’s salary or salary basis.² Further, there is no minimum education or academic degree required to meet the teacher exemption.³ Analyzing whether an employee qualifies as a teacher for FLSA purposes requires an employer to determine the employee’s primary duty and whether fulfilling that duty is considered teaching or providing instruction.

This Fact Sheet is designed to provide guidance on applying the teacher exemption to athletics coaches in the UNC system by reviewing the key terms in the above definition and identifying additional considerations.

Primary Duties Test

The U.S. Department of Labor (DOL) defines an employee’s primary duty as the “principal, main, major or most important duty that the employee performs.”⁴ There is no defined percentage or numerical threshold that must be met for a task to qualify as an employee’s primary duty, but the DOL has advised that employees who spend more than 50 percent of their time performing exempt work will generally satisfy the primary duty requirement.⁵ With this federal guidance in mind, each UNC constituent institution has the flexibility to determine for itself how best to articulate and calculate an athletics coach’s primary duty (or duties). In making the determination, each constituent institution should document its review and analysis of the following factors:

- the relative importance of the exempt duties as compared with other types of duties;
- the amount of time spent performing 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.

Athletics coaches whose primary duty is teaching qualify for the exemption whether or not they hold a teaching certificate or an academic degree.

¹ 29 C.F.R. 541.303(a).

² *Id.* § 541.303(d). Other FLSA white-collar exemptions (administrative, professional, and executive) require an employee to meet certain duties and salary requirements.

³ *Id.* § 541.303(c).

⁴ *Id.* § 541.700(a).

⁵ *Id.* § 541.700(b).

Instructional time: “Teaching, Tutoring, Instructing or Lecturing in the Activity of Imparting Knowledge”

In the FLSA context, teaching is not limited to mere classroom instruction of a curricular subject. The DOL uses a more expansive definition that embraces conveying knowledge in a variety of settings. For example, a coach’s exempt teaching duties may include instructing student-athletes in how to perform their sport.⁶ On the other hand, if a coach’s primary duties are either recruiting students to play sports or visiting high schools and athletic camps to conduct student interviews, the DOL would not consider the coach to be an exempt teacher (though other exemptions could apply).⁷ There are, of course, variations within these two examples. It is the position of UNC that time spent by an athletics coach instructing student-athletes about general life skills such as physical health, teamwork, and safety likely qualify as exempt instruction. The argument for these life-skill instructional activities as exempt duties is bolstered if the instruction is regular, formalized, and provided to a group of student-athletes.

Also, classification of life skills instruction as an exempt duty to support an employee’s exemption as a teacher is more persuasive for employees who perform other teaching or instruction, rather than for a coach who is just helping counsel a student-athlete through a difficult personal situation.

Additional Considerations: Job Descriptions

The tasks that an employee actually performs should be clearly articulated in his/her job description and used as the basis to support any FLSA exemption status. Accurate job descriptions for athletics coaches allows the UNC constituent institutions to memorialize their expectations that employees are primarily engaged in exempt duties. Because of the visibility of the work of athletics coaches, it is important that UNC constituent institutions conduct periodic reviews to ensure the work the athletics coaches are actually performing is aligned with the position descriptions.

If an athletics coach is determined to be exempt as a teacher, then language indicating that an employee’s primary duty is teaching should be clearly articulated in multiple documents such as the job description, any employment contracts or appointment letters, and annual evaluation materials. While UNC constituent institutions may want to construct job descriptions that accurately and specifically reflect the full range of an employee’s duties, being overly specific can make positions more difficult to fill and, in some cases, may weaken the argument that an FLSA exemption applies if too many non-exempt duties are required.

Additional Considerations: Individual Determinations

Whether an athletics coach will come within the teaching exemption discussed above will have to be evaluated on a case-by-case basis, with a close focus on the athletics coach’s primary duties. Based on system-wide discussion, it is clear that the duties of coaches can vary widely, making it difficult to categorize and evaluate exemption status solely by job title.

In the event that an athletics coach is unable to meet the teacher exemption, it is possible that other FLSA exemptions may apply, such as the administrative, professional, or executive exemption.⁸ Keep in

⁶ U.S. Dep’t of Labor, Guidance for Higher Education Institutions on Paying Overtime under the Fair Labor Standards Act (May 18, 2016), <https://www.dol.gov/whd/overtime/whdfs17s.pdf>.

⁷ *Id.*

⁸ Fact Sheet #17A: Exemption for Executive, Administrative, Professional, Computer & Outside Sales Employees Under the Fair Labor Standards Act (FLSA).

mind that there are specific requirements for meeting these exemptions; one of which is that the coach must be paid a minimum salary of \$684.00 per week. If no exemption applies, the athletics coach will most likely be subject to the overtime requirements of the FLSA, regardless of the salary paid, and the constituent institution should use other methods to assist in handling overtime needs with predictability to the employing institution and fairness to the employee. Practices institutions might utilize to assist with managing overtime needs, include but are not limited to, managing the work schedule, considering alternate appointment periods, and/or utilizing compensatory time off for any hours actually worked over 40 in a workweek.