

*Not unless they worked less than 8 hours per day.....

*We have a few individuals that coach, but are not employees of our District so we don't run into overtime issues with them.

We have one individual that works as a tutor for us 29 hours per week. He assists with baseball. We currently do not do anything with overtime for him. I have asked the AD to have coaches complete calendars of their hours worked, but he will not enforce it and I don't think I would get any support from the Supt. to enforce it.

*I only have one classified staff member who has a "partial supplemental contract" and what I have done is require her to fill out a time sheet to get her payments. It is a building secretary. Besides this one individual I have no classified staff with supplemental.

*The Athletic Director gives the Payroll dept the total number of hours for them to be paid at the end of the season. If you need to email or speak with him Guy Fogle; guyfogle@trotwood.k12.oh.us (937) 854-0878 ext. 2003

*while we have not taken the risk, i have attended numerous presentations by attorney's that have all said you can do it, i believe it just has to do with making sure their main job is not impacted and evaluated accordingly. However, the affordable care act now plays into it as far as having to offer insurance, so that unfortunately adds another obstacle.

*We have had this happen. It typically occurs when none of the teaching staff apply.

The overtime is calculated based on a blended rate between the two jobs.

I have attached a blended rate overtime instruction sheet. I also attached a spreadsheet with an individual that we had this issue on.

*We do but it typically does not result in OT. I have a track coach right now that it does have an impact on though. I would appreciate if you would share your responses.

*The classified employees we have that also hold a supplemental contract are less than 40 hour employees (significantly less). They are to track their hours in the supplemental position (not going over 40) and submit the tracking sheet to us bi-weekly.

I'm not sure what we would do if we had a 40 hour employee want a supplemental. Fortunately we have not had that issue.

*I just had this problem. I spoke with our attorneys and we will be paying overtime for the classified personnel with the supplemental. They had us blend the rates of pay to determine the overtime hourly rate. By luck, I also had all my supplementals track their hours this year to get an update of for retirement reporting.

*Our Classified have held coaching positions for years. As long as they meet the qualifications you have for the supplemental position there should not be a problem

*We are an ESC and sometimes employ classified staff for our local districts for various reasons. You could look into doing that.

*We have a couple. I do a spreadsheet with their contract hours & contract rate and their coaching hours using minimum wage & figure a blended rate for weeks they go over 40 hours. I've attached an example.

*We have a 40 hour classified staff that is also a coach. We have the person turn in timesheets for the coaching and when the whole season is done and at the end we then evaluate the coaching hours using the hourly minimum wage rate to come up with a weighted average overtime rate that is applied to the coaching hours and then we do the math to see if the supplemental amount stipulated in the contract is sufficient to cover the calculated amount using the weighted average results. If it is not, we then pay them an additional amount to "cover" the difference between the supplemental contract amount and the total calculated amount we come up with. This can get more complex if the classified person also has additional hours for the district on their regular job, you then have to take that into account in calculations to get a weighted average amount.

*We have specific language in classified supplemental contract that addresses the overtime issue. We have using this for 10 years and have never had an issue. See attached contract.

*We have a couple of classified employees that have a regular job with us, they time slip their hours during the season, and we pay blended rate if they are over the 40 hours. I look at the season, get an estimated number of hours for the season for an hourly rate, use that to pay blended. Then at the end of the season I check to make sure if the hours are ok and re-figure with an actual number (using their time slips) of hours and hourly to make sure that I've not overpaid them.

*I have a couple that Greg lets me run through his payroll at the ESC. I figure that gives me some cover as well as the "occasional & sporadic" nature of a supplemental. So instead of hassling with OT and its calculation, we hassle with paying Greg the 5% Busdeker fee...I mean, administrative fee. ;^) If Greg needs an updated BCI/fingerprint, we cover that cost for the employee.

* He does time sheets for his regular job and for his coaching time. We pay the coaching at minimum wage for the hours worked and do a pay off at the end, which is stated in the contract. We do a blended rate for the OT. I realize this may not be totally accurate since there is a pay off amount that is not figured into the OT, but this is what we have been doing.

*We had this come up during football season. Our maintenance guy was hired as an assistant football coach. I took the supplemental amount and divided it by his overtime rate. I used that number and listed it on the contract as "not to exceed 63 hours". I probably should break that down into a weekly number of hours based on the length of football season. We haven't had any issues doing it this way.

*We make classified coaches do timesheets. We pay them minimum wage from their timesheet and then pay the balance of contract after the season is finished. They are told how many hours they are allowed to work ahead of time and told they cannot exceed that. (contract salary divided by minimum wage)

It's a pain but we don't have enough teachers to fill the coaching positions.

*We have just a couple of hourly classified employees who take coaching assignments.

And we have to keep in mind that we can pay no more than the negotiated supplemental rate.

So we make an (educated) estimate of the number of hours involved in the coaching supplemental to get that hourly rate. The coach completes a timesheet each pay period of the season.

Both rates are then used to pay each job and to weight any overtime involved.

This has generally worked out, but it is a bit of work.

We also faced this with a classified employee who took on a supplemental for theatre.

Good luck. No easy answer here if the District wants to hire a classified hourly in a supplemental role which puts them into overtime.



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MEMORANDUM

To: Treasurers

From: Erin Wessendorf-Wortman

Date: August 7, 2012

Re: Classified employees holding supplemental contracts

As you are aware, boards of education are required to issue written supplemental contracts to teachers who receive additional compensation for the performance of duties which are in addition to the teacher's regular teaching duties.¹ Boards of education are also permitted to issue written supplemental contracts to non-licensed persons for the purpose of coaching athletic teams or to direct and supervise any pupil activity program which is not a course offered for credit or a required part of any such course.² The supplemental contract should set forth the duties expected under the contract as well as the compensation to be paid for the additional duties.³

In order to initially employ a non-licensed person in a supplemental contract, the following conditions must be met:

1. The person must hold a permit issued by the State Board of Education;
2. The person must have the minimum qualifications for the position as established by State Board of Education regulations;
3. The board must have offered the position to licensed employees in the district, and not received any acceptance from persons qualified to fill the position;
4. The board must then have advertised the position as being available to qualified licensed personnel not employed by the district; and not received any acceptances; and
5. The board must have adopted a resolution stating that it has offered and advertised the position as described above, and that no qualified licensed individual has accepted the position.⁴

Additionally, in order to employ a non-licensed person on a supplemental contract it is necessary to avoid any problems that could occur with the Fair Labor Standards Act (FLSA), i.e.

¹ R.C. §3319.08.

² R.C. §3313.53.

³ R.C. §3319.08.

⁴ R.C. §3313.53.



potential overtime payments. To comply with the FLSA and avoid minimum wage compensation and potential overtime payments, non-teaching, nonexempt school employees can receive a stipend for services as a coach or advisors to a school's sports team(s) and club(s) so long as a number of requirements are met. These requirements were set forth in a U.S. Department of Labor opinion letter issued on November 10, 2005 (enclosed).

First, the U.S. Department of Labor must consider the employee on a supplemental contract to be a "volunteer" (teaching and non-teaching, alike). To be considered a volunteer under the federal guidelines⁵, a person must:

1. Offer services freely and without pressure or coercion, direct or implied, from an employer; and
2. Not be employed by the same employer for the *same type* of service; and
3. Perform services without promise, expectation or receipt of compensation. This prohibition does not apply to nominal fees given to volunteers.

Under the first two prongs, typical teaching and non-teaching employees receiving supplemental contracts will be considered to be "volunteers" if they are not forced to take a supplemental contract (i.e. they volunteer for the job), and if the job duties of the supplemental position are different than the "normal" job duties for which the employee is already employed. For example, a teacher of classified employee will be a volunteer for a supplemental position if he is not forced to take an assistant football coach position, and if his job duties as custodian are different from his job duties as an assistant football coach.

The last prong considers the fee that may be paid to the "volunteer" teaching or non-teaching employee receiving a supplemental contract. This consideration is entirely situation specific. In general, this "volunteer" may receive a set nominal fee. In order to constitute a *nominal* fee, two requirements must be met:

1. Nominal fees cannot be a substitute for compensation; and
2. Nominal fees must not be tied to productivity.

To consider both of these requirements, it is necessary to look at the economic realities of the particular situation.⁶ A key factor in this analysis is whether the amount of the nominal fee varies based on a variety of factors, including how much time the individual spends advising or

⁵ 29 C.F.R. §553.101.

⁶ 29 C.F.R. §553.106(f).



coaching, a win/loss record of the team or school activity, etc. When there is no variation in the amount of the nominal fee paid to the "volunteer", then the nominal fee is permissible because it is not a substitute for compensation or tied to productivity.

Note that it is permissible to vary the nominal fees among different activities. However, it is not permissible to vary the nominal fee based upon time commitment, win/loss, number of participating students, etc. It is also not permissible to vary the nominal fee based on whether a teaching or non-teaching employee holds the supplemental contract. If a teacher receives \$5,000.00 on a supplemental contract for an assistant football coach position, a classified employee receiving the same supplemental contract for the same position should receive the same *nominal* fee.

Once it is determined that an employee on a supplemental contract meets all of the above requirements, the *nominal* fee must be put through an "economic realities test." In order to pass the "economic realities test", the nominal fee must be less than twenty percent (20%) of what the Board of Education would have to pay to hire a full-time employee to perform the same services.

For example, if the Board of Education is looking to hire a custodian as the football coach on a supplemental contract for \$8,000.00, the fee amount is considered *nominal* only if \$8,000.00 is less than 20% of what it would cost the Board of Education to hire a full-time, salaried football coach. If a full-time, salaried football coach would receive a \$50,000.00 salary, the \$8,000.00 for the supplemental contract would be a permissible *nominal* fee because it is less than 20% of \$50,000.00 (or \$10,000.00). If the Board of Education currently has any full-time coaches on staff, the salary or hourly numbers for those employees should be used.

The Board of Education should examine under the economic realities test outlined above if the compensation paid pursuant to its supplemental contracts is less than 20% of what it would cost the Board of Education to hire a full-time employee to perform the same services. Normally, the supplemental contract compensation amounts will be less than 20% of what it would cost the Board of Education to hire a full-time employee to perform the same services. However, in certain higher profile positions (i.e. varsity football) the Board of Education will want to take care to ensure that it is not running afoul of the 20% limit.

Therefore, it is our opinion that Boards of Education may have classified employees on supplemental contracts so long as (1) the five steps above in how to offer the position are met, (2) the employee's services are offered freely without coercion, (3) the employee is not being paid to do the same or substantially similar job duties with the supplemental contract, and (4) the nominal fee given is in fact nominal. Any nominal fee should not be subject to variation, and it should be less than 20% of what the Board of Education would have to pay a full-time employee to perform the same services as the supplemental contract.

Classified Employees hired for Supplemental Position guidelines.

In order to initially employ a non-licensed person in a supplemental contract, the following conditions must be met:

- Position must have been offered to licensed employees in the district and not received any acceptance from persons qualified to fill the position.
- Position must have been advertised as being available to qualified license personnel not employed by the district; and not received any acceptances (qualified applicants).
 - Advertised in local paper and any other place vacancies are posted.
- Board of Education must adopt a resolution stating the position has been offered and advertised with no qualified licensed individual accepting the position.
- The person must hold a permit (pupil activity certificate) issued by the State Board of Education, if applicable.
- The person must have minimum qualifications for the position established by either the State Board of Education regulations or Board of Education.

Acknowledgement of Volunteer -

- Offer services freely and without pressure or coercion from an employer.
- Not be employed by the same employer for the same type of service.
- Perform services without promise, expectation or receipt of compensation.

The following exempts the employee from overtime regulation established as part of the Fair Labor Standards Board.

Nominal fees to "volunteer" -

- Cannot be a substitute for compensation
- Must not be tied to productivity
 - Pay may not vary according to win/loss record
- Nominal fee must be same as if compensation was paid to a teaching supplemental contract

Economic Realities Test -

- Must be 20% less than compensation paid to full time employee for same services
 - Full time refers to an employee performing the position as a full time employee. If the position is not offered as a full time position, a projection is considered as to what you would pay if a full time employee were employed.

Supplemental Contract
SCHOOL DISTRICT BOARD OF EDUCATION

This Agreement by and between _____ (hereafter "Employee") and the _____ **SCHOOL DISTRICT BOARD OF EDUCATION** (hereafter "Board"), pursuant to Ohio Revised Code §3313.53 and a Resolution duly adopted by the Board, on _____, 20__.

WHEREAS, the Board has determined it necessary to provide the services of _____, has accepted the recommendation of the Superintendent that the Employee be engaged to perform said services, and has authorized this Agreement; and

NOW, THEREFORE, for the consideration contained herein, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Commencing on _____ and ending on _____, Employee is employed to perform the supplemental duty of _____ for the _____ school year, or such part thereof as may succeed the effective date of employment under this Agreement, to serve in that position, and that Employee's duties in said position shall be as directed and assigned by the Superintendent pursuant to R.C. §3319.01. Employee further agrees to perform these duties and responsibilities in accordance with the policies, rules and regulations of the Board and all amendments thereto, during the life of this Agreement.

2. The Board agrees to pay Employee the sum of \$ _____ per school year, payable as provided by Resolution of Board and/or any Board-adopted salary schedule. For the express purposes of the Fair Labor Standards Act, the effective hourly wage rate for determining overtime pay, should any be due, is the Federal or State minimum hourly wage rate, whichever is higher. In no event may the Employee work more than 40 hours in one work week.

3. Employee is obligated to perform the services and duties provided for herein, and the Board's obligation to accept the Employee's performance of such services and duties shall terminate on _____, 20__. The Board shall not be obligated to compensate Employee for any such duties performed after said date. Further, this Agreement shall automatically expire and non-renew on that date without further action on the part of the Board.

4. Employee, where relevant, must meet the state certified requirements and provide proof of said certification upon the request of the Board.

5. This Contract may be terminated by the mutual agreement of the parties, retirement or resignation of Employee, and/or in accordance with Ohio laws.

IN WITNESS WHEREOF, the Board, by its President and Treasurer, having been duly authorized, and Employee, have set their hands this the ____ day of _____, 20__.

SCHOOL DISTRICT
BOARD OF EDUCATION

President

Employee

Van Buren Schools



Home of the Black Knights

Board of Education

Ken Rowles
President

Karen Flanagan
Vice President

Michael Leifheit
Edd Van Horn
Nicolle Wheeler

March 3, 2014

Dear Van Buren Supplemental Employee:

Administration

Tim Myers
Superintendent

Cheryl Swisher
Treasurer

Michael Brand
High School Principal

Jay Clark
Middle School Principal

Michael Newcomer
Elementary Principal

Due to federal regulations in the Fair Labor Standard Act (FLSA), you will now be required to keep track of your time spent doing your supplemental. This is not to justify your pay, but simply because the FLSA states we must pay you at least minimum wage for worked provided to us because you are not an exempt employee. The definition of exempt simply means you are not exempt from getting paid overtime for work over forty hours per week. Teachers and administration are exempt employees (meaning they do not get compensated for hours over 40 per week) – so they do not have to complete time sheets, but you will. I just didn't want any confusion on why someone may be doing timesheets and others may not.

You will have to complete and turn in the timesheet on the back of this form. We will put below the Maximum number of hours you can work on this supplemental. If you come close to exceeding these hours, you must speak to your supervisor and they must get Board (and possible Union) approval to increase the hours.

The maximum hours to work on this supplemental are:

I will be attending coaches meetings to try and explain this to all of you but in the meantime if you have questions please stop by or call me at 419-299-3863. Your timesheets must be turned in to be paid for the supplemental.

Thanks for your help in this.

Cheryl Swisher
Treasurer

Van Buren Schools



Home of the Black Knights

Calculation:

Supplemental Amount /
\$7.95 (minimum
wage in Ohio) =
Total
Hours Available to
Work (this number is
reflected above).

Pupil Activity Extra-Curricular Contract
(RC 3313.53)

This is an agreement between «First Name» «Last Name» and the Maysville Local School District Board of Education for the employment of Employee to direct, supervise, or coach the following Pupil Activity program during the 2014-2015 school year. The duration of this agreement shall be for one (1) school year.

The Employee will serve as «Position» for the 2014-2015 school year.

Compensations shall be paid by the Board to the Employee in the following amount(s) in accordance with the policy of the Board. For the 2014-2015 school year, the total salary is: «Amount».

The Employee and the Board also agree to the following terms of employment:

Employee acknowledges the requirement of O.R.C. 3313.53 that he/she may not serve under a contract exceeding one year in duration AND HEREBY WAIVES ANY CLAIM THAT HE/SHE IS ENTITLED TO PRIOR NOTICE OF CONTRACT NONRENEWAL OR TO A CONTINUING CONTRACT.

«First Name» «Last Name» is a non-certified employee of the Maysville Local School District and acknowledges that he/she is aware of the hours that he/she works in a regularly scheduled workweek.

«First Name» «Last Name» understands that for purposes of the Fair Labor Standards Act, any hours worked over his/her regularly scheduled workweek while performing the duties of his/her regular position and this position will be calculated at the greater of the Federal or State minimum wage rate. If more hours are worked over his/her regularly scheduled workweek in any one week, «First Name» «Last Name» is required to obtain prior approval of the Superintendent and file a time sheet for that week's total hours so that a determination can be made if additional compensation is due. If a time sheet is not filed with the Treasurer within two weeks after the completion of that pay period, «First Name» «Last Name» is acknowledging that he/she did not work more than his/her regularly scheduled work week in any one week during that pay period. The failure to file a time sheet for pay periods in which more hours were worked than his/her regularly scheduled workweek are multiplied by the appropriate hourly rate and the result is less than the amount in this contract, the balance of the contract will be paid in full. By signing this Contract, I am resigning this position effective at the end of the 2014-2015 school year. I acknowledge that by approval of this Contract the Board has accepted by resignation from this position and that it is binding.

This limited contract entered into at Zanesville, Ohio, this «Day» day of «Month», «Year».

Employee Signature

MAYSVILLE LOCAL BOARD OF EDUCATION

President's Signature

Treasurer's Signature

**PLEASE SIGN AND RETURN
TO TREASURER'S OFFICE.**