

Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

WWW.OHIOEDLAW.COM

# COACHING CONTRACTS Q & A

START YOUR DAY WITH ANSWERS TO  
FREQUENTLY ASKED COACHING  
CONTRACT QUESTIONS

June 24, 2016

*Presented by:*

**PAUL J. DEEGAN, ESQ.**

[pdeegan@ohioedlaw.com](mailto:pdeegan@ohioedlaw.com)

## TODAY'S MAIN TOPICS INCLUDE:

- Supplemental Contracts
- Pupil-Activity Permits
- Background Checks
- Overtime



Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

# SUPPLEMENTAL CONTRACTS

[WWW.OHIOEDLAW.COM](http://WWW.OHIOEDLAW.COM)

## WHAT IS A SUPPLEMENTAL CONTRACT?

- Supplemental contracts are for teachers who perform extra duties, such as coaching, in addition to their regular teaching duties.
- You cannot give someone a supplemental contract if they do not already have an initial contract.
- Supplemental contracts should be in writing, but they are not void if you fail to memorialize it.
- All supplemental contracts must be limited contracts.
- There is no such thing as a continuing supplemental contract.

# SUPPLEMENTAL CONTRACTS

## Ohio Statute

### R.C. 3319.08(A)

- Licensed individuals employed by a board of education may enter into a supplemental written contract with each teacher who is to perform additional duties.
- Supplemental contracts must be limited contracts.
- Supplemental contracts must set forth the teacher's duties and shall specify the compensation to be paid for regular teaching duties and additional teaching duties.
- A supplemental coaching contract typically lasts one year, but may be up to five.

## SUPPLEMENTAL CONTRACTS

### “Second-class” status of contract

- A supplemental contract employee who is not reemployed upon the expiration of the contract is not entitled to a written statement of circumstances and hearing.
- A board decision not to reemploy is not conditioned on evaluation of the employee.
- A board decision not to reemploy does not require service of written notice of nonrenewal on or before June 1 of the year in which the supplemental contract expires.
- A board is not obligated to give timely written notice of its choice to non-renew a supplemental contract.

## SUPPLEMENTAL CONTRACTS

### BE CAREFUL

Make sure none of the previously-mentioned requirements have been included in the terms of a collective bargaining agreement with teachers, which would supersede the statute.



## SUPPLEMENTAL CONTRACTS

- Supplemental contracts should include an automatic termination date to avoid any need for board action.
- An unclear expiration date could result in unwanted scenarios due to conflicting case law.
- Renewal of a supplemental contract requires a board vote of three-fourths where the superintendent has not recommended the employee for renewal.
- Where a superintendent has recommended renewal, the contract is renewed if the issue receives three or more affirmative votes by the board.



## SUPPLEMENTAL CONTRACTS

Any questions about  
supplemental contracts?



Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

# PUPIL ACTIVITY PROGRAMS & PERMITS

[WWW.OHIOEDLAW.COM](http://WWW.OHIOEDLAW.COM)

## WHAT ARE PUPIL-ACTIVITY PROGRAMS, PERMITS, AND CONTRACTS?

- Districts establish and create and maintain pupil activity programs – such as athletic programs – directly related to the curriculum.
- A board of education may employ professional staff to direct, supervise, or coach such pupil activity programs.
- Or, a board of education may employ a non-licensed individual (e.g., non-teacher) to coach a pupil-activity program as long as that individual holds a valid pupil-activity program permit issued by the state board of education under 3319.303(A).

## PUPIL ACTIVITY PROGRAMS, PERMITS, AND CONTRACTS

An individual must obtain a pupil-activity permit from the state board of education before he or she may be hired by a BOE to coach, regardless of licensure or non-licensure.

See OAC 3301-27-01

There are specific requirements for individuals to obtain a Pupil-activity permit.

- See handout about requirements

A current teacher employed to coach receives: supplemental contract

A non-licensed individual receives: pupil-activity contract

## HIRING NON-LICENSED INDIVIDUALS FOR COACHING JOBS

- The law favors boards of education hiring licensed coaches.
- A non-licensed individual who holds a valid PAP may be employed only after the board of education adopts a resolution stating that it has offered such position to those employees of the district who are licensed individuals and no such employee qualified to fill the position has accepted it.
- **BUT THERE'S MORE.** A board must then advertise the position as available to any licensed individual who is qualified to fill it and who is not employed by the board. Only after no such person has applied for and accepted the position may a board hire a non-licensed individual.

## HIRING PRACTICES

- Must you hire a licensed individual to coach when such person is the only licensed person interested in the job?
- Short answer: no
  - A licensed individual is also required to meet certain standards to coach. If not, they can't be hired.
  - Sound discretion of the board: a person must be “qualified to fill the position.” A board may deem someone with the appropriate credential unqualified for the position for some other reason.
  - The applicable statutes do not create a right to a job – but rather, procedures for proper hiring.

## NON-LICENSED INDIVIDUALS

- A board may renew the contract of any non-licensed individual currently employed by the board without first offering the position held by that individual to employees of the district who are licensed individuals or advertising the position to licensed non-employees. R.C. 3313.53 (D)(2).
- A non-licensed individual employed as a coach or supervisor is a nonteaching employee and is not an educational assistant. R.C. 3313.53(E).
- A non-licensed coach must be compensated the same amount as the position was or would be offered to the district's licensed employees. Compensation may not be reduced unless part of a uniform plan. The contract may not be for more than 1 year.

## NON-RENEWAL

- At least one court has held that non-licensed coaches in local school districts are entitled to notice of contract nonrenewal in the same manner as other nonteaching employees, and will be automatically re-employed if such notice is not given. *Pistone v. Canfield Local Bd. of Educ.*, 1987 Ohio Ap.. LEXIS 7655 (applying R.C. 3319.083 to non certificated [nonlicensed] coach)
- Non-licensed coaches in city school districts:
  - The statute is confusing – it suggests that civil service rules do not apply to these employees. No court has addressed the issue.
- Avoid being the test case – give notice of contract nonrenewal by June 1 to non-licensed coaches with pupil activity contracts.



PUPIL ACTIVITY  
PROGRAMS/PERMITS/CONTRACTS  
NON-LICENSED INDIVIDUALS

Any questions related to this section?



Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

# BACKGROUND CHECKS

## BACKGROUND CHECKS

- Non-licensed coaches or activity supervisors must pass a background check performed by the Bureau of Criminal Identification and Investigation and the Federal Bureau of Investigation.
- Professional staff employed by board receiving supplemental coaching contracts must also pass a background check.
- Applicable statutes:
  - R.C. 3301.541 – Criminal Record Check Statute
  - R.C. 3319.291 – Criminal records check for schools
  - R.C. 3319.39 – Criminal records check for teachers
  - R.C. 109.57(F) – State Law re: background checks
  - R.C. 109.572 – Convictions of certain crimes

Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

OVERTIME

[WWW.OHIOEDLAW.COM](http://WWW.OHIOEDLAW.COM)

## OVERTIME

- The Fair Labor Standards Act requires a board of education to pay hourly employees time and a half for hours worked over 40.
- Teachers are exempt from this requirement.
- Non-teaching employees hired to coach are subject to overtime pay.
- Coaching contracts are typically for a set amount of money which makes it difficult to track how many hours are needed to be performed per week.
- Prudent course of action: Non-teaching coaches should keep time records in order to be compensated for working more than 40 hours in any given week.

## OVERTIME/COMPENSATION

- Reminders:
  - FLSA rights cannot be waived or bargained away
  - Avoid paying a volunteer coach (it could violate your CBA or Ohio law)
  - Do not allow boosters to pay for a portion of a coach's compensation.
    - A booster group may donate funds to the district, which, in turn, may use the funds to compensate the coach.



Smith  
Peters  
Kalail  
CO., L.P.A.

ATTORNEYS AT LAW

2016 OSBA  
SPORTS LAW  
WORKSHOP

[WWW.OHIOEDLAW.COM](http://WWW.OHIOEDLAW.COM)

THE END

ANY OTHER  
QUESTIONS?