

November 9, 2022

The Honorable Joseph T. Deters  
Hamilton County Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, OH 45202

SYLLABUS:

2022-014

- (1) The exemption to the federal minimum-wage requirements for minor-league baseball players found in 29 U.S.C. 213(a)(19) is incorporated without limitation into both the minimum-wage and overtime sections in the Ohio Revised Code, R.C. 4111 *et seq.* and the Fair Minimum Wage Amendment of the Ohio Constitution, Article II, Section 34a.
- (2) Because Ohio law incorporates the exemption found in 29 U.S.C. 213(a)(19), minor-league baseball players are exempt from the minimum-wage and overtime protections in R.C. 4111 *et seq.* and the Fair Minimum Wage Amendment of the Ohio Constitution, Article II, Section 34a, provided that the players' contracts meet the requirements of 29 U.S.C. 213(a)(19).



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OPINION NO. 2022-014

The Honorable Joseph T. Deters  
Hamilton County Prosecuting Attorney  
230 East Ninth Street, Suite 4000  
Cincinnati, OH 45202

Dear Prosecutor Deters:

You have requested an opinion regarding the applicability of the federal Fair Labor Standards Act (FLSA) to minor-league baseball players in Ohio, under Ohio law. I have framed your questions as follows:

- (1) Do the Ohio minimum-wage and overtime provisions in R.C. 4111 *et seq.*, along with the Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution, incorporate the exemptions into the FLSA found in 29 U.S.C. 213(a)(3) and 29 U.S.C. 213(a)(19)?
- (2) If the answer to question one is “yes,” are minor-league players exempt from the FLSA and therefore Ohio minimum-wage and overtime requirements under 29 U.S.C. 213(a)(19), the Save America’s Pastime Act (SAPA) exemption?

- (3) If the answer to question one is “yes,” are minor-league players exempt from the FLSA and therefore Ohio minimum-wage and overtime requirements under 29 U.S.C. 213(a)(3), the seasonal exemption?

For the reasons that follow, I find that the answers to questions one and two are “yes.” Because the answer to question two is “yes,” minor-league players are exempt from Ohio minimum wage and overtime protections under the SAPA exemption. Thus, there is no need to analyze question three regarding whether players are also exempt under the FLSA’s seasonal exemption.

## I

Understanding the organization and operation of Major League Baseball (MLB) and minor-league baseball is integral to this analysis.

## A

MLB is a professional sports league composed of thirty teams, or clubs. *Major League Constitution*, MLC Art. VIII Sec. 1, available at <https://perma.cc/8ZRL-PLAM>. These clubs are divided into two leagues: the American League and the National League, both of which have three divisions based on geographical location. *Id.* Each MLB club has four minor-league teams relevant here: one Single-A, one High-A, one Double-A, and one Triple-A. Major League Baseball, *Teams in Minor League Baseball by Affiliate*, <https://perma.cc/9QVV-YVYA>. Minor-league baseball makes up the pool from which MLB

gets its players. All players, whether in MLB or the minor leagues, sign uniform player contracts with MLB for employment as baseball players. *Senne v. Kansas City Royals Baseball Corp.*, 105 F.Supp.3d 981, 991 (N.D.Cal.2015); *see generally*, Major League Rules 2021, MLB Rule 3(a)(1)(A)(ii), available at <https://perma.cc/9VPQ-TUCL>.

Both MLB and minor-league clubs play a Championship Season, which is the full schedule of regular-season games between early April through late September. Currently, minor-league Triple-A teams play 150 games and the other minor-league affiliates play fewer games per season. *See e.g.*, Mike Axisa, CBS Sports, *Minor League Baseball extends Triple-A season by six games for 150-game slate in 2022* (Feb. 3, 2022), <https://perma.cc/P7F5-6YMH>.

In addition to the Championship Season, MLB and minor-league players take part in spring training at camps in either Arizona or Florida between February and March. And there are options for players to participate in the winter leagues, exhibition games, or postseason games, or to make official appearances at events. *See generally*, Major League Rules 2021, available at <https://perma.cc/9VPQ-TUCL>. The minor-league postseason typically ends in early October, and the MLB postseason typically ends in early November with the World Series. Minor League Baseball, *MiLB Playoff procedures*, <https://perma.cc/Z3VS-N5P8>; Major League Baseball, *MLB announces 2022 postseason schedule* (Aug. 15, 2022), <https://perma.cc/XBB3-EAEL>. Participation in these non-Championship Season activities is expected pursuant to the uniform

players contract. *See*, Major League Rules 2021, available at <https://perma.cc/9VPQ-TUCL>. Players are also required to maintain their physical fitness and skills outside the Championship Season. *Id.*

B

1

The FLSA is found in Chapter 8 of Title 29 of the U.S. Code, and it outlines requirements and guidelines for employers as it relates to work conditions, minimum wage, and overtime payments for eligible employees.

The FLSA’s minimum-wage requirements are laid out in 29 U.S.C. 206, and the current minimum wage is \$7.25 per hour. The maximum-hour requirements are laid out in 29 U.S.C. 207, which states that employees working over 40 hours per week shall be paid no less than 1.5 times the regular rate of pay. 29 U.S.C. 206-207. However, travel to and from a place of work, or activities that occur before the workday starts or after it ends, are not considered for overtime pay unless there is a contract or custom in place. 29 U.S.C. 254(a)-(b).

Other provisions in the FLSA recognize categories of employees that are exempt from its minimum-wage and maximum-hour requirements. These employees would not be entitled to the protections and guarantees of the FLSA. One such exemptions—the “SAPA exemption”—is relevant here. It states:

any employee employed to play baseball who is compensated pursuant to a contract that provides for a weekly salary for services performed during the league's championship season (but not spring training or the off season) at a rate that is not less than a weekly salary equal to the minimum wage under section 206(a) of this title for a workweek of 40 hours, irrespective of the number of hours the employee devotes to baseball related activities.

29 U.S.C. 213(a)(19).

2

Ohio outlines its minimum-wage and overtime requirements in R.C. Chapter 4111, as well as in the Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution. Both incorporate definitions, and rules regarding overtime, from the FLSA.

The Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution specifies that:

[a]s used in this section: "employer," "employee," "employ," "person" and "independent contractor" have the same meanings as under the federal Fair Labor Standards Act or its successor law, except that "employer" shall also include the state and every political

subdivision and “employee” shall not include an individual employed in or about the property of the employer or individual’s residence on a casual basis. Only the exemptions set forth in this section shall apply to this section.

R.C. 4111.14(B) states that:

In accordance with Section 34a of Article II, Ohio Constitution, the terms “employer,” “employee,” “employ,” “person,” and “independent contractor” have the same meanings as in the “Fair Labor Standards Act of 1938,” 52 Stat. 1060, 29 U.S.C. 203, as amended. In construing the meaning of these terms, due consideration and great weight shall be given to the United States department of labor’s and federal courts’ interpretations of those terms under the Fair Labor Standards Act and its regulations. As used in division (B) of this section...

R.C. 4111.14(B)(1) defines “employee” as:

individuals employed in Ohio, but does not mean individuals who are excluded from the definition of “employee” under 29 U.S.C. 203(e) or individuals *who are exempted from the minimum wage requirements in 29 U.S.C. 213* and from

the definition of “employee” in this chapter.

(emphasis added).

Pertaining to overtime, R.C. 4111.03(A) states:

Except as provided in section 4111.031 of the Revised Code, an employer shall pay an employee for overtime at a wage rate of one and one-half times the employee’s wage rate for hours worked in excess of forty hours in one workweek, in the manner and methods provided in *and subject to the exemptions of section 7 and section 13 of the “Fair Labor Standards Act of 1938,” 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended*, and, effective beginning on the effective date of this amendment, sections 2 and 4 of the “Portal to Portal Act of 1947,” 29 U.S.C. 252 and 254.

(emphasis added).

As in 29 U.S.C. 254, the Ohio Revised Code states that travel to and from a place of work or activities that occur before the workday starts or after it ends are not considered for overtime pay unless there is a contract or custom in place. R.C. 4111.031(A); R.C. 4111.031(C). However, if an employee performs activities before or after the workday that are typically done during the workday, or are done at the request



of the employer, it does constitute overtime work. R.C. 4111.031(B).

## II

You first ask whether the SAPA exemption in the FLSA is incorporated into Ohio law.

Based upon their plain language, Ohio's minimum-wage and overtime statutes, along with the Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution, both explicitly incorporate the FLSA in its entirety and defer to federal interpretations of FLSA provisions, without limitation. R.C. Chapter 4111; Article II, Section 34a of the Ohio Constitution; *Bautista v. Ohio Univ.*, Ct. of Cl. No. 2020-00592JD, 2022-Ohio-3085, ¶ 19 citing *Dillworth v. Case Farms Processing, Inc.*, N.D. Ohio No. 5:08CV1694, 2009 U.S. Dist. LEXIS 76947, at \*13 (Aug. 27, 2009) ("Ohio's minimum wage and hour statute, O.R.C. § 4111 *et seq.*, 'expressly incorporates the standards and principles found in the FLSA,' *Thomas v. Speedway SuperAmerica, LLC*, 506 F.3d 496, 501 (6th Cir. 2007) (citing Ohio Rev. Code § 4111.03(A)), and accordingly is interpreted similarly."); *Haight v. Minchak*, 146 Ohio St.3d 481, 2016-Ohio-1053, 58 N.E.3d 1135, ¶ 12-13 (the Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution "incorporates the FLSA without limitation" and "the entirety of the FLSA is to be considered when determining who is covered under its protections").

Of particular relevance here, R.C. 4111.14(B)(1) and R.C. 4111.03(A) both incorporate the exemptions in 29 U.S.C. 213. That section contains the SAPA exemption, which is codified at 29 U.S.C. 213(a)(19). Thus, Ohio law expressly incorporates the SAPA exemption.

All of this is consistent with precedent from the Supreme Court of Ohio, which has held that all of the exemptions in the FLSA, including those in 29 U.S.C. 213, are incorporated because the entirety of the FLSA is incorporated. *Id.* at ¶ 14. *See also, dissenting opinion in Haight v. Cheap Escape Co.*, 2014-Ohio-2447, 11 N.E.3d 1258, ¶29 (2d Dist.) (J. Welbaum, dissenting) (cited approvingly by majority opinion in *Haight v. Minchak*, 146 Ohio St.3d 481).

As a result, the SAPA exemption to FLSA protections, contained in 29 U.S.C. 213(a)(19), is incorporated into Ohio law. The answer to question one is “yes.”

### III

Because I conclude that Ohio’s minimum wage laws incorporate the federal SAPA exemption, I must next analyze whether minor-league players who are subject to the SAPA exemption from the FLSA are also exempt from Ohio minimum-wage and overtime requirements.

While typically the Ohio Attorney General “is not empowered to render authoritative interpretations of federal law”, this office may provide guidance and analysis of federal law when “provisions of federal law are explicitly intertwined with related issues of state law.”

1999 Op. Att’y Gen. No. 99-007, at 2-55; 2009 Op. Att’y Gen. No. 09-036, at 2-271. Accordingly, because all protections and exemptions in the FLSA are explicitly incorporated into Ohio law and the Ohio Constitution, they necessarily must be analyzed when inquiring about minimum-wage and overtime protections in Ohio law.

#### A

Effective in 2018, the SAPA exemption amended the FLSA, as stated in the bill summary, specifically “to exempt from minimum wage and maximum hours requirements any employee who has contracted to pay baseball at the minor league level” and, as codified, to “clarify certain requirements under the Fair Labor Standards Act of 1938 with respect to minor league baseball players.” H.R. 5580 – 114<sup>th</sup> Congress (2015-2016): Save America’s Pastime Act, H.R. 5580, 114<sup>th</sup> Cong. (2016), H.R.5580 - 114th Congress (2015-2016): Save America’s Pastime Act | Congress.gov | Library of Congress.

The analysis of the SAPA exemption is contingent upon the terms of a contract. Though the Attorney General is “unable to make findings of fact or to interpret provisions of a particular contract or agreement,” this opinion can state whether, if the requisite elements of the exemption are satisfied, the exemption would apply. 1990 Op. Att’y Gen. No. 90-111, 2-502; *see also*, 2013 Op. Att’y Gen. No. 13-016, 2-155 (“the Attorney General is not authorized to interpret the terms of a particular contract or agreement”).

Here, the SAPA exemption's elements track the uniform players contract that all minor-league players sign: it applies to employees who are hired to play baseball, and who are compensated based upon a contract that: (1) provides a weekly salary during only the Championship Season (not spring training or the off season), (2) pays a rate not less than the minimum wage under 29 U.S.C. 206(a), and (3) covers a workweek of forty hours per week regardless of how many hours are actually spent on baseball or related activities. 29 U.S.C. 213(a)(19). The clause regarding the forty-hour workweek establishes that there would also be no overtime payment pursuant to 29 U.S.C. 207 or 254. Notably, if any of the contract terms change, this exemption may not apply.

## B

Given that the SAPA exemption was tailored specifically to apply to minor-league players, who sign uniform contracts, and that both the Ohio minimum wage and overtime laws and the Fair Minimum Wage Amendment in Article II, Section 34a of the Ohio Constitution incorporate the FLSA and its exemptions without limitation, it is likely that a minor-league player who falls under the SAPA exemption of the FLSA will also be exempt from the minimum-wage and overtime protections in Ohio law. R.C. 4111.14(B); Ohio Constitution, Article II, Section 34a; *see also*, *Bautista*, 2022-Ohio-3085, ¶ 19; *Haight v. Minchak*, 146 Ohio St.3d 481, ¶ 12-13; *compare with Senne v. Kansas City Royals Baseball Corp.*, N.D.Cal. No. 14-cv-00608-JCS, 2022 U.S.

Dist. LEXIS 45932, at \*65-66 (Mar. 10, 2022) (SAPA was not relevant to an analysis of Florida minimum wage laws because the relevant state law did not incorporate the amendment).

Thus, the answer to question two is “yes,” minor-league players, under current law, would be exempt from both FLSA and Ohio protections for minimum wage and overtime.

#### Conclusion

Accordingly, it is my opinion, and you are hereby advised that:

- (1) The exemption to the federal minimum-wage requirements for minor-league baseball players found in 29 U.S.C. 213(a)(19) is incorporated without limitation into both the minimum wage and overtime sections in the Ohio Revised Code, R.C. 4111 *et seq.* and the Fair Minimum Wage Amendment of the Ohio Constitution, Article II, Section 34a.

(2) Because Ohio law incorporates the exemption found in 29 U.S.C. 213(a)(19), minor-league baseball players are exempt from the minimum-wage and overtime protections in R.C. 4111 *et seq.* and the Fair Minimum Wage Amendment of the Ohio Constitution, Article II, Section 34a, provided that the players' contracts meet the requirements of 29 U.S.C. 213(a)(19).

Respectfully,

A handwritten signature in blue ink that reads "Dave Yost". The signature is written in a cursive, flowing style with a large, looped "D" and "Y".

DAVE YOST  
Ohio Attorney General