

ARE EMPLOYEES WHO WORK AT THE TOWN POOL ENTITLED TO OVERTIME IF THEY WORK MORE THAN 40 HOURS IN A WORKWEEK?

No. The Fair Labor Standards Act includes a specific exemption for amusement and recreational employees from minimum wage and overtime requirements. Twenty-nine U.S.C. § 213(a)(3) exempts any employee who is employed by an establishment that is an amusement or recreational establishment, organized camp, or religious or non-profit educational conference center:

- if the establishment does not operate for more than seven months in a calendar year; or
- if, during the preceding year, its average receipts for any six months of the year were not more than 33 1/3 percent of its average receipts for the other six months of that year.

In order to apply this exemption, a town needs to determine whether it operates a seasonal recreational “establishment.” The U.S. Department of Labor defines “establishment” as “a distinct physical place of business rather than an integrated business or enterprise.” *Fair Labor Standards Handbook, Volume I*. A beach or swimming pool open seven months or less complies with this definition and a town would not be required to pay the minimum wage or overtime. Other establishments whose employees may be exempt include concession stands at beaches, pools or public golf courses, summer camps and seasonal recreation programs.

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