



## Exempt vs. Non-Exempt

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### The Fair Labor Standards Act

The Fair Labor Standards Act (FLSA) is a federal law that governs the payment of minimum wage and overtime to employees.

#### Minimum Wage

In general, most employees must be paid at least the federal minimum wage for all hours worked. Some states have a higher minimum wage that must be honored. See chart on the following page.

#### Overtime Pay

Employees are also entitled to overtime pay at time and one-half the regular rate of pay for all hours worked over 40 hours in a workweek. BJL defines a workweek as Monday – Sunday. Only hours worked count. If the employee is paid holiday pay and did not work on the holiday, the 8 hours of HOL earnings do not count towards overtime.

#### Exemption

The FLSA provides an exemption from both minimum wage and overtime pay for specific types of employees. To determine whether an individual employee qualifies for an exemption, the employee must meet certain requirements regarding both the employee's **wages and job duties**.

The FLSA defines an exempt employee such as:

1. The employee must be guaranteed a salary that equates to no less than \$684 per week. (\$35,568 per year).

Commission or Lesson income can account for 10% of the threshold.

2. The employee's primary duty must consist of managing the business or a customarily recognized department; and
3. The employee must customarily and regularly direct the work of two or more other employees;
4. The employee must have authority to hire or fire employees, or the employee's recommendations as to hiring, firing, or promotion of employees must be given particular weight.

An IRS fact sheet that can help any understanding of any exemption is located here:

[IRS Exempt Employee Fact Sheet](#)

[https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a\\_overview.pdf](https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fs17a_overview.pdf)

Instructors may fall into a grey area and be hard to classify. Things to consider when making an instructor exempt:

- Does the instructor manage at least two employees?
- Does the instructor have the authority to make hiring and firing decisions?
- Does the instructor spend at least 50% of his or her on managerial duties?
- You cannot reduce pay for missing time during a workweek.

Answers to these questions do not necessarily make a final determination of classification; however, they should be considered and discussed with BJL HR.

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### Frequently Asked Questions:

#### Can we require exempt, salaried associates to clock in and out?

Yes. There are many reasons you might want or need to track exempt employee time. For example, you may opt to track an exempt employee's hours for purposes of client billing, Family and Medical Leave Act (FMLA), retirement plans, or hours-based benefits calculations such as vacation accrual. However, as a general rule, we recommend focusing on whether the job is getting done instead of worrying about the exact amount of time spent in the office. Tracking exempt employee hours adds likely unnecessary work to their plate and to yours.

While you may choose to track the hours of exempt employees, ensure the information is not used to take deductions from an employee's regular salary, unless such deductions are allowable under both state and federal law. An exempt employee's salary should not fluctuate based on the number of hours worked within the workweek. Prorating an exempt employee's salary based on hours worked may result in the loss of the exemption.

The only time to prorate an exempt, salaried associates pay is their first pay check after hire date if it is less than a full pay period. Or on the exempt, salaried associate's final paycheck if they do not work the entire work week of their final week.

#### Is the club required to offer paid breaks?

The FLSA does not require the following:

- Vacation, holiday, or sick pay
- Meal or rest periods (except break periods for nursing mothers)
- Holidays off or vacations
- Premium pay for weekend or holiday work
- Pay raises or fringe benefits

Although it is not required by the FLSA, Bobby Jones Links does follow all policies documented in the Bobby Jones Links Associate Handbook.

### What about seasonal employees?

For seasonal operators, the Department of Labor provides an exemption for overtime pay for all employees if specific criteria are met. Here is a summary of the DOL seasonal exemption rule;

#### Key Exemptions:

1. **Overtime Exemption:** Seasonal businesses may qualify for exemptions from paying overtime. Under Section 13(a)(3) of the FLSA, an establishment that does not operate for more than seven months in any calendar year or earns more than one-third of its annual revenue in any six months is exempt from the overtime pay requirements. This means employees working beyond 40 hours per week during the peak season might not be entitled to overtime pay.
2. **Minimum Wage Exemption:** In some cases, seasonal amusement or recreational establishments may be exempt from the minimum wage requirements if they meet similar criteria to the overtime exemption.

**Eligibility Criteria:** To benefit from these exemptions, a business must:

1. Operate for fewer than eight months in a year or
2. Their highest revenue period (six months) accounts for more than 66.67% of their annual income.

NGCOA would remind operators that even with these exemptions, businesses must maintain accurate records and fully comply with all applicable labor laws. Misclassification or incorrect application of exemptions can lead to significant penalties.

***These are general guidelines and are subject to change by the IRS or BJJ. Please contact BJJ HR if you have any concerns about classifying employment.***