



THE IMPORTANCE OF COMPLYING WITH MINIMUM WAGE, OVERTIME AND TIPPING REGULATIONS

BY DAVID PIERCE



It can be difficult for restaurants to comply with the ongoing changes in state and federal employee pay regulations.

The most common issues are around excessive side work, unpaid overtime, unpaid wages, missed meals, missed breaks, and nonpayment for mandatory job-related training, which is required under the Fair Labor Standards Act (“FLSA”).

Tipping has been customary in America’s restaurants for years. Servers were able to increase their income, customers used it to reward good service, and restaurant management was able to keep down labor costs. However, many restaurants had difficulty achieving compliance with tipping laws because of their complexity, state-to-state variation, and inconsistency of enforcement.

As class-action wage and hour suits have become more profitable and less labor intensive than discrimination lawsuits, large restaurant chains are facing litigation brought by employees who allege that they are underpaid per federal regulations. The suits involve thousands of workers at restaurants nationwide who receive a tip credit wage while performing side work such as washing dishes, cleaning and setting tables, making coffee, and sweeping floors. The FLSA makes it illegal for employers to pay servers and bartenders below minimum wage on the basis that they are tipped employees, while also having them perform excessive side work that does not produce tips. Federal regulations provide that servers and bartenders may spend up to

20% of their time doing non-tipped side work, but must be paid at the federal minimum wage rate after that. If the work takes longer, it is supposed to be treated as a separate job at full minimum wage, to prevent abuse (i.e. hiring employees for less than minimum wage, even though they are performing minimum wage work). If an employee is primarily a server and is needed to provide non-server duties, they should clock out and back in as a non-server for those tasks.

And the law is not the same in every state. Many states have tipped minimum wages that exceed the federal tipped minimum wage and differing non-tipped side work rules.

Minimum wage overtime lawsuits are also a risk for restaurant operators if regulations are not followed. The FLSA requires employers to pay for all hours worked as well as for overtime hours. Failure to do so is a violation of the minimum wage and overtime provisions of the FLSA.

Most restaurant operators don’t purposefully violate tipping rules. As mentioned above, the rules are complex. Compliance can be difficult. Continuously reviewing tipping practices, regulations, job responsibilities and payment practices will greatly assist restaurant operators to reduce risk.

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