

Avoid Investigations Through Labor Law Enforcement



The U.S. Department of Labor Wage and Hour Division has set its aim – with ample ammunition – on the restaurant industry. Focusing on overtime, minimum wage and record-keeping violations, the enforcement initiative has recovered millions of dollars in back wages and penalties from restaurants throughout the country. In a stated effort to protect the more vulnerable members of the workforce, the DOL has initiated several high-profile enforcement initiatives focused on restaurants. Restaurants often employ recent immigrants, individuals with limited English language skills and people uninformed about their employment rights. The DOL believes this population can too easily be taken advantage of through unlawful pay practices. As a result, it is likely the restaurant industry will continue to be the focus of the DOL's efforts for the foreseeable future.

Certain areas of the country, including Boston, South Carolina, Florida and New York are the primary focus of the targeted restaurant industry enforcement initiative; however, every region is seeing increased activity in this area. In Boston, for example, the DOL has recovered more than \$1.3 million in back wages during the initiative, in addition to assessing penalties and damages. The Columbia District Office in South Carolina has recovered more than \$2.5 million in back wages from more than 300 restaurant investigations since 2009. The Tampa, Fla. region has been similarly active, recovering \$500,000 in back wages for restaurant employees in 2012 alone.

The DOL shows no signs of slowing down. Since the last quarter of 2012, the DOL has announced wide-ranging suits and settlements concerning wage and hour violations in the restaurant industry nationwide. Some notable settlements and actions include:

- **Columbia, S.C.:** Investigators found systematic wage and hour violations at three San Jose Mexican restaurants, including overtime, minimum wage and record-keeping violations, resulting in a \$390,960 settlement. A fourth San Jose Mexican restaurant was also investigated and entered into a settlement of \$170,666 for minimum wage violations.
- **San Antonio, Texas:** The DOL filed suit against three China Sea Restaurants seeking over \$1 million after an investigation found minimum wage, overtime and record-keeping violations. In addition, the DOL alleges the restaurant made improper wage deductions for employees' housing and meals.
- **Westbury, N.Y.:** A three-restaurant chain doing business as Asian Moon and Golden Rod restaurants has been ordered to pay \$1.08 million in back wages plus \$98,231 in penalties and interest for failure to pay overtime and minimum wage violations.
- **Long Island, N.Y.:** Chateau Briand, a catering hall, has been ordered to pay \$278,000 in back wages for various wage and hour violations, including failure to pay minimum wage and overtime to kitchen employees by paying the workers a flat rate regardless of the number of hours worked.
- **Boston, Mass.:** The DOL reached a settlement with three restaurants operated by the Sunset Management Corp. to resolve overtime violations. The owner failed to pay overtime for more than 40 hours worked and also refused to combine hours worked in multiple locations in a single workweek. The parties agreed to a settlement of \$675,000, with half of that amount allocated to back wages and the other half to liquidated damages.

These are just some of the sizeable amounts recovered in settlements, court orders and lawsuits by the DOL in recent months. Regulators believe razor-thin profit margins, coupled with the traditionally vulnerable population forming the restaurant industry workforce, creates conditions ripe for wage and hour violations. Recently departed Secretary of Labor Hilda L. Solis has explained that “restaurant workers are among the most vulnerable workers in this country. [The recent activity] demonstrates the department’s commitment to using all enforcement tools available, including litigation, to recover workers’ wages and ensure a level playing field for law-abiding employers.”

While the DOL has long relied on employee complaints to initiate investigations, it has recently launched a free smartphone app intended to arm employees with the information needed to understand wage and hour laws and even lodge a complaint. The DOL’s Timesheet App, which is available in both English and Spanish, allows the user to track regular time, breaks and overtime hours, and calculate the wages due at the appropriate rates. In addition to tracking capabilities, the app also provides information about employee rights, relevant labor laws and instructions on how to file a wage violation complaint. Indeed, a “contact us” button takes a user directly to the DOL’s website and customer service request form. The app also includes a glossary linking to the DOL’s easy to understand fact sheet about overtime pay and minimum wage overviews. Employees can print, email and retain reports about their wages and hours to provide to DOL investigators or to use in private lawsuits. When the DOL launched the app, then-Secretary of Labor Solis stated, “I am pleased that my department is able to leverage increasingly popular and available technology to ensure that workers receive the wages to which they are entitled. This app will help empower workers to understand and stand up for their rights when employers have denied their hard-earned pay.”

In light of this articulated focus on the restaurant industry, restaurant owners and operators must be diligent in complying with the Fair Labor Standards Act. Common missteps in tip pooling, counting hours and calculating overtime pay can turn into significant liabilities as a result of a single complaint from an employee, or more frequently, a former employee. Once the DOL is engaged, poor record-keeping can magnify the problem because the restaurant will be unable to rebut the employee’s contentions about time actually worked. Restaurateurs should take steps now to ensure compliance with state and federal wage and hour laws to minimize the risk of a DOL investigation. Remedying misclassifications or improperly calculated overtime now can save thousands down the road.

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