

HR Compliance for Restaurants

How to Protect Your Business From Fines, Penalties & Lawsuits

March 22, 2023



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Founder & President



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Today's Agenda



- 01 What is HR Compliance?
- 02 The DOL Targets the Restaurant Industry
- 03 Two Areas of DOL Focus
- 04 The Expensive Cost of Non-Compliance
- 05 Wage & Hour Laws for Restaurant Owners
- 06 Equal Employment Opportunity Pitfalls
- 07 Protect Your Business from DOL & Employee Lawsuits



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What is Human Resources Compliance?

Aligning and implementing HR policies and procedures to ensure your business follows governments' labor and employment laws and regulations.



Avoids fines and penalties for non-compliance



Shows good-faith efforts to recognize and adhere to laws



Assures employees that they work for a reputable company

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Department of Labor's Increased Scrutiny -- 2014

“ We want to go where there's a high likelihood that there are vulnerable workers and laws are not being complied with. And so that's one of the reasons why we pay careful attention to what's happening in restaurant industries across the country. ”

Laura Fortman

U.S. Department of Labor

- ✓ High-Violations
- ✓ Low Wages
- ✓ Workers ignorant of their rights
- ✓ Young / Inexperienced Supervisors
- ✓ Owners Greed



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Low Wage, High Violation Industries			2022 US Department of Labor
Industry	Cases	Back Wages	Employees
Agriculture	879	5,815,943	8,260
Amusement	182	420,904	665
Apparel Manufacturing	114	989,237	359
Auto Repair	308	1,334,622	1,249
Child Care Services	347	545,157	1,190
Construction	2,268	32,913,795	17,127
Food Services	3,840	27,142,447	22,531
Guard Services	606	3,900,935	4,606
Hair, Nail & Skin Care Services	76	275,896	207
Health Care	1,104	14,994,106	22,451
Hotels and Motels	595	4,636,891	3,018
Janitorial Services	339	3,397,300	1,295
Landscaping Services	252	2,670,300	1,947
Retail	1,812	7,448,019	6,715
Temporary Help	400	8,192,262	6,764

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Two Areas of Department of Labor's Focus



Wage & Hour Laws


Fair Labor Standards Act (FLSA) – Minimum wage, overtime, record-keeping, child labor, exempt vs. non-exempt classification, tip laws



Equal Employment Opportunity


Title VII of Civil Rights Act -- Discrimination and harassment based on a person's race, color, religion, sex, national origin, age, disability or genetic information.

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Displaying 1 - 24 of 576 results for 'restaurant'

Title	Date
Joe & The Juice Resolves Sex Discrimination Charge	February 02, 2023
Burger King Franchise to Pay \$60,000 to Settle EEOC Sexual Harassment and Retaliation Suit	January 19, 2023
McDonald's Franchise to Pay Nearly \$2 Million to Settle EEOC Sexual Harassment Lawsuit	January 06, 2023
JDKD Enterprises Will Pay \$100,000 to Settle EEOC Disability Discrimination Suit	December 16, 2022
EEOC Sues Mexico Restaurant for Sexual and Racial Harassment	September 29, 2022
EEOC Sues Red Robin for Sexual Harassment, Retaliation, and Constructive Discharge	September 29, 2022
IHOP Franchisee Pays \$125,000 to Settle EEOC Sexual Harassment Lawsuit	September 22, 2022
Chili's Grill and Bar Sued by EEOC for Sexual Harassment of Teens in Texas and Arkansas Restaurants	September 12, 2022
EEOC Sues Bojangles for Sexual Harassment and Retaliation	September 07, 2022
EEOC Sues Justin Vineyards & Winery and The Wonderful Company for Sexual Harassment and Retaliation	August 25, 2022
EEOC Sues Il Fornaio (America) LLC for Sex Harassment and Retaliation	August 24, 2022
Green Lantern and Pullman Associates to Pay \$60,000 to Settle EEOC Sexual Harassment Suit	July 12, 2022
Applebee's to Pay \$100,000 to Settle EEOC Lawsuit Over Sexual Orientation and Race Discrimination, Retaliation for Complaining	July 11, 2022
Major New England McDonald's Owner/Operator to Pay \$1,600,000 to Settle EEOC Class Harassment and	



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Wage & Hour Laws and Pitfalls for Restaurant Owners

Minimum Wage

Annual Increases for State, County, and City; Minimum Cash Wage for Tipped Employees.

Overtime

Time & A Half for All Hours Worked in Excess of 40 During a Set Workweek.

Hours Worked

Employer Control = On-the-Clock; Meals & Rest Breaks; Employees Can't Perform ANY Work Until They're Clocked In.

Tips

Tipped Employees Must Retain All Tips Other than Mandatory Tip Pools; Managers and Supervisors Cannot Retain Tips; Mandatory Tip Pools Limited to Normally-Tipped Employees; Can Only Take a Tip Credit on Employees Whose Work Regularly Receives Tips Each Hour.

Proper Classification of Salaried Managers

If They're Paid a Salary (and Therefore Exempt From Being Paid Overtime), the Employee's Actual Job Duties Must Pass the DOL "Executive Exemption Test"

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Executive Exemption from Overtime Law

To qualify for the Executive Employee exemption and be paid a salary, all of the following tests must be met:

- ✓ The employee must be compensated on a salary (as defined in the regulations) at a rate not less than \$684 per week.
- ✓ The employee must customarily and regularly direct the work of at least two or more other full-time employees or their equivalent.
- ✓ The employee must have the authority to hire or fire other employees, or the employee's suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees must be given particular weight.
- ✓ The employee's primary duty must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise.



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Proper Classification of Salaried Managers

The Person's Actual Job Duties Must Pass the FLSA Exemption Test for "Executives."

Employee and Record Keeping

Employee Payroll Records Kept for 3 Years; Time Cards, Work Schedules, and Wage Deductions Kept for 2 years.

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Record-Keeping Requirements



- 1 Employee's full name and social security number.
- 2 Address, including zip code.
- 3 Birth date, if younger than 19.
- 4 Sex and occupation.
- 5 Time and day of week when employee's workweek begins.
- 6 Hours worked each day.
- 7 Total hours worked each workweek.
- 8 Basis on which employee's wages are paid (e.g., "\$9 per hour" or "\$440 a week.")
- 9 Regular hourly pay rate.
- 10 Total daily or weekly straight-time earnings.
- 11 Total overtime earnings for the workweek.
- 12 All additions to or deductions from the employee's wages.
- 13 Total wages paid each pay period.
- 14 Date of payment and the pay period covered by the payment.

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Home > Newsroom > News Releases > Wage and Hour Division > US Labor Department recovers \$1.6M for 83 restaurant workers whose Los Angeles employer denied them overtime pay; tried to hide wage theft

News Release

US LABOR DEPARTMENT RECOVERS \$1.6M FOR 83 RESTAURANT WORKERS WHOSE LOS ANGELES EMPLOYER DENIED THEM OVERTIME PAY; TRIED TO HIDE WAGE THEFT

Ocha Classic, Vim restaurant owner Prapai Boonyindee also fined \$62K

LOS ANGELES – The U.S. Department of Labor has recovered \$1,651,550 in back wages and liquidated damages from the owner of seven Los Angeles restaurants who denied 83 workers overtime wages and kept false pay records in an attempt to hide the wage theft.

The department's [Wage and Hour Division](#) found Prapai Boonyindee – owner of six establishments operating as Ocha Classic restaurant and one operating as Vim restaurant – intentionally did not pay the affected workers overtime for hours over 40 in a workweek, and created false records showing they worked no overtime hours. Both actions violate the [Fair Labor Standards Act](#).

“Wage theft is used by unscrupulous restaurant industry employers to increase their bottom lines at the expense of some of our nation's lowest paid workers,” explained Jessica Looman, Principal Deputy Administrator of the Wage and Hour Division. “We work tirelessly to recover hard-earned wages owed to workers like these, and employers who disregard workers’ rights

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U.S. DEPARTMENT OF LABOR

Home > Newsroom > News Releases > Wage and Hour Division > Federal court orders Weymouth restaurant, owner, to pay \$345K in back wages, damages to 13 workers denied overtime, earned tips

News Release

FEDERAL COURT ORDERS WEYMOUTH RESTAURANT, OWNER, TO PAY \$345K IN BACK WAGES, DAMAGES TO 13 WORKERS DENIED OVERTIME, EARNED TIPS

US Department of Labor found Sweet Lemon Inc., former owner retaliated against workers

BOSTON – An [order](#) issued by a federal judge in Massachusetts, has fully granted the U.S. Department of Labor’s motion for summary judgment regarding numerous violations of federal law by a Weymouth restaurant and its owner that deprived workers of their hard-earned wages and tips.

Entered in the U.S. District Court for the District of Massachusetts, the judgment orders Sweet Lemon Inc. – doing business as Sweet Lemons Thai Restaurant – and Pornthip Neamong to pay 13 affected workers \$159,899 in back wages and tips, and an equal amount in liquidated damages, plus \$25,000 in punitive damages, for a total of \$344,798. The court also permanently enjoined the defendants from violating the [Fair Labor Standards Act](#)’s overtime, recordkeeping and anti-retaliation provisions in the future.

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Questions?

Minimum Wage
Annual Increases for State, County, and City;
Minimum Cash Wage for Tipped Employees.

Hours Worked
Employees Can’t Perform ANY Work Until They’re Clocked In; Meals & Rest Breaks.

Overtime
Time & A Half for All Hours Worked in Excess of 40 During a Set Workweek.

Tips
Managers and Supervisors Cannot Retain Tips; Can Only Take a Tip Credit on Employees Whose Work Regularly Receives Tips Each Hour; Employees Must Retain All Tips Other than Mandatory Tip Pools; Mandatory Tip Pools Limited to Normally-Tipped Employees.

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The EEOC's Protected Classes

Applicants, employees and former employees are protected from employment discrimination based on race, color, religion, sex (including pregnancy, sexual orientation, or gender identity), national origin, age (40 or older), disability, and genetic information (including family medical history.)



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Equal Employment Opportunity Pitfalls for Restaurant Owners



Inadvertent Discrimination of Applicants and Employees

Intentionally or unintentionally treating someone differently because of their protected characteristic.

Harassment

Unwelcome conduct based on someone's protected characteristic. Harassment becomes illegal when enduring it is a condition of employment or is "severe or pervasive."

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

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Individual Restaurants and Franchisees Not Immune from Lawsuits

Green Lantern and Pullman Associates to Pay \$60,000 to Settle EEOC Sexual Harassment Suit

Rochester-Based Company Created Sexually Hostile Work Environment for Female Employees, Federal Agency Charged
 NEW YORK – Green-Lantern Inn, Inc. and Pullman Associates, LLC, two commonly-owned Rochester, New York-based companies that own and operate the Mr. Dominic’s on ...

Federal agency sues Mexican restaurant in Kalihi for alleged sexual, racial harassment

HONOLULU - The U.S. Equal Employment Opportunity Commission filed a lawsuit against a Mexican restaurant in Kalihi for alleged racial and sexual harassment.
 The federal lawsuit claims management at the eatery called Mexico Restaurant condoned a hostile work environment, which included multiple instances of sexual harassment ...

McDonald’s franchisee to pay \$100K to settle claim it discriminated against long-tenured employee with autism

This case raises an interesting question that the legal system has been grappling with for years: Does behavior that stems from a disability require reasonable accommodation? The answer is not always cut and dried.
 In one case from 2007, for example, a former worker at dialysis services company DaVita, Inc., sued her employer following...

Restaurant Admits to Pregnancy Discrimination and Pays \$30,000 to Resolve EEOC Lawsuit

NEW ORLEANS – A Louisiana restaurant admitted that it violated federal law when it fired and then later refused to rehire a worker because she was pregnant as part of federal court resolution with the U.S. Equal Employment Opportunity Commission, the EEOC announced today.
 Bourne’s House, LLC, doing business as Bourne’s House Restaurant in Franklinton, Louisiana, and the EEOC ...

Applebee’s to Pay \$100,000 to Settle EEOC Lawsuit Over Sexual Orientation and Race Discrimination, Retaliation for Complaining

TAMPA, Fla. – Neighborhood Restaurant Partners Florida, LLC (NRP), which operates an Applebee’s Neighborhood Bar & Grill restaurant in Plant City, Florida, has agreed to pay \$100,000 and furnish comprehensive injunctive relief to settle a sexual orientation and race discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC), ...

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Employer Liability

Employers are automatically liable for discrimination & harassment that results in a negative employment action (e.g., termination, demotion, loss of wages, failure to hire, failure to promote).

Employers can avoid or mitigate liability if 1) the company has written procedures to reasonably try to prevent and promptly correct harassment from occurring, and 2) the employee failed to use the company’s procedures to alert them to a harassment complaint.

Employers are liable for harassment by non-supervisory employees, guests, and vendors over whom it has control if they knew -- or should have known -- about the harassment and failed to take prompt and appropriate corrective action.

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Equal Employment Opportunity Pitfalls for Restaurant Owners

Discrimination

Intentionally or unintentionally treating someone differently because of their protected characteristic.

Harassment

Unwelcome conduct based on someone's protected characteristic.

Sexual Harassment

Unwelcome sexual advances, requests for sexual favors, and other verbal or physical harassment of a sexual nature.

Retaliation

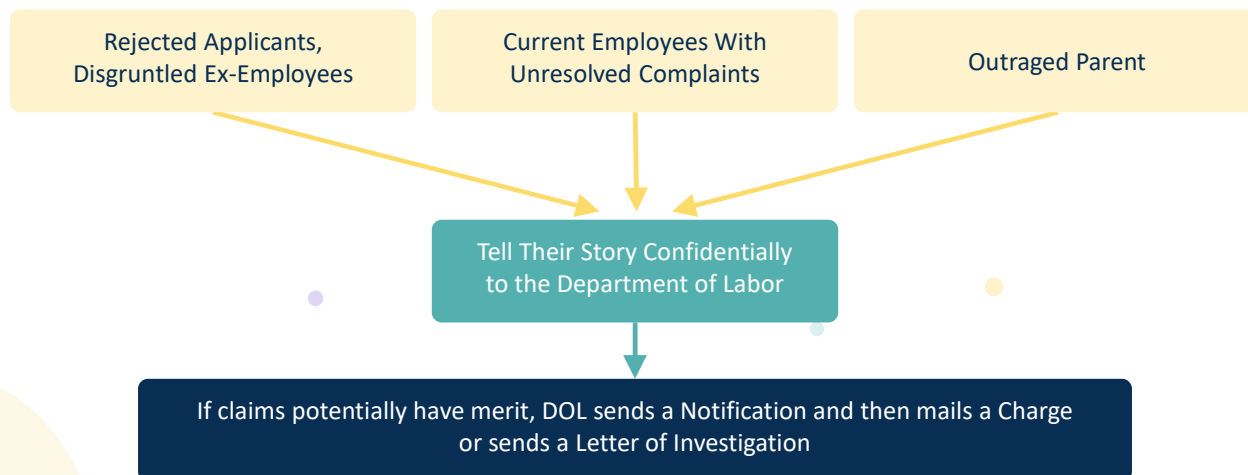
Punishing job applicants or employees for making or participating in a complaint.

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How to Get on the Department of Labor's Radar



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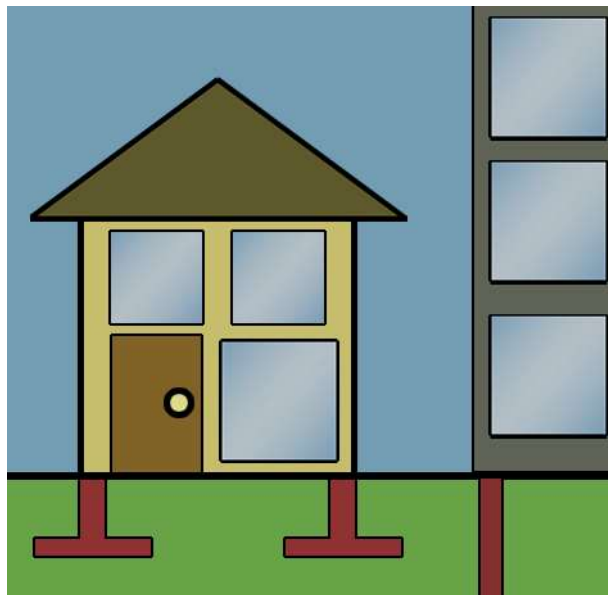
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Protect Your Organization with Sound HR Compliance

General awareness of Wage & Hour and Equal Employment Laws

All supervisors trained on employment laws – including interviews, banter

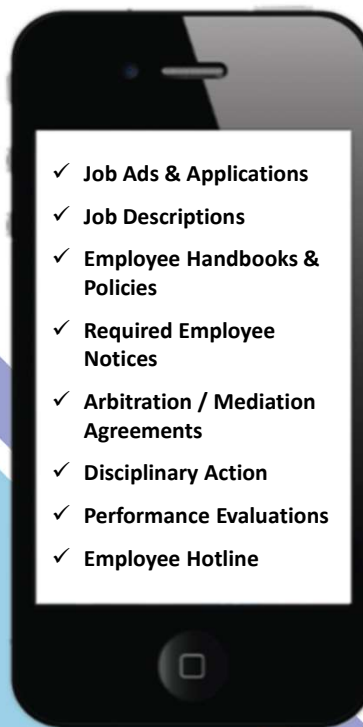
HR Foundation that establishes your intent to comply with all laws



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HR Foundations Protect Your Company



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The Restaurant Employment Toolkit contains:

- [Correctly Classify Managers and Assistant Managers](#): Determine whether employees are exempt from or protected by the Fair Labor Standards Act (FLSA).
- [What Employers Should Know about Compensable Hours Worked under The Fair Labor Standards Act](#): Learn how to properly record and pay employees for all hours worked.
- [Why the Minimum Wage Deserves Your Maximum Attention](#): Understand an employer's federal minimum wage obligations and avoid common violations.
- [What Fast-Food Restaurant Owners Should Know about Child Labor Requirements under the Fair Labor Standards Act](#): Employees under age 18 may only perform allowed tasks and work specific hours.
- [Wage and Hour Fact Sheet 2](#): Restaurants and Fast Food Establishments Under the Fair Labor Standards Act (FLSA)
- [Wage and Hour Fact Sheet 2A](#): Child Labor Rules for Employing Youth in Restaurants and Quick-Service Establishments under the

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Protect Your Organization with Sound HR Compliance

Formal Complaint Process that Includes Promise to Investigate and Take Appropriate Action

Habit of Documenting Employment Decisions

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Thank you!

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