

EMPLOYMENT SERVICES ALERT

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Department of Labor Targets Restaurant Industry Employers

The Wage and Hour Division of the Department of Labor has recently escalated enforcement initiatives throughout the U.S. to identify and remedy labor violations in the restaurant industry. The Department of Labor views low-wage workers who lack knowledge of the law and may be reluctant to exercise their rights as vulnerable to disparate treatment and labor violations.

In recent years, the Department of Labor has found wage and hour violations in nearly all of its 9,000 investigations of full-service restaurants, including, but not limited to, tip violations.

The Fair Labor Standard Act (FLSA) violations found at the establishments under investigation resulted from the employers' failure to compensate employees properly for all hours worked. Common violations have included employers creating illegal tip pools involving kitchen staff, which resulted in servers and waiters not being paid the proper minimum wage of \$7.25 per hour or overtime compensation; paying straight-time wages for overtime hours; and making illegal deductions from worker's wages for credit card transaction fees, which reduced wages below the required minimum wage. Violations also include failing to pay the full minimum wage when tipped workers spend considerable time on cleaning, cooking or other nontipped work, as well as requiring servers to share their tips with other employees who do not typically receive tips. Additionally, employers often fail to maintain accurate and thorough records of employees' wages and work hours.

The Department of Labor will continue its enforcement initiative this year to identify and remedy FLSA violations. When violations are found, the Department of Labor is pursuing corrective action, including payment of back wages, civil money penalties and liquidated damages to ensure accountability and deter future violations.

The FLSA requires that covered, nonexempt employees be paid at least the federal minimum wage of \$7.25 per hour for all hours worked, plus time and one-half their regular rates for hours worked beyond 40 per week. In accordance with the FLSA, an employer of a tipped employee is required to pay no less than \$2.13 an hour in direct wages, provided that amount, plus the tips received, equals at least the federal minimum wage of \$7.25 per hour. If an employee's tips, combined with the employer's direct wages do not equal the minimum wage, the employer must make up the difference. Employers also are required to provide employees notice of the FLSA tip credit provisions and to maintain accurate time and payroll records.

The FLSA provides that employers who violate the law are, as a general rule, liable to employees for their back wages and an equal amount in liquidated damages. Liquidated damages are paid directly to the affected employees.

To minimize the risk of a Department of Labor investigation, restaurant employers should review their compensation practices and ensure they are in compliance with the FLSA. Roetzel attorneys regularly provide counsel to restaurant industry clients and assist them in responding to government investigations and employee claims. For assistance, please contact one of the Roetzel attorneys below.

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