Fourth

Labor and Wage Compliance Rules

Are You Managing Compliance or Putting Your Business at Risk?

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Introduction

A lot of rules - very little time

Today's hospitality businesses have to juggle dozens of complex federal and state labor compliance issues—along with everything else it takes to keep their doors open and their businesses profitable. Operators and managers have to worry about the quality of their food and service, marketing planning, customer satisfaction, changing consumer demands and the rise of third party delivery, just to name a few. But labor compliance can't play second fiddle to those issues—it must stay top of mind.

While always important, in recent years labor compliance has risen to the new levels for hourly workforces. There has been a steep rise in the number and cost of violations for non-compliance with federal, state, and regional labor rules. A study by the U.S. Dept. of Labor found that at least 80 percent of restaurants nationally were not in compliance with all labor laws.

Non-compliance with any one or more of the full range of labor laws can result in significant damage to restaurant operations, including expensive violation penalties, lost class-action lawsuits, and damaged reputations. It's critical for restaurant owners and operators to fully understand employee rights and wage laws in order to protect their businesses and create a workplace that is in compliance.

About this eBook

This eBook provides an overview of the labor laws that impact restaurants today and the high cost of non-compliance. It will also explore the features of an automated system that gives restaurants the capabilities they need to meet today's increasingly complex labor compliance regulations—so they can avoid the high price of non-compliance and create work environments that better serve their employees' needs and rights.

The US Labor Department collected $322 million in back wages for workers in fiscal year 2019, increasing the amount for the second straight year.

Labor Laws are Complicated & Violations Happen Regularly

When you employ hourly workers, it seems like the labor rules can change as often as the weather. And restaurant operators know that both of these factors can dramatically impact the bottom line. Further complicating the matter is the recent political climate and the increasingly regional nature of hourly labor laws.

The Department of Labor's wage and hour division estimated that nearly 84 percent of full-service restaurants it investigated between 2010 and 2012 had violated labor standards, including but not limited to tip violations. Not to be left out, a 2017 study showed that in the retail industry alone, around 350,000 workers are victims of wage theft by their employer each year.

There are several reasons for the increase in labor compliance violations, including these reasons:

Compliance Complexity — employers often don't understand the complex wage and hour laws, so do not properly adhere to them.

Educated Employees — today's hourly workers are more sensitized to wage and hour issues because of news about violations and lawsuits.

Lack of Resources — it's hard to keep track of both federal and state labor compliance considerations, and many businesses lack the proper resources to be on the ball at all times.

Common Restaurant Compliance Violations

The U.S. Dept. of Labor stated that the most common labor violations committed include:

Wage Theft — Requiring employees to work "off the clock"

Overtime — Calculating overtime incorrectly

Deductions — Making illegal deductions from workers' wages and reducing wages below the required minimum wage

Tips — Requiring employees to work exclusively for tips and creating illegal tip pools

Record-keeping — Failing to track all hours worked by employees and provide them with accurate wage statements

Minors — Committing significant child labor violations

Meals & Breaks — Failing to provide appropriate meal and rest breaks

Can You Afford Non-Compliance?

The government has stepped up its enforcement efforts around federal minimum wage and overtime rules—and the penalties can be steep. **Here are just some of the recent non-compliance violations:**

$5.16 Million — Japanese restaurant in Daly City, California, closed down after this fine for wage theft violations

$102 Million — In 2019 Walmart paid California employees for wage theft and overtime violations

$26 Million — McDonalds settled a wage theft lawsuit filed by workers in California

$1.5 Million — Owner of six New Jersey gas stations was fined for federal labor and wage law violations

A Breakdown of Today's Labor Laws

& the Requirements for Employers

Oversight of today's labor laws is executed by the Dept. of Labor's Wage and Hour Division (WHD). The WHD enforces federal minimum wage, overtime pay, record keeping, and child labor requirements of the Fair Labor Standards Act (FLSA). Here's a breakdown of everything you need to consider:

Wages Laws

Employers who underpay their employees, defer payment of wages to a later period, or don't pay workers at all are committing compliance violations. Along with ensuring that employees receive a fair wage for every hour they work, many businesses are required to pay a higher price for overtime hours.

Minor and Child Labor Rules

The federal child labor laws ensure that young people's jobs do not jeopardize their health, wellbeing, or educational opportunities.

Meals and Breaks

Federal law does not require lunch or coffee breaks. However, when employers do offer short breaks (five to 20 minutes), federal law considers them as compensable work hours that would be included in the sum of hours worked during the workweek and considered in determining if overtime was worked. Bona fide meal periods (typically 30 minutes), serve a different purpose than coffee or snack breaks and, thus, are not work time and are not compensable.

Payroll and Reporting Laws

Restaurant payroll is time-consuming due to the payment of several forms of wages with varying tax requirements, making legal compliance challenging. Calculating taxes for all appropriate laws can also be complex, particularly for restaurants with multi-state operations. Missing a quarterly tax form submission or any other required reporting can be costly.

Overtime Rules

The federal overtime threshold for salaried employees is $35,568 (01/2020). Six states thresholds are higher than the federal rate with New York City coming in at $58,500. The overtime threshold limit for salaried employees is currently $23,660, but a new proposal from the DOL could increase it to $35,308. Any salaried employee who falls under the threshold is entitled to overtime pay.

Record-keeping

The FLSA requires employers to keep records on wages, hours, and other items, as specified in Dept. of Labor (DOL) record-keeping regulations.

Spread of Hours (unique to New York state)

"Spread of hours" pay is an extra hour of pay at the minimum wage rate that must be paid to certain non-exempt employees. Employees receive one hour of pay at minimum wage rate in addition to owed wages when the spread of hours exceeds 10 hours, there is a split shift, or both. While the minimum wage in much of New York is $12.50 (12/2020), under state law a different minimum wage applies in New York City and other localities.

Training and Certification — Food Service & Alcohol Certifications and Compliance

State-run food and alcohol handling laws are designed to ensure that restaurant employees receive reasonable level of training in food safety practices to reduce the potential for foodborne illness and responsible alcohol service. Each state requires its own certifications.

Predictive Scheduling Laws

Predictive scheduling has been a growing trend and concern for restaurant and retail and retail operators in the last five years. Sparked by rising minimum wages and a demand for more predictable work schedules, these laws require employers to give employees advanced notice of schedules and entitle employees to premium pay for last-minute schedule changes. There are also extensive record-keeping requirements.

Since 2014, predictive scheduling laws have been implemented in eight U.S. jurisdictions, including San Francisco, Emeryville and San Jose in California; Seattle; New York City; Oregon; Philadelphia and, most recently, Chicago. Predictive scheduling ordinances are currently under consideration in Los Angeles. It's clear that the Fair Workweek Movement is growing in popularity, so let's take a look at what these laws actually entail.

- Give employees written notice of schedules in advance

- Stop the practice of "clopening"— scheduling workers to work closing shifts and then opening shifts on consecutive days

- Give current employees the option to take new shifts before hiring new workers

- Maintain extensive compliance records

- Not retaliate towards employees in any way, shape or form

The Ground Rules

Keep Your Operation Compliant

As you can see – and may have even experienced – non-compliance is risky business. Often, labor compliance violations are simply a lack of standard procedures, processes and checks and balances. But there are ways to protect your people from making honest mistakes and empower them with tools to make better decisions and only manage the exceptions to the rules.

Here are Fourth's Ground Rules for Managing Labor Compliance

#1 Remove the Room for Error

Ground rule number one? Figure out how to take as much of the tracking, monitoring, and rule following out of your managers' brains. Your managers have enough to handle on a day-to-day basis. Remembering all the various labor laws and then applying them to every employee is a lot to keep up with - it's no wonder there are mistakes. One way to do that is by using technology that keeps federal, state labor laws and wages up-to-date in a system and then applies them to your unique store configurations and schedules.

#2 Make it Easy to Schedule Meals and Breaks

You've got some skills and unlimited time under your belt if you're taking the spreadsheet route. If you're like most managers, however, managing Meal Periods and keeping labor costs in check can really only be successfully executed using scheduling and labor management solutions. If you are in a state that has specific rules around Meal Periods, rest periods and breaks and you want a smarter way to make sure you're complying with the law.

First, you set the Meal Period configurations, then you generate schedules and scheduling templates. Ideally, your POS syncs with your scheduling solution so your team can keep track of not only who clocks out and in, but when they do it so that you can consistently and easily manage your labor costs and track Meal Period compliance.

#3 Monitor Hours for Minors

Minors make up about 30% of the hospitality workforce. In fact, restaurants and retail are top choices for a teen's first job. There are rules to managing minors and fines if operators don't comply.

These are often simple rules that can be automated in a scheduling and labor management system. For instance, HotSchedules labor management solutions give administrators the ability to configure minor rules that are unique to the individual State where the stores operate. Additionally, local school calendars can be added to HotSchedules so that store-level managers can schedule around their legal availability and the system can generate accurate labor warnings to prevent violations. Minor laws will be recognized in shift transactions as well – a minor won't see shifts available for pick up or swap if that transaction would violate the labor laws.

#4 Track Time & Attendance

Tracking time and attendance is a given with hourly employees. Too often though, timecard records are spread out across processes, people and stores, and the payroll team doesn't always have easy access to the data. This creates a lot of manual work subject to human error. It's also a recipe for confusion and duplicate work for everyone involved - including employees who want to know what they will be getting paid each pay period.

#5 Address Payroll Issues

One way managers and payroll teams are streamlining the process is by taking the data out of the point of sale system and keeping it all in a labor management solution where other labor compliance rules around things like overtime and minors can be managed. It makes it easy for managers to edit time cards and for employees to see and acknowledge any changes that were made. And perhaps most importantly, payroll has more confidence that the data they are getting is clean and finalized and doesn't require a lot of manual manipulation.

#6 Enable Managers with Proactive Alerts

Managers are moving fast. They are also held accountable to all of these compliance elements that can end up costing the operation if not properly managed. Even the best intentioned manager can make mistakes if not equipped with the right tools.

That's why many are moving their data into a more centralized database using an application programming interface (API). An API calls out to the various systems to utilize different data.

Combined with business rules as well as local, state and federal compliance rules, managers can be alerted to issues and make faster, more informed decisions about their staff and their schedules.

Getting Labor Compliance Under Control with Workforce Technology

While labor compliance is complex and challenging, it is possible to streamline and simplify the process. The solution lies in a robust, automated system designed specifically to align business practices with all national, state, and regional labor laws. HotSchedules delivers a full range of functionality that supports labor compliance — allowing restaurants to more easily follow the rules and avoid the cost-prohibitive and business-destroying penalties. We also offer options to outsource your HR and Payroll needs, to lower costs, limit liabilities, and maintain compliance with ever-shifting laws.

About Fourth

Fourth provides end-to-end, best-in-class technology and services for the restaurant and hospitality industries. Their procurement, inventory and workforce management solutions, coupled with the industry's most complete data and analytics suite, give operators the actionable insights they need to control costs, scale profitability, improve employee engagement, and maintain compliance. Since its merger with US-based HotSchedules, Fourth serves more than 7,000 customers across 120,000 locations globally.

You have enough to do.

Let's help get the administrative busywork off your plate. To learn how we can help simplify your back-office operations, boost your efficiency and profitability, and improve your inventory management, give us a call.

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