



# LABOR COMPLIANCE RULES

Are You Successfully Managing  
Labor Compliance—or Putting  
Your Restaurant at Risk?

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There's no two-second rule  
when it comes to the law.

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# INTRODUCTION

A lot of  rules—very little time

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Today's restaurants 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. While food quality management, menu development, efficient ordering, and marketing planning are essential tasks in successful restaurants, labor compliance can't sit on the salamander and get cold.

While always important, in recent years labor compliance has risen to the new levels for restaurants. There has been a steep rise in the number and cost of violations for non-compliance with federal, state, and regional labor rules.

“

The Wage and Hour Division of the Dept. of Labor collected **\$38 million** in back wages owed to nearly 47,000 restaurant workers in fiscal year 2015.

”

Across the country, lawsuits against restaurants doubled from 2005 to 2015 in federal courts, according to the New Jersey Restaurant and Hospitality Association (NJRA). In New York, legal claims nearly tripled from 2009 to 2015, from 652 to 1,738. Further, 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 results 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 also presents 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.

# REALITY CHECK

It's Not Just You—Labor Laws are Complicated & Violations are on the Rise 

**2** Today's restaurants are facing one of the most difficult challenges ever—consistently and thoroughly meeting the constantly changing and ever-expanding number of labor compliance regulations.

Recent headlines speak to the labor compliance struggle that restaurants are facing:

Why Wage and Hour Litigation is Skyrocketing

— *The Wall Street Journal*

Study Finds Violations of Wage Law in New York and California

— *The New York Times*

Restaurant Workers Abused by Rampant Labor Law Violations

— *Law360.com*

Federal Gov. Cracking Down on Restaurants' Wage and Overtime Violations

— *Paychex.com*

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



**Compliance complexity**—employers often don't understand the complex wage and hour laws, so they don't properly adhere to them.



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



**Healthy economy**—it may provide incentives for plaintiffs' counsel to sue new and relatively unsophisticated companies, employers whose workforces are growing, and companies whose improved financial position has made them more attractive targets.



**Motivated lawyers**—they are witnessing large labor non-compliance settlements.

## 2

Non-compliance statistics also speak to today's labor compliance challenges:

**80%** of employees are not in compliance WITH APPLICABLE WAGE & HOUR LAWS

**95%** of Austin restaurants were in VIOLATION OF SOME LABOR RULES

—Department of Labor

**71%** of restaurants on the west coast were in violation of wage & hour compliance issues

—2012 report of more than 1,800 restaurants

**18%** of restaurant & hotel workers face MINIMUM WAGE VIOLATIONS

**70%** FACE OVERTIME VIOLATIONS

**74%** encounter off-the-clock violations

—2009 Multiple Think Tank study



# A RECIPE FOR DISASTER



## Common Restaurant Violations

# 3

### 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:

## \$154K

Metro Diner in Jacksonville, Florida for violated minimum wage and overtime provisions

## \$459K

Los Arcos in South Carolina for overtime, minimum wage, and recordkeeping violations

## \$700K

El Azteca in Wisconsin for wage and overtime violations

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



**Wages**—Requiring employees to work “off the clock”



**Overtime**—Calculating overtime incorrectly for servers



**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



**Breaks**—Failing to provide appropriate meal and rest breaks

## \$900K

Tacolicious in San Francisco — employee class-action lawsuit for meal and rest breaks, and improperly withheld wages

## \$227M

13 Georgia restaurants for wage violations

## \$6.8M\*

Chickie’s and Pete’s in Philadelphia for wage and hour violations

\* One of the largest wage and hour settlements in recent years

## \$1M

Manna in New York for wage violations

# HOW TO COMPLY



## How to Comply with Today's Labor Laws & Avoid Expensive Violations

# 4

Oversight of today's labor laws is executed by the Dept. of Labor's Department's Wage and Hour Division (WHD). The WHD enforces federal minimum wage, overtime pay, recordkeeping, and child labor requirements of the Fair Labor Standards Act Compliance (FLSA), a complicated law that sets the terms for wages and hours employees work including the following:



**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.



**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.

## 4



**Overtime Rules:** Unless exempt, covered employees must receive overtime pay for hours worked over 40 in a workweek at a rate not less than time and one-half their regular rates of pay. The new overtime threshold limit increased in December 2016 from \$23,660 to \$47,550, which means any salaried employee who falls under the new 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) recordkeeping regulations.



**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. The U.S. Department of Labor found that during FY 2000, child labor law violations were most common in the restaurant and hotel industries.



**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.



**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 \$9.70, under state law a different minimum wage applies in New York City and in certain other localities.



**Uniforms:** Many employers require employees to purchase their uniforms from the company and in turn the employer deducts the uniform cost from the employees' pay. It could be a violation if the deduction results in a reduction of an employee's hourly wage below the federal minimum.



**State and Regional Regulations:** Every state and region has unique employee rights regulations and restaurants operating in more than one trade area must understand, adhere to, and coordinate all federal, state, and local labor laws.





# BEYOND LABOR COMPLIANCE



## Additional Compliance Regulations Facing Today's Restaurants

# 5

While labor compliance presents multiple challenges for restaurants, they are not the only regulations to which restaurants must adhere. Adding additional complexity to an already complex situation are several other compliance regulations. Here is a quick overview.



### **Employee Health Benefits—Affordable Care Act**

This healthcare law requires employers with more than 50 full-time workers, to offer health benefits to full-time employees or face penalties of up to \$2,000. Restaurants must also provide written notice to employees about new government-run healthcare marketplaces.



### **Training and Certification—Food Service & Alcohol Certifications and Compliance**

State-run food and alcohol handling laws are designed to ensure that restaurant employees receive a 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.





### **New Legislation—Joint-Employer Status**

In August 2015, the National Labor Relations Board started shifting the joint-employer status so franchisors could be held liable for employment actions by their franchisees. This ruling has direct implications for restaurant franchisors, who may now need to take a hands-on approach in hiring, firing, and promoting employees. Although the legislation is still under review, it's important for franchisors to evaluate their franchisees and workforce-related practices to limit potential liabilities, such as employment-related lawsuits.



### **New Legislation—Predictive Scheduling Ordinances**

In January 2015, San Francisco implemented the “Predictable Scheduling and Fair Treatment for Formula Retail Employees Ordinance” (the Ordinance)—becoming the first U.S. jurisdiction to require employers to provide predictable schedules to employees. The Ordinance requires that all San Francisco employers provide new hires with an initial notification of their work schedules and a monthly estimate of their anticipated minimum hours. The Ordinance entitles employees to at least one of the following: substantial advance notice of their work schedules, the right to request schedule modification for variety of reasons, and predictability pay, under which employers must compensate an employee who is sent home before the end of a scheduled shift or required to call in for a shift but not given any work. The Ordinance is already being adopted by other jurisdictions across the country, with New York City and Oregon passing laws in 2017.



# THE GROUND RULES



## Keep Your Restaurant Operation Compliant

# 6

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 HotSchedules' Ground Rules for Managing Labor Compliance in Restaurants:**



### #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 GMs and shift leaders have enough to manage 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 Track Time & Attendance

Tracking time and attendance is a given in restaurants 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.



### #3 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.



#### #4 Monitor Hours for Minors

Minors make up about 30% of the hospitality workforce. In fact, restaurants are a top choice for a teen's first job and is often a steady stream of the workforce that may choose to have a career in the restaurant & hospitality industry. There are rules to managing minors and fines if restaurant 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 gives 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 for pick up or swap if that transaction would violate the labor laws.



#### #5 Make it Easy to Schedule Meals and Breaks

You've got some mad skills and unlimited time under your belt if you're taking the spreadsheet route. If you're like most restaurant 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, then 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.



#### #6 Enable Managers with Insights & 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 more and more restaurants 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 labor law compliance. 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.

## Scheduling Management

Here is just some of the extensive scheduling management functionality available in HotSchedules to help restaurants stay in compliance with all labor laws.



**Overtime compliance and management**—Pulls in each state's overtime rules and keeps them updated; allows you to set your weekly overtime thresholds; lets you filter for different hourly thresholds based on schedule and job type; alerts you when an employee is about to hit their overtime status; and more.



**Meals and breaks**—Allows users to create and assign rules for meals and breaks both for the enterprise and individual restaurants, marks employees who are eligible for meals and breaks, and more.



**Minor and child labor rules**—Provides local school calendars to facilitate scheduling around their legal availability, prevents minors from seeing shifts for pick up or swap if they violate labor laws, generates labor warnings to prevent violations, and more.



**Punctuality controls**—Allows restaurants to set up a window of time during which employees can clock-in on their own, requires managers to override clock-in outside of window, and more.



**Mobile app access**—Provides an online and mobile app for employees to manage their own schedules, lets employees make changes, trade shifts, and accept time slots, pending managers' approval, and more.

## Labor Management

Here is just some of the extensive labor management functionality available in HotSchedules to help restaurants stay in compliance with all labor laws.



**Wages and payroll**—Consolidates time cards, tips, and pay rules; alert managers to time punch exceptions that need immediate attention before payroll data is exported; captures actual employee hours worked using clock-in and clock-out data from a Point of Sale (POS) or from the HotSchedules Webclock; and more.



**State and regional regulations**—Retains current state labor laws and supports adherence, including the new state-based Predictability Scheduling Laws; gives managers control to set their own meal, breaks, and minor rules based on regional compliance requirements; calculates priorities when state and federal laws differ.

## Time & Attendance

Here is just some of the extensive time and attendance management functionality available in HotSchedules to help restaurants stay in compliance with all labor laws.



**Tracking actual time**—Integrates employee time and scheduling data, aggregates punch data for all restaurant locations on one screen, provides pre-formatted files ready to be dropped into popular third-party payroll systems.



**Record-keeping**—Keeps a time-bound, online logbook of shift and personnel notes, cash deposits, weather, and tasks, and more.

## Configurable Labor Rules and Above Store Visibility

Here is just some of the extensive labor compliance configuration functionality available in HotSchedules to help restaurants stay in compliance with all labor laws.



Define minor rules for each state and for specific age ranges and specific school calendars of each school districts.



Define meal and break rules by state, including the pay impact if someone doesn't take a break or meal they are allowed.



Easily customize your rules for punch records and timecards including long/short shifts, scheduled versus actual variations to keep your labor budgets in check.



Increase accuracy and limit tedious data entry by exporting your aggregated and verified payroll data using one of these standard export formats. Additional exports will be available soon. ADP, PayChex, Paylocity, PayCor\*



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