

Employment Law ALERTS

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Do I really have to pay for that? Department of Labor Continues to Crack Down on Hospitality Industry

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The Department of Labor is cracking down on employers allegedly failing to pay employee wages. Since 2009, the Department of Labor's Columbia, South Carolina District Office has concluded more than 300 restaurant investigations, resulting in restaurants paying more than \$2.5 million in back wages for more than 2,500 workers.

Michelle Garvey, director of the division's Columbia office, said in a recent press release, "The Wage and Hour Division is resolute in its commitment to increasing compliance in [the hospitality] industry. Our investigators continue to make unannounced visits to restaurants throughout South Carolina to remedy widespread labor violations and ensure a level playing field for law-abiding employers."

The Fair Labor Standards Act (FLSA) covers minimum wage and overtime pay. The FLSA requires employees, except those exempt under the Act, to be paid at least the federal minimum wage, which is currently \$7.25/hour, for all hours worked. It also requires overtime pay at time and a half the regular rate for all hours worked over 40 in a workweek.

One of the most common mistakes is failing to pay employees for all hours worked. Below are a few tips to ensure your business will not have to pay back wages in the future.

"Choosing" to Continue Working is Still Working

- Employees must be paid for all work "suffered" or permitted to be performed. If an employee voluntarily continues to work at the end of the shift to finish an assigned task or to correct errors, the hours are still work time, and you have to pay them for it.

Don't Deduct Too Much

- Deductions made from wages for items such as cash shortages, required uniforms, or customer walk-outs are illegal if the deduction reduces the employee's wages below the minimum wage or cuts into overtime pay. Therefore, deductions made for items other than board, lodging, or other recognized facilities normally cannot be made in an overtime workweek.

Track Hours Worked by Employee, Not by Position

- You are required to pay overtime for all hours an employee works over 40 in a given week. Some employees may work two positions. If they work 13 hours as a dishwasher and 29 as a server, you do not initially think overtime is due. But if they worked these amounts in one week, they are owed overtime because the total hours worked was 42.

About Charles Appleby

Charles Appleby is an associate practicing in employment law and retail/hospitality/entertainment liability. In his employment practice, Charles represents employers from all types of industries in litigation and alternative dispute resolution. Charles has represented clients in Circuit Court, United States Federal Court, and has appeared regularly before the South Carolina Employment Securities Commission and Appeals. In addition, Charles provides informative content on retail/hospitality law and employment law through quarterly newsletters and on the South Carolina Retail/Hospitality Law Blog and South Carolina Employment Law Alerts.

Charles, originally from Columbia, SC, graduated from the University of Florida and received his Juris Doctor from the University of South Carolina School of Law. While in law school, he served as the Student Bar Association President and initiated the inaugural University of South Carolina School of Law Career Week. He was also a member of the John Belton O'Neall Inn of Court. Charles worked as a law clerk for Collins & Lacy prior to joining the firm in 2007.

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