

# Definitive Guide to Compliance for Restaurants

## The Full Employee Lifecycle

Published February 2025



### Disclaimer

This document is provided for informational purposes only. It is not considered to be and should not be relied upon for legal advice. We encourage all restaurant operators to take the necessary steps to comply with the Federal, State, and local laws applicable to their businesses, including discussing compliance questions and concerns with professional legal advisors.

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# Introduction

## The Ongoing Compliance Challenge

Restaurants operate in a highly regulated industry. Beyond food safety and health regulations, there is a long list of labor laws, tax requirements, and employee protections in an evolving regulatory landscape that operators must abide by throughout the employment lifecycle. It's a tall order to keep up with these changing requirements, and the matter is further complicated if your restaurant chain operates in multiple states. It can feel like a tapestry of overlapping and conflicting rules.

Nevertheless, restaurant operators are obligated to remain compliant with both federal and local regulations in all jurisdictions where they operate, starting with the time they recruit for new employees to well after termination.

Even major brands leverage internal and external legal advisors, meeting with them weekly to stay on top of compliance updates. For smaller restaurant chains and single locations, however, full-time legal counsel is often cost-prohibitive. In either case, compliance is a big job, and the consequences of violating these regulations may include fines, civil penalties, back pay to employees, bad press and even jail time. Additionally, the time and expense to address a violation claim can be huge: attorney and accountant fees, staff time to respond to complaints and audits, and reduced staff morale.

The Federal Department of Labor (DOL) recovered \$273 Million in back wages for more than 152,000 workers during the 2024 fiscal year. These investigations included more than \$35 million for food service workers and another \$6.3 million for retail workers.<sup>1</sup> The investigations included Child Labor Violations, minimum wage, overtime and tip payment violations, Family Medical Leave Act (FMLA) violations, Failure to maintain required health benefits and more.

A few examples:

1. In 2020, A national chain reached a \$400,000 settlement to resolve allegations of child labor laws at 46 of its restaurants in Massachusetts. Records reviewed indicated more than 2,100 violations including

allowing 16- and 17-year old minors to work more than the maximum 9 hours per day and past 10 P.M. The company has since changed many of their work practices to ensure compliance.

2. In late 2024 a single site restaurant in Wisconsin was fined nearly \$100K for allowing minors to work in prohibited jobs.<sup>2</sup> As part of the settlement, they agreed to:
  - A. Apply stickers to equipment that workers under 18-years old are prohibited from using.
  - B. Require workers to wear color coded hats/shirts that will indicate if they are 14-15, 16-17 or 18 and over.
  - C. Post and provide child labor and anti-retaliation fact sheets to all employees.

“Compliance is a bit of a dirty word. It’s unavoidable but really challenging, especially without the right technologies and partners in place.”

*David Lehn*  
Director of Ops Services at  
Noodles & Company



3. In late 2024, a four-unit restaurant group in Minnesota was required to pay \$105,784 in back wages, penalties, and damages<sup>3</sup> for:

- i. Including managers and shift supervisors in a tip pool for servers, which invalidated the tip pool.
- ii. Not combining hours employees worked at more than one location, which denied employees overtime wages for working more than 40 hours in a workweek.
- iii. Allowing at least four workers to avoid overtime pay by routinely using other names and identification numbers to clock-in.
- iv. Paying two employees straight-time rates for overtime hours, instead of time and one-half their regular rate of pay as required.
- v. Not maintaining accurate employment records with employee start and stop dates, contact information, and allowing individual workers to use others' names to clock-in..
- vi. Failing to distribute tips to workers or provide records showing that tips were paid to workers properly.
- vii. Allowed one 15-year-old to work outside permitted hours.

Such penalties are a hefty sum even for a national brand, but for a single location or small chain restaurants, it would be disastrous. Further, in an era in which food prices have risen 20% and labor costs another 30% since 2019.<sup>4</sup> With slim profit margins, restaurants simply can't afford to be faced with wage and hour violation claims and investigations.

Nearly all states, and dozens of cities and counties have scheduling and pay laws that differ from the Federal standard. Do you know the working hour restrictions for your employees under 18? Do you know which employees are entitled to meal and rest breaks and when they need to be taken? What about the complexity of Fair Workweek requirements?

As a restaurant operator you should not have to be a legal expert. For that reason, we've assembled this first in a series of Definitive Guides to Compliance for Restaurants. We'll walk through some of the basic Federal labor regulations and provide a sample of state and local examples of how they can differ. With this guide, you'll gain a better understanding of the vast array of legal requirements and how to avoid costly penalties, fees, and litigation and provide strategies to aid compliance.



## Compliance for the Full Employee Lifecycle

### Onboarding



#### Hiring

ADA and EEOC compliance  
Employment Eligibility  
Ban the Box and the Fair Chance Act



#### Scheduling

I-9 Employment Verification  
Tax Forms  
Employee Benefits Enrollment and Management  
New Hire Reporting



### Pay



#### Termination & Offboarding

Minimum Wage  
Overtime  
Tips  
Premium Pay

Unemployment Insurance  
Workers' Comp  
Final Pay  
Government Reporting Requirements



# Employee Lifecycle

## Recruiting and Hiring

The moment an employer considers adding to their staff or promoting from within, the statutory requirements kick in. As always, the intent is to provide fairness, equity and safety for all employees, but there are many requirements that employers must follow when recruiting and hiring.

The following is a sample of the common requirements. There are more beyond this list, especially as they affect specific industries or classes of employees. Where relevant, we have included some of the laws that cover these topics and links to further information.

Note that in locations covered by the Fair Workweek Provisions that include Access to Hours, employers must offer hours to current employees before recruiting from the outside.

Job postings and job applications may require specific language (such as pay rates) or omission of certain language that could be considered discriminatory. In addition to the description of the job, hours, locations and how to respond, best practices and statutory requirements indicate the inclusion/avoidance of several items:

### Job Postings

- **ADA statement:** Indication that the employer abides by the requirements of the American with Disabilities Act (ADA). This federal regulation ensures accessibility for individuals with disabilities by setting standards that businesses must adhere to, including workplace accommodation for employees with disabilities.
- **EEOC statement:** Indication that the employer abides by the **EEOC (Equal Employment Opportunity Commission)**,<sup>5</sup> Federal agency responsible for enforcing laws that prevent workplace discrimination.
- **Employment Eligibility:** Requires that employees be eligible to work in the U.S.<sup>6</sup>
- **Pay Transparency:** Requires employers to disclose pay ranges for open positions. Most pay transparency laws require a pay range to appear in both public and internal job postings, sometimes alongside other information, such as details about benefit offerings. A few jurisdictions require the employer to share a pay range with a job applicant upon request or at a certain point in the interviewing and hiring process but do not mandate that the information appears in job postings. Some pay transparency laws also give employees the right to learn the pay range for their current position. Locations currently and starting in 2025 include: CA, CO, CT, DC, HI, IL, MD, MN, NV, NJ (and Jersey City), NY (and Albany, Ithaca, NYC, Worcester County), RI, VT, WA.
- **Age:** Required age to qualify for the positions, if relevant. In many instances minor workers are not allowed to perform certain jobs (serving alcohol, limitations due to minor work rules, etc.).
- **Educational Requirements or Certifications:** Required educational achievements to qualify, if relevant.
- **Non-Discrimination:** Avoiding requirements or language that could be construed to indicate a preference for applicants based on:
  - Age— The federal **Age Discrimination in Employment Act (ADEA)** prevents hiring practices that discriminate against applicants for their age.
  - Gender
  - Criminal Background
  - Credit History
  - National Origin
  - Physical Appearance
  - Race
  - Religion
  - Union Affiliation
  - Marital Status
  - Disabilities

## Job Applications

During the recruiting process, most employers require potential hires to complete a job application and/or provide a resume with additional information about their personal and work history. Since these are typically provided to prospective employers before a job offer, there are certain items that may not be asked of employees.

Below is a list of items with restrictions in some states and/or warnings to protect the employer and prospective employee. Occasionally a job may be offered if certain post-offer conditions are met, such as drug testing, credit or background checks, verification of information, etc. Furthermore, states may have additional requirements.

**1. Ban the Box and the Fair Chance Act:** Over 40 cities and states have statutes in place to protect prospective employees convicted of a crime from automatic disqualification during the selection process. These ban the box laws prevent an employer from requesting a prospective employee's criminal history information on an employment application. Some jurisdictions prohibit an employer from asking whether an applicant has been convicted of a crime until a specified point in the hiring cycle (e.g., the interview stage or after a conditional job offer has been made). Several states also have laws imposing restrictions on an employer's ability to use credit history in making employment decisions.

**2. Credit Checks:** [The Federal Bankruptcy Reform Act of 1978](#) bans employers from discriminating against employees solely because they have filed for bankruptcy or have bad debts, and the [Fair Credit Reporting Act](#) requires written authorization and specific notices when an employer obtains a credit report through a consumer reporting agency and uses the report to take an adverse action.

**3. Salary History Inquiry:** To promote pay equity, several states and cities have enacted laws that prohibit prospective employers from inquiring about salary history or retaliating against an applicant that refuses to provide salary history.<sup>7</sup>

**4. What NOT to Ask:** Employers are required to refrain from asking any questions on an application that might violate the rights of the EEOC. See the Job Postings section for protected information.

**5. Employment Eligibility:** To determine if an employee is eligible to work, employers may ask the following questions:

- A.** *Do you have the legal right to work permanently in the US?*
- B.** *What is your visa status (if answered no to the previous question).*
- C.** *Are you able to provide proof of employment eligibility upon hire?*

**6. Work Schedule:** Rather than ask about religious schedule accommodations, you may ask employees if they are able to work certain schedules. Many employment applications have a section for employees to indicate the days/times they are available and unavailable – which might include both religious observance, school, other personal commitments, and preferences.

- A.** *Are you available to work on Saturdays?*
- B.** *Are you available to work on Sundays?*

## Onboarding

In addition to any on-the-job training for the position, the paperwork to get an employee set up can seem endless and getting it wrong or missing just a few items can be very time-consuming and expensive to rectify. A thorough checklist of all items your organization requires, including federal, state, local and internal company policies or documents is crucial for success in the onboarding process.

The items below include the primary statutory requirements (federal/local) and steps required to get your employees set up for success. Your industry or local organization may have many more, so be sure to check local authorities or industry-specific regulations for a full understanding of the requirements.

**1. Determining Employee Status and Rate of Pay<sup>8</sup>:** Each employee must be assigned a single status for all work performed for the employer. Note that an hourly employee (with few exceptions) may never be

considered “Exempt.” If an employee’s role changes, the status may be changed. If so, it is always recommended to change the status at the beginning of a workweek to avoid confusion. Status determines if employees are eligible for overtime, pay premiums, Fair Workweek requirements, and more<sup>9</sup>.

- A. Non-Exempt Hourly Employee:** Typically paid an hourly wage and scheduled for shift work.
- B. Non-Exempt Salary Employee:** Paid a salary but still eligible for overtime and other protections and premiums – often used for supervisors or administrative staff.
- C. Exempt Salaried Employee:** Typically executive, certain administrative and professional staff. Salaried employees are paid a fixed salary for a defined role which may not have a set schedule or required number of hours. They are not eligible for overtime or other premiums, so long as their salary is above a specified threshold.
- D. Independent Contractors:** These are NOT considered employees, are paid for their services based on submission of invoices and/or contracts, and are not eligible for employee benefits, unemployment compensation, minimum wage, or overtime.

## 2. Onboarding Documents Required at Hire

- A. I-9 Employment Verification:** All employers must complete and retain [Form I-9, Employment Eligibility Verification](#), for every person they hire for employment in the U.S.
  - i. Employees must complete and sign Section 1 of Form I-9 no later than their first day of employment (the actual commencement of employment of an employee for wages or other remuneration, referred to as date of hire in the Department of Homeland Security (DHS) regulations), but may complete Section 1 any time after they accept the job offer. Preparers and translators can help employees complete Section 1.
  - ii. Employers must review the Employee section for completeness and complete the employer section no later than three days from the first day of employment.
  - iii. Options for completion of the I-9 form:
    - 1. **Paper** completion and verification of documents in person.
    - 2. **Through an onboarding portal** for both employer and employee documents. Note that the review of the verification documents must still be in person

- 3. **Participation in the E-Verify Program:** E-Verify, or the Electronic Verification system, is a web-based program operated by the DHS in partnership with the Social Security Administration (SSA). E-Verify allows participating employers to electronically verify the information provided by the employee on the Form I-9. It compares the information provided to the data contained in the databases of the SSA and the DHS.

Employers are then advised of the newly hired employee’s eligibility to work in the US. The program is FREE and is voluntary for most employers. Employers participating in the E-Verify program must post notices informing them of their participation. States that require E-Verify include AL, AZ, CO (certain contractors), FL, GA, IN (certain contractors), LA (certain employers), MI (certain contractors), MN (certain contractors), MS, MO (certain employers), NE (certain employers), NC, OK (certain employers), PA (certain employers), SC, TN, TX (certain employers), UT, VA (certain employers).

- 4. **E-Verify+ Program:** A new program similar to the E-Verify program that employers will facilitate on their own. [E-Verify+](#) allows the employees to upload copies of the original documents rather than bringing them to the workplace for examination. Employees access a portal and complete the information as described [here](#).

## B. Federal and State/City Employment Tax Forms for Employees

- i. **Federal:** All employees must submit an IRS form W-4 Employee's Withholding Certificate to indicate the amount of Federal Income tax to be withheld from pay. If an employee fails to provide the form, the taxes withheld will be at the highest rate. Recovery of any over-withheld income tax will be the responsibility of the employee when they file their personal income tax returns.<sup>10</sup>
- ii. **State:** Each state with income tax and a few cities have their own forms that employees must complete.<sup>11</sup>
  1. Nine States have NO individual income tax and do not require a different form: AK, FL, NV, NH, SD, TN, TX, WA and WY.
  2. Several states allow for reciprocity forms if an employee works in one state but lives (and is taxed) in another. These are often used when an employee lives near a state border or is on a short assignment in another state. Most payroll processors can accommodate these reciprocity forms, so an employee does not have to file an income tax return for the non-resident state to receive a refund and then make individual tax estimates in their resident state.

**C. New Hire Reporting:** Federal law requires employers to report basic information on new and rehired employees. The information is maintained in the National Directory of New Hires, which child support agencies use to locate a parent who owes child support and will issue an income withholding order. This information is typically reported as part of the payroll processing system.

If there is a mandated child support garnishment, the employer will be notified from the garnishing agency and then can begin withholding accordingly. There is nothing needed from the employee for this process and the employee may not "opt out" of the garnishment process.<sup>12</sup>

**D. Other Employer Forms** that may be required for employee signature might include:

1. Signing an offer letter or employment agreement.
2. Wage Theft Notices: Several cities and states require that upon hire and when there are changes to pay, the employer provides a Wage Theft Notice to the employee with specified information regarding wages and pay. The notice must be signed by both the employee and the employer.
3. **Handbook or company policy acknowledgments which may include:**
  - a. Drug-free workplace notifications
  - b. Conflict of interest policy
  - c. Sexual harassment policy
  - d. Confidentiality and non-disclosure policy
  - e. Ethics policy
  - f. Tip credit and tip pooling policy
  - g. Family Medical Leave Act (FMLA) rights statement
  - h. Paid family and medical leave benefits
  - i. Paid time off (PTO), vacation and sick leave policy
  - j. Pregnancy accommodation policy
  - k. Workers' compensation notification
  - l. Phone, email, internet monitoring policy
  - m. Meal and rest break policy
  - n. Access to personnel file policy
4. **Direct Deposit Agreement or Pay Card Agreement:** These have specific rules by state. Some states may NOT mandate their use.
5. **Earned wage access enrollment options:** Benefits offered and methods for enrollment (covered in the Pay Section).

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# Employee Benefits Enrollment and Management

## Group Plans

Upon hire, employees must typically be notified of all employee benefits to which they may be entitled and the enrollment procedures. Some are mandated by law (e.g., federal ACA or state sick pay) and others are employer sponsored programs. Below is a list of the most common benefits. Each state may have differing requirements and methods for enrollment and management.

**1. Health Insurance:** Under the Affordable Care Act's employer shared responsibility provisions, certain employers (called applicable large employers or ALEs) must either offer [minimum essential coverage](#) that is "affordable" and that provides "minimum value" to their full-time employees (and their dependents) or potentially make an employer shared responsibility payment to the IRS. Employers with 50 or more full-time workers (over 30 hours per week) are typically covered by this provision.<sup>13</sup>

- A.** Employers are required to offer the coverage, but employees may elect to decline.
- B.** The employer is not obliged to cover the employee's spouse or dependents.
- C.** The employer must pay a minimum amount of the monthly premium (typically 60%).

**2. Employer-Sponsored Plans:** Employers are not obliged to offer these plans, but they are all common offerings and managed by the employer. The employer may pay none, some, or all the premium and withhold the employee's portion from payroll.

- A.** *Life and accidental death & dismemberment (ADD)*
- B.** *Dental*
- C.** *Vision*
- D.** *Health and wellness programs*
- E.** *Gym memberships*
- F.** *Transportation reimbursement*
- G.** *Educational assistance programs*
- H.** *Short-term disability (STD) and long-term disability (LTD)*

**3. Health Savings Accounts (HSA):** These individual savings accounts are set up on a pre-tax basis to pay for qualified medical expenses that typically include copays, coinsurance, and out-of-pocket costs. Only employees with high deductible medical plans are eligible. The accounts are individually owned, and the funds may be carried over indefinitely (not required to be used annually). Some employers set them up for employees and may provide a portion of the annual funding.<sup>14</sup> For 2025, the maximum contribution/deductions are:

- A. Individual:** \$4,300 (+additional \$1,000 if over age 55)
- B. Family:** \$8,300 (+additional \$1,000 if over age 55)

**4. Flexible Spending Accounts (FSA):** These accounts are established by employers for employees covered by employer-sponsored health plans to set aside funds for out-of-pocket medical expenses each year. Employers may provide the funds or allow employees to contribute pre-tax to the accounts. The maximum contributions for 2025 is \$3,300. The funds typically must be used during the calendar year with some "grace period" allowed at the employer discretion.<sup>15</sup>

**5. Employer-Sponsored Retirement Accounts:** The most common plan is the 401(k) plan that allows employees to contribute a portion of their wages to an individual account. There are several types of 401(k) plans with different contribution limits. The employee contributions are pre-tax as is any employer match. When an employee leaves a job, they are able to roll the 401(k) plan into another deferred retirement account.<sup>16</sup>

## Other Employee Benefits

**1. Paid Time Off (PTO):** PTO plans come in a variety of forms and may include holidays, sick time, personal time and vacation. If an employer is in a state that requires sick pay, the PTO plan must be at least as generous as the state- or city-mandated plan. There are also specific rules that vary by state and city regarding what might be required to be paid at the time of termination. There is presently no federal requirement for any paid time off for part-time or full-time employees. Tracking PTO is typically done via HR or payroll applications.

**2. Employee Discounts:** Many employers allow for generous discounts, including free meals while working or during non-working hours. Some also allow for discounts to be extended to family members.

**3. Employee Stock Purchase Plans (ESOP):** These plans allow employees to purchase and/or receive stock in the employer company. These plans are typically administered by 3rd party providers.

## Government Mandated Benefits

**1. Unemployment Insurance (UI or SU):** Unemployment Insurance is a joint state-federal program that provides cash benefits to eligible workers. Each state administers a separate UI program, but all states follow the same guidelines established by federal law. The benefits are intended to provide temporary financial assistance to employees while searching for a new position.<sup>17</sup>

**A.** Benefits are generally only available to unemployed employees through no fault of their own.

**B.** Employers pay 100% of the premium through payroll taxes to both the state and the IRS.

**2. Workers' Compensation Insurance:** All employers except those in Texas are required to maintain workers' compensation insurance to protect employees who are injured on the job or become ill performing their job duties. The policies are generally purchased from independent insurance brokers and require annual reporting of employee job duties and wages paid.

**3. State Required Disability Insurance:** Employers in certain states are required to provide temporary (short-term) disability insurance (STD) to workers. STD laws provide income protection to employees who cannot work due to a nonwork-related illness or injury (which may include pregnancy and organ donation). Employers and/or the employees pay the premiums via a payroll tax. States with these requirements include: CA, HI, NJ, NY, and RI.

**4. State Required Individual Retirement (IRA) Programs:** Several states currently have or have future requirements for mandatory participation in retirement savings programs. Employees must be enrolled in the plans but may "opt out" of participation. The intent is to provide a simple way for employees to participate in retirement savings. Employers are not required to make contributions on behalf of the employees.

**5. Family Medical Leave Act (FMLA):** FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave.

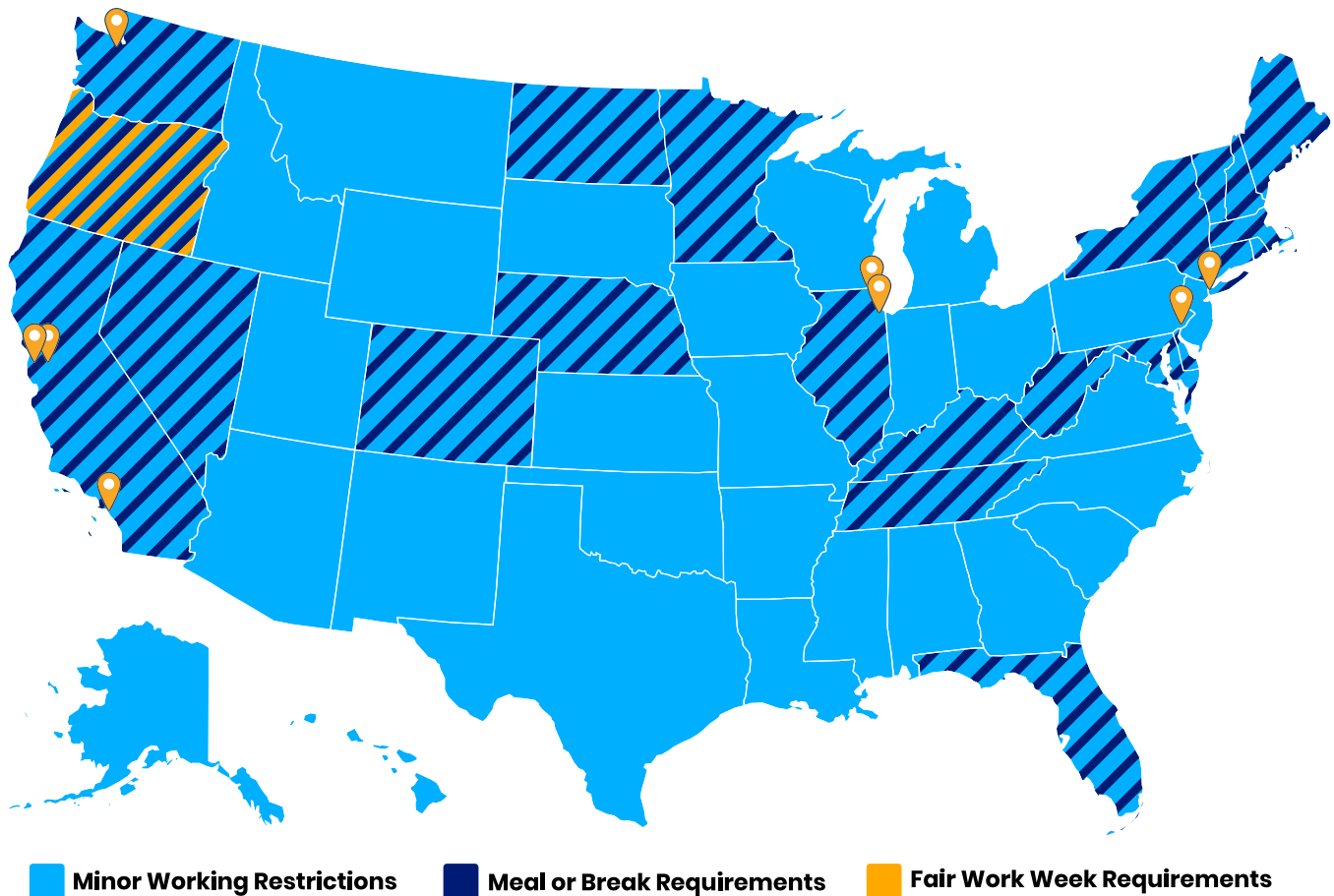
Eligible employees are entitled to:

- A.** Twelve workweeks of leave in a 12-month period for:
  - i. *The birth of a child and to care for the newborn child within one year of birth.*
  - ii. *The placement of a child for adoption or foster care and to care for the newly placed child within one year of placement.*
  - iii. *To care for the employee's spouse, child, or parent who has a serious health condition.*
  - iv. *A serious health condition that makes the employee unable to perform the essential functions of their job.*
  - v. *Any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty".*
- B.** Twenty-six work weeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or illness if the eligible employee is the servicemember's spouse, son, daughter, parent, or next of kin (military caregiver leave).

**6. Paid Family Leave:** There is not presently any federal requirement for paid family leave. At time of writing, just over 25% of the states have mandated paid family leave for at least some of their employees. Employers and/or the employees pay the premiums via a payroll tax.

**7. Paid Sick Leave:** While no federal law requires paid sick leave in private employment, more than 10 states, the District of Columbia, and several municipalities require certain private employers to provide some form of paid sick leave to eligible employees. Tracking and accounting for the required sick leave can be very complex and varies by location.

### States with Minor Working Restrictions, Meal or Break Requirements, and/or Fair Work Week Requirements



# Scheduling and Time and Attendance

## Federal, State, and Local

The assortment of federal and state laws that include scheduling, tracking time and calculating pay can be daunting to learn, but the consequences for violations are serious. Failure to pay employees for all time worked is known as “Wage Theft.”<sup>18</sup> Use of a reliable system for tracking, reporting and creating schedules and calculating pay can help employers avoid these potential and costly pitfalls:

### Wage Theft Examples:

- Failure to pay minimum wage.
- Failure to pay or properly calculate overtime premiums or Fair Workweek premiums.
- Failure to pay for all hours worked – referred to as “off the clock” work.
- Misclassification of workers as “Exempt” or “Independent Contractors” to avoid paying overtime and other benefits.
- Failure to distribute tips earned.
- Withholding final wages from terminated employees.
- Adjusting time records for unpaid meal breaks that are not taken or failing to provide breaks as required.
- Taking improper deductions from paychecks.

US wage and hour laws are guided by the Fair Labor Standards Act (FLSA) as enforced by the Wage and Hour Division of the U.S. Department of Labor (DOL), which was designed to protect workers from unfair labor practices. It primarily includes provisions for:

1. Setting a federal minimum wage
2. Child labor standards
3. Overtime pay
4. Employer recordkeeping requirements

The FLSA does not presently require any of the following:

1. Vacation, holiday, severance or sick pay.
2. Meal or rest periods.
3. Pay raises or benefits (except for ACA requirements).
4. Premium pay for holidays, weekends or night work.
5. Limits to the number of hours or days employees (excluding minors) may be required to work.
6. Discharge notices, reasons for discharge, or immediate payment of final pay to terminated employees.

If a city, county, or state enacts a law that is different from the federal standard, the local law will prevail if it is either more restrictive (such as the Fair Workweek scheduling rules) or pays higher wages or premiums (such as California daily overtime). In addition, if an organization has a collective bargaining agreement (Union) the rules of the agreement need to be considered and applied.

Federal regulations are also enforced by several other agencies, including the Equal Employment Opportunity Commission (EEOC), Occupational Safety and Health Administration (OSHA), and the Employee Benefits Security Administration as well as the Internal Revenue Service (IRS) and state and local taxing agencies. These agencies cover other areas in the employee lifecycle that will be covered in subsequent Compliance Guides.

Following are some illustrative highlights of the most common scheduling and time and attendance statutes.

## Minimum Wage, Overtime, And Premium Pay

### Minimum Wage

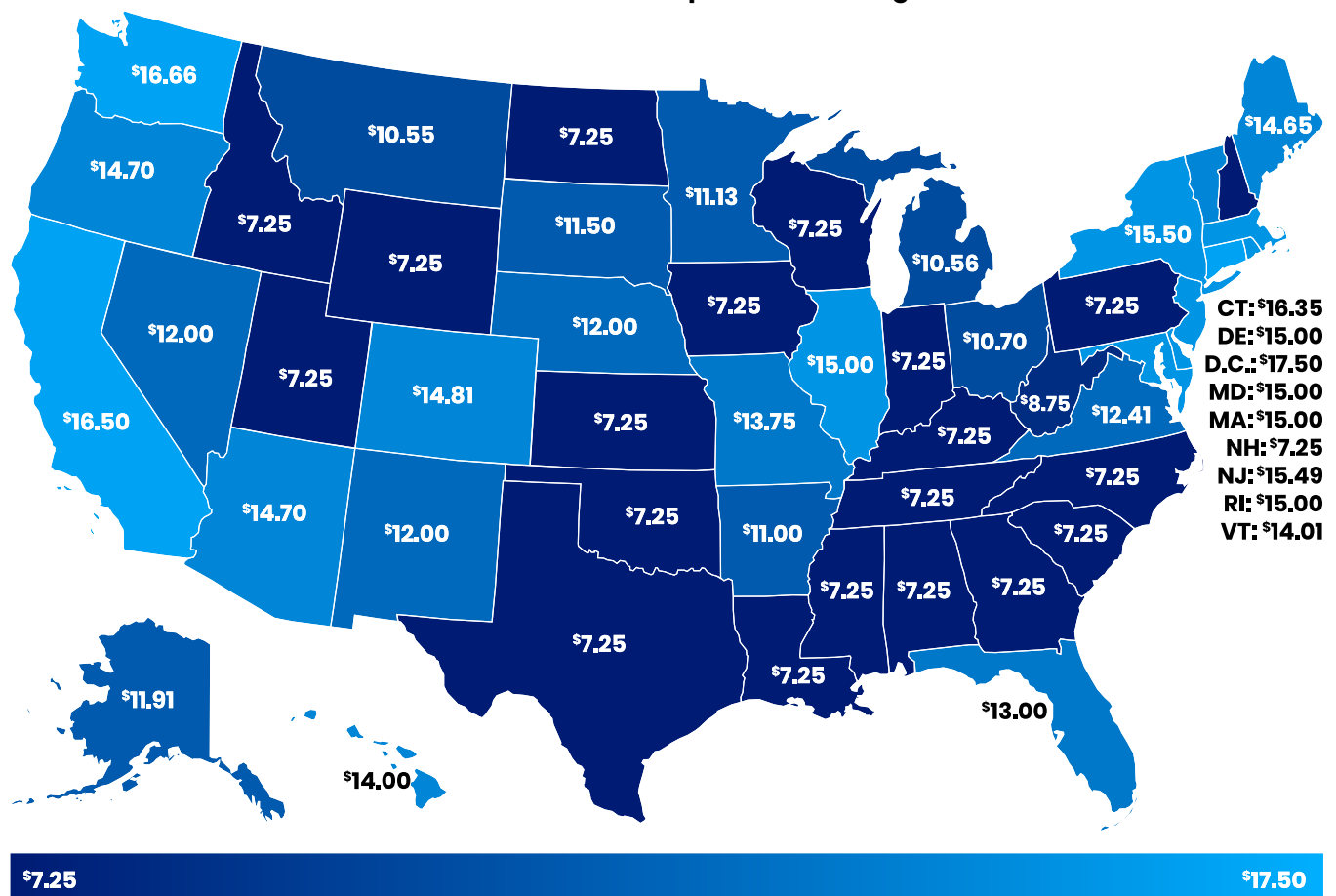
The Federal minimum wage established by the Fair Labor Standards Act (FLSA) is \$7.25 per hour. This rate has been in effect since July 24, 2009. The FLSA ensures that all covered, non-exempt workers are entitled to at least this minimum wage for all hours worked. For employees working in tipped jobs (servers, bartenders, etc.) the FLSA allows for a cash wage of \$2.13 per hour if the weekly tips earned bring the employee's earnings up to at least \$7.25 per hour.

If there is a local wage (state, county, city, region, airport, industry, or union) that is higher than the federal rate, the local rate will prevail.

Local Minimum wage rates typically increase annually and at various renewal dates throughout the year.

- There are over 150 local minimum wage rates across the U.S., including more than 50 in California, 8 in Washington state, and differing rates in NY depending on location and industry.
- The amount of tipped cash wage also differs in most of these locations.
- Only 14 states follow the FLSA minimum wage requirements.
- 8 states require full minimum wage and do not allow for a reduced amount for tipped employees: AK, CA, MN, MT, NV, OR, and WA.
- The FLSA and many states allow for a sub-minimum wage rate to be paid under certain conditions including youth and/or training rates. Because of the competitive nature in the hospitality industry, these are rarely used.

**Basic Combined Cash & Tip Minimum Wage Rate**



Source: [U.S. Department of Labor](https://www.dhs.gov/eis-a-104)



## Federal Overtime

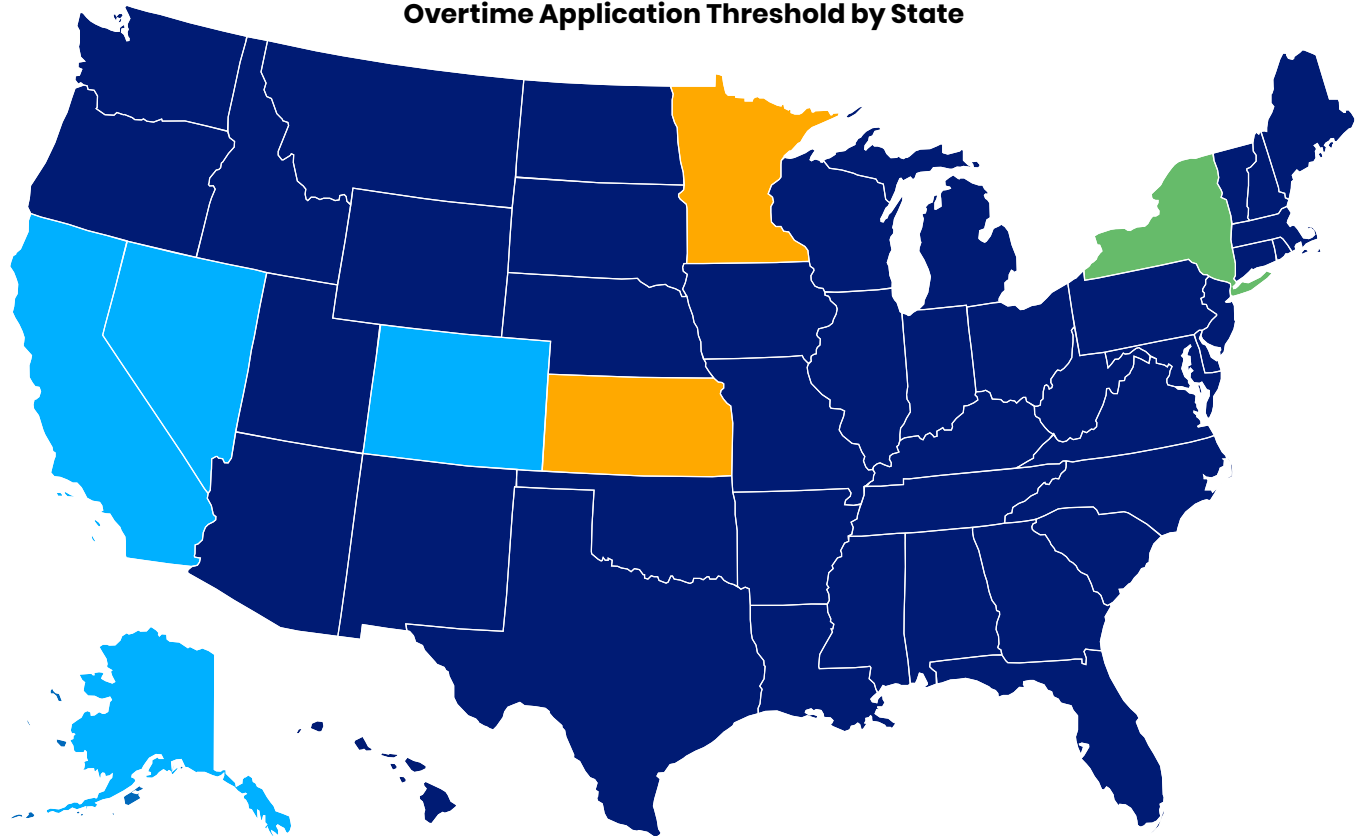
The Federal Overtime Pay rule is the FLSA requirement that non-exempt employees be paid a premium of 50% (known as time-and-a-half) for all hours worked more than 40 in a workweek. Each employer establishes a 168-hour workweek and 24-hour workday that fits their operations and business needs. While it seems that this calculation would be simple, there are several factors and alternatives to consider:

- **Income for overtime calculation must include:**
  - Hourly wages earned, including the full minimum wage for tipped employees.
  - Non-discretionary bonus pay which may need to be applied across multiple workweeks (i.e. \$200 for upselling the most lemonade in the month of June).
  - Service charges included in pay that are not tips. Mandatory gratuities stated on menus or applied to large groups are not tips and may not satisfy the tip credit. They are reported as regular wages.
  - Other pay that might include meetings, training, travel time, waiting time, commissions, or prizes.
- Hours worked across the workweek cutoff must be counted as worked in two separate weeks, even if in the same shift. For example, if the workweek ends at midnight on Saturday night and an employee works a shift from 8pm Saturday to 6am Sunday, only the hours from 8pm to 12am will be counted toward the first week's overtime; the hours from 12am to 6am will count toward the 2nd week's total.
- **Calculating the rate of pay for the premium:**
  - **Blended Rate or Weighted Average:** This is used if an employee worked at more than one pay rate during the week or has any of the additional items included above. An average hourly rate needs to be calculated to determine the overtime rate.
  - The FLSA allows an alternate option to use the rate of pay for the job at the time the overtime was worked.
- Salaried employees might be eligible for overtime pay:
  - Any non-exempt employee paid a salary is eligible for overtime. There are a few different options for determining the hourly rate for the premium calculation that an employer may use.
  - Any employee with a salary below a certain threshold (federal standard is currently \$35,568 and 8 cities or states have higher rates including up to \$83,200 for CA fast food and \$77,968 in WA).
- Paid rest breaks or meal breaks where an employee is required to stay on premises and provide any amount of work (even if only a few minutes) must be paid time and are considered working time and considered in the counting of hours toward overtime.
- The FLSA allows for exemption from overtime pay under certain conditions. "Commissioned" employees, including retail/restaurants where employees are paid a "commission" that might include service charges for banquets or events may be exempt from overtime if certain conditions are met. These conditions include a base hourly pay rate of at least 1.5 times the local minimum wage for the full workweek and more than half the total earnings are from commissions. This rule is referred to as the 7(i) exemption after the code section in the FLSA.<sup>19</sup>
- There is a long list of employees exempt from federal overtime including: executive, administrative, professional employees, outside sales, certain computer professionals and many more. See the [FLSA Digital Reference Guide](#) for more information.

## State Overtime

Several states have overtime rules that provide additional premiums. A sample of these include:

**Overtime Application Threshold by State**



### **Federal Standard (Most states)**

- Overtime applies after 40 hours in a 7-day workweek.

### **Daily Overtime (Some states require overtime based on daily hours in addition to weekly limits)**

- Alaska: Overtime applies after 8 hours in a single workday.
- Nevada: Overtime applies after 8 hours in a single workday.
- California: 1.5x pay after 8 hours/day, 2x pay after 12 hours/day.
- Colorado: Overtime applies after 12 hours in a single workday.

The states do not require the “pyramiding” of overtime pay if a work period falls in both daily and weekly overtime. In these cases, the employee is eligible for the highest rate of premium.

Other states and cities with special overtime premiums include: AK, various city hotels in CA, CT, and KY.

### **Weekly Overtime Threshold (Some states set a higher weekly threshold than the federal standard):**

- Kansas: Overtime applies after 46 hours in a workweek.
- Minnesota: Overtime applies after 48 hours in a workweek.

### **Spread of Hours Provision:**

- NY: Employees receive an extra hour of minimum wage if their shift (including breaks) exceeds 10 hours.

In certain circumstances, employers may opt to use a 4–10-hour workday and/or an 80-hour per 2-week schedule for determining overtime premiums. And, if an employer is covered by a collective bargaining agreement or has its own policies for pay, the agreements may require more favorable overtime provisions for employees.

## Other Pay/Premium Pay

There are several other types of pay/premium pay based on schedules or hours worked that include<sup>20</sup>:

- **Minimum Shift aka Short Shift or Reporting Time Pay in Tucson AZ, CA, CT, DC, NH, NJ, NY, OR, RI:** If an employee's schedule is canceled or cut short or an employee is scheduled for or called in for a short shift, these cities and states require a premium to be paid to the employee to partially make up for the missed work hours. As always, there are exceptions which may include a regularly scheduled short shift, such as an employee who comes in to clean for 2 hours every day, or an employee requested the shorter shift, arrived late, or chose to leave early. These exceptions should be documented in the permanent pay records.
- **Split Shift Premium in CA, DC, NY:** A split shift refers to a work schedule where an employee's workday is divided into two or more separate periods of work with a substantial break in between (typically more than one hour). The employee is not paid for the time during the gap but is entitled to a premium for working a split shift. Employers need to monitor the reason an employee may have a gap during the day to determine if it is an employer-scheduled split shift that requires premium pay, or an employee requested a long break for personal reasons or returned late from an unpaid meal break that does not require the premium.
- **Spread of Hours in NY:** If an employee's full workday, from the time of clock-in to the time of clock-out, spans more than 10 hours, they are entitled to Spread of Hours premium.
- **Shift Differential Pay:** This is not required by the FLSA or any states but may be a company pay policy. It typically provides additional pay (i.e., extra \$2.00 per hour) for working specified time or shifts such as between 1am and 6am.
- **Holiday Premium Pay:** This is not required by the FLSA and only in a few instances in some states in retail. Many employers provide premiums for working on holidays, which requires setting up clearly documented pay rules and holiday calendars.
- **Sleep Time Pay (not typical in Hospitality):** This may be required in certain industries based on the description of the job, requirements to be on duty, and the amount of time the employee is authorized for sleep. Sleep time pay during a long shift may be at a different pay rate.
- **On Call Pay:** An employee who is required to remain on call on the employer's premises is considered working while "on call." An employee who is required to remain on call at home or who is allowed to leave a message where they can be reached, is not working (in most cases) while on call. Additional constraints on the employee's freedom could require this time to be compensated.
- **Waiting Time:** Consideration of waiting time as time worked depends upon circumstances. For example, an employee waiting for customers to arrive after prepping the restaurant for opening or waiting at their desk waiting for an assignment is considered working. This time is known as "engaged to work," even if an employee is allowed to check their phone or read a book.
- **Travel Time:** This may be considered hours worked depending on the circumstances. Typically, commuting from home to work is not considered work time, but time spent traveling to a seminar or extra travel time to work at a different location may be compensable.
- **Fair Workweek Predictability Pay** (covered below)



37 states have statutory meal and rest break requirements, and many have separate, more restrictive rules for minors. In addition, many have requirements that if a meal break falls short of 30 minutes, even if by just a few seconds or a minute, the

In rare instances and under certain conditions (i.e., only one employee is on duty) employees may take their meal breaks while on duty and eat a meal during the time or stay at their station to answer calls, but again this is considered time worked and must be paid. Some states have provisions allowing employees to waive meal breaks. It is very important that the waivers are “in writing” to be available as documentation in the event of an audit or employment claim.

**Meal Break Requirements**

**Rest Break Requirements**

**Meal & Rest Break Requirements**

**Federal Requirements Only**

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Examples of a few of the more complex rules are below:

### California Meal Break

- California requires a 30-minute meal break for any employee working more than 5 hours. The break must start no later than the beginning of the 5th hour, and a second break that must start before completing 10 hours of work.
- Employees who are not authorized and permitted to take their breaks are entitled to meal break penalty pay of 1 hour's pay.
- There are provisions allowing employees to waive some meal breaks (if the shift is shorter than 6 hours or waive a 2nd meal break if the shift is shorter than 12 hours). The meal waivers must still be taken before the 5th and 10th hour of work respectively.
- Employers must take care to carefully document these waivers.

### California Rest Break

California also requires 10-minute paid rest breaks for each 4 hours (or major fraction of 4 hours) worked. These may not be waived, and employees are entitled to rest break penalty pay of 1 hour's pay if they are not provided.

### New York Meal Break

New York also has complex meal break rules that depend on both the length of the shift and the time the shift starts and/or ends.

- A shift of greater than 6 hours that starts before 11:00am and ends after 2:00pm is entitled to a meal break of 30 minutes that must be taken between 11:00am and 1:30 pm.
- There are similar rules for shifts starting between 1:00pm and 6:00am and for shifts longer than 8 hours that start before 11:00am and end after 7:00pm.
- There are no required paid rest breaks.

### Illinois Meal and Rest Break

Illinois has different break requirements for employees 16 and older and for 14–15-year-olds. As defined by the FLSA, breaks of 20 minutes or shorter must be paid and counted as hours worked. Employers may always allow for or require longer unpaid meal periods.

### Washington Meal and Rest Breaks

Washington State also mandates meal breaks at specified periods during the shift.

- For shifts over 5 hours, a first meal break must start after working at least 2 hours and completed before the end of the 5th hour.
- If the shift is over 11 hours, a second meal period must be completed before the employee works 5 consecutive hours.
- Washington allows employees 18 and older to waive the meal breaks if the employer mutually agrees.

Washington requires 10-minute rest breaks for each 4 hours of work, also to be taken at specified times. Employees may not waive these breaks.


Washington has separate meal break requirements for 14–15-year-old employees and for 16–17-year-old employees. These meal periods may not be waived.


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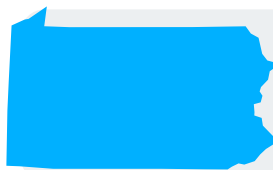
## Fair Workweek (AKA Predictive Scheduling)


		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours
	Berkeley, CA	Yes	Yes	Yes	Yes	Yes
	Emeryville, CA	Yes	Yes	Yes	Yes	Yes
	Los Angeles, CA (Retail)	Yes	Yes	Yes	Yes	Yes
	San Francisco, CA	Yes	Yes	Yes	No	Yes
	San Jose, CA	No	No	No	No	Yes

		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours	Consent to More Hours
	Chicago, IL	Yes	Yes	Yes	Yes	Yes	Yes
	Evanston, IL	Yes	Yes	Yes	Yes	Yes	No

		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours	Consent to More Hours
	New York, NY (Fast Food)	Yes "Regular Schedule"	Yes	Yes	Yes	Yes	Yes
	New York, NY (Retail)	No	Yes	No, but right to decline	No	No	Yes

		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours
	Oregon State	Yes	Yes	Yes	Yes	Yes

		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours	Consent to More Hours
	Philadelphia, PA	Yes	Yes	Yes	Yes	Yes	Yes

		Good Faith Estimate	Advance Notice of Schedule	Predictability Pay for Schedule Changes	Right to Rest	Access to Hours
	Everett, WA	No	No	No	No	Yes
	Renton, WA	No	No	No	No	Yes
	SeaTac, WA	No	No	No	No	Yes
	Seattle, WA	Yes	Yes	Yes	Yes	Yes
	Tukwilla, WA	No	No	No	No	Yes

Fair Workweek (FWW) laws are designed to provide predictable and stable work schedules for employees, especially in industries such as retail and food service where scheduling can be inconsistent. Each city/state with Fair Workweek provisions have different criteria to determine which employers must abide by the rules. These laws include the following provisions:

- **Good Faith Estimates (GFE):** This refers to an employer's obligation to provide an estimate of the number of hours an employee can expect to work, typically when the employee is first hired, returns from a leave of absence, or when a new schedule is being discussed. This estimate is meant to give employees a clear idea of their expected weekly schedule and helps reduce the unpredictability that can be a challenge in many industries. NYC requires a fixed "REGULAR SCHEDULE" and Philadelphia requires updates based on look-back of Good Faith Estimate compared to actual hours worked.
- **Hiring by Need:** To discourage employers from relying on last-minute scheduling changes or on-call employees, some FWW requirements mandate employers to make hiring decisions based on their actual need.
- **Advanced Notice of Schedules:** Employers are required to provide posted work schedules to employees 14 days in advance of the first day of a work schedule for the full week. For example, a schedule starting on Monday, July 15th must be "posted" no later than midnight on the evening of June 30th.
  - **In Writing:** The notice of work schedules is required to be provided in writing or through an accessible scheduling system, ensuring that employees have a clear record of their assigned shifts.
  - **Posting and Access:** Schedules must often be posted in a place where employees can easily see them, and employers may need to provide access to schedules through digital systems or other means that employees can regularly check.
  - **Penalties for Non-Compliance:** If an employer fails to provide the required advance notice, they may face penalties imposed by the departments of labor and may need to pay a premium to each employee for each scheduled shift not posted on time.
  - **Employee Request for Privacy:** A few of the cities have provisions that under certain circumstances employees may request that their names be omitted from the posting schedule to maximize their personal privacy.
- **Predictability Pay:** Changes to posted schedule after the deadline may result in a premium payment to employees. To remain compliant employers must have a solid, reportable workflow in place to capture employee consent for schedule changes including coding the reasons for the changes, documentation indicating that the employee received notice of a schedule change, and a clear understanding of the amount due for each change.
- **Compensation for Changes:** Generally, if an employer makes changes to an employee's schedule after the posting deadline for the weekly schedule, the employee may be entitled to predictability pay. This includes additional pay for last-minute changes, including adding time/shifts, changed locations or dates, and reducing or cutting shifts.
- **Pay Amounts:** Set by local regulations, pay may be a fixed dollar amount, an hour's pay, or a portion of time for hours missed if a shift is cut short or canceled.
- **Exceptions:** Each location has a definitive list of reasons why an employee may not be eligible for predictability pay. Lists typically include: employee-initiated changes such as shift swaps or calling out sick, weather or disaster related closures of the business, or reduction of hours.
- **Grace Period or Buffer:** Most locations allow for minimal changes to schedules (10-20 minutes) that will not result in requiring consent or predictability pay. This allows for inadvertent early/late clocking of just a few minutes or an employer's request to stay just a few minutes late.
- **Right to Decline:** In most instances, employees have the right to decline any additional hours or time added to their schedules. In other words, if a manager wants to add a shift to a schedule, they must notify the employee in advance and allow the employee to decline. In addition, if an employee is asked to "stay late," they have the right to decline and to leave at the scheduled hour.
- **Right to Rest AKA "Rest Between Shifts" or "Clopening":** This provision is designed to allow employees a minimum number of hours (ranging between 9-11) between shifts, typically overnight, before being required to clock back in for a new shift.

- **Right to Decline and Consent:** Employees always have a Right to Decline and, in some locations, must provide written consent before accepting or working these shifts. NYC is very strict and requires written consent before starting the shift or an additional \$100 right to rest premium, if there is consent. If the employee works a close-open and there's not prior consent, it's an additional \$500.
- **Compensation:** If an employee works a shift that is within the required rest period (with or without consent), they will be entitled to "Right to Rest" compensation. Each location calculates the compensation based on statute in the form of premium pay of 25%-50% or a fixed dollar amount. Employees may not waive their right to the Right to Rest provisions or premium pay.
- **Access to Hours:** Before recruiting externally for open positions on ongoing shifts, employers are required to offer the hours to current employees. Each statute is a bit different, but they typically require offering shifts to employees that are part time (does not create ongoing overtime), trained for the position (not required in NYC), and at the current location. Each statute has specific criteria for notifying current employees.

**“Fair Work Week laws make it tough to stay compliant while running your business. A smart scheduling tool is essential to create compliant and cost-effective schedules.”**

*Debra Glassman*

*U.S. Compliance, HR & Payroll Specialist*

## Other Scheduling Requirements

### Day of Rest

Several States provide an opportunity for employees to have a weekly day of rest and/or to request not to be scheduled due to religious observance. It is important to have a clear understanding of each state's requirements and clear documentation of each employee's requests. Much of this can be accomplished by a robust availability application integrated into the scheduling process, so the scheduling manager has easy access to all employees' restrictions and preferences. Here are a few samples of Day of Rest requirements:

- **Federal:** Employers must make a reasonable effort to accommodate an employee's sincerely held religious beliefs or practices, including observing a Sabbath or other holy days. Accommodations might include rescheduling shifts, allowing swaps with other employees, or granting unpaid leave.
- **California:** An employer may not cause an employee to work more than six out of every seven days. A day of rest is guaranteed for each workweek. Periods of more than six consecutive days of work that stretch across more than one workweek are not necessarily prohibited. An employer must also provide reasonable accommodations to allow employees to observe a Sabbath or other religious holy days, reasonable time necessary for travel before and after a religious observance, and religious dress practice and religious grooming practice.
- **Louisiana (Employees Under Age 18):** Minors shall receive an eight-hour rest break at the end of each workday and before the commencement of the next day of work. This is similar to the Rest Between Shifts provision of Fair Workweek.
- **New York:** An employer must allow covered employees to have at least 24 consecutive hours of rest in any calendar week. Before operating on Sundays, an employer must designate a day of rest in each calendar week for each employee and notify each employee in advance of his or her designated day of rest.

### Industry Specific Rules: Hotels

Several cities in California have statutes that apply to hotel employees, generally for staff that service guest rooms. Among other requirements, these employers have the following restrictions.

The employer must:

- Notify the employee of the square feet they are assigned to clean during a shift.
- Limit the number of square feet an employee can be required to clean in an 8-hour day.
- Limit the number of "special assignment" rooms an employee can be assigned to clean in one day unless the employee is paid a premium of double time.
- Not require or permit an employee to work over 10 hours in a workday without written consent from the employee. The employee may decline to work over 10 hours without any adverse actions on the part of the employer.



# Tips and Service Charges

Tipped employees are those working in occupations that “customarily and regularly” receive more than \$30 in tips per month (some state thresholds are higher).<sup>22</sup> If an employer chooses to pay the reduced rate “tip credit provision”, they must:

- Notify the employee in advance, typically as part of onboarding notifications.
- Track the tips received by employees to demonstrate that the full minimum wage is earned each week and report each pay period on the employee pay stub.

Pay the difference (up to full state minimum wage) to the employee if the tips do not satisfy the weekly requirement.

## What Are Tips?

1. Tips are discretionary (optional or extra) payments determined by a customer that employees receive from customers. Tips include:

- A.** Cash tips received directly from customers.
- B.** Tips from customers who leave a tip through electronic settlement or payment. This includes a credit card, debit card, gift card, or any other electronic payment method.
- C.** The value of any noncash tips, such as tickets or other items of value.
- D.** Tip amounts received from other employees paid out through tip pools or tip splitting or other formal or informal tip sharing arrangements.

2. Three factors are used to determine whether a payment qualifies as a tip. Normally, all three must apply to be a tip. The customer generally has the right to determine who receives the payment, and if any one of these criteria does not apply, the payment is likely considered a service charge. Qualifications include:

- A.** The payment must be made free from compulsion.
- B.** The customer must have the unrestricted right to determine the amount.

- C.** The payment should not be the subject of negotiations or dictated by employer policy.
- D.** Other Factors:
  - i.** The FICA tax (employer match) of 7.65% paid by the employer is credited back to the employer on the employer’s tax return.
  - ii.** All tips must be distributed to employees and no portion may be retained by the employer.
  - iii.** Employers may withhold an amount equal to the estimated cost of credit card fees if customers pay the tips with credit cards.

## What Are Service Charges?

1. This refers to the amounts an employer requires a customer to pay. This is true even if the employer or employee calls the payment a tip or gratuity. Examples of service charges commonly added to a customer’s check include:

- A.** Standard charge on all bills. These were popularized in 2020–2021 during Covid-19 shutdowns
- B.** Standard “health and wellness” charges. This charge is often 4–5% to “cover the cost of benefits for employees.”
- C.** Large dining party automatic gratuity
- D.** Banquet event fee
- E.** Cruise trip package fee
- F.** Hotel room service charge
- G.** Bottle service charge (i.e., at nightclubs and restaurants)

2. Generally, service charges are reported as non-tip wages paid to the employee. Some employers keep a portion of the service charges. Only the amounts distributed to employees are non-tip wages to those employees.

3. Other Factors

- A.** The FICA tax (employer match) of 7.65 paid by the employer is not eligible for a credit and is a cost on to the employer.
- B.** The service charges are considered wages and therefore must be included in total wages for calculating overtime pay.

- C. Service charges are typically paid out to employees on paychecks and not cashed out at the end of the shift.
- D. Service charges are typically considered taxable sales to the restaurant and subject to sales tax.

The rule known as 80/20/30 was overturned in October 2024. The rule required employers to monitor the amount of time a tipped employee was doing “tip supporting tasks,” such as rolling silverware or prepping tables. If the employee was engaged in more than 20% of the week’s hours or more than 30 consecutive minutes in non-tippable work, the employee would be entitled to receive the full minimum wage for that period.

Employers are still required to monitor employee work assignments and only apply tip credit for legitimately tipped jobs.

## Payroll Calculations and Payroll Processing

While most restaurants and chains utilize payroll processing bureaus, there is still a whole lot for the operators to know about staying compliant. Once again, each state may have separate requirements. Below are some of the highlights:

### 1. Paycheck Calculations

- A. **Accurate Calculation of Gross Pay:** While the easy part is determining how many hours the employee worked and multiplying by the rate of pay, much more goes into an accurate calculation. In most states employers must provide a detailed pay stub to employees showing these calculations, and they should include separate line items for:
  - i. Earned Income.
  - ii. Each pay rate and the hours worked at that rate or the salary for the period.
  - iii. Overtime hours worked (weekly, daily) and the premium amount for the overtime.
  - iv. Split shift, minimum shift, spread of hours or shift differential premiums.
  - v. Other pay that might include: sleeping time, on call, meeting time.
  - vi. Holiday pay.
  - vii. PTO or vacation pay, including the accrual and balance on each pay stub.

- viii. Sick pay or family leave pay, including the accrual and balance on each pay stub.
- ix. Fair Workweek predictability pay or rest between shift pay.
- x. Missed break penalty pay (CA only).
- xi. Tip shortfall pay (if the tips reported for the week do not bring the rate to minimum wage).
- xii. Tips, which are often split between:
  - 1. Credit card tips.
  - 2. Cash tips.
  - 3. Indirectly received tips (tip outs from other employees).
- xiii. Service charges (mandatory charges) that are separate from tips.
- xiv. Bonus payments.
- xv. Retro pay adjustments.
- xvi. Other payments.
- xvii. Expense reimbursements.
- xviii. Loans or advances.

### B. Deductions from Pay:

- i. Required statutory deductions.
- ii. Federal and state income tax based on the tax forms supplied by employees.
- iii. Social Security and Medicare tax also known as the FICA tax (typically 7.65%).
- iv. State-sponsored disability insurance deductions.
- v. Wage garnishments and child support payments.
- vi. Voluntary and employee benefit deductions. These may be pre-tax or post tax depending on the plans in place.
- vii. Retirement Plan Contributions (IRA, 401(k) etc).
- viii. Health Plan, Health Savings Account (HSA), Flexible Spending Accounts (FSA), or other employee voluntary plans.
- ix. Union dues, charitable contributions, uniforms etc.
- x. Reimbursement for purchases or meals.
- xi. Employer loan repayments.
- xii. Earned Wage Access (EWA) payments received during each pay period.

- C. **Pay Frequency and Lag Time Requirements:** State wage payment laws control how often employees must be paid as well as how soon they must be paid after they perform services for an employer. The federal Fair Labor Standards Act only generally requires that an employer pay its employees “promptly” and by the established regular pay day. Examples Include:

#### i. Frequency<sup>23</sup>

- 1. **CO:** At least monthly or every 30 days, whichever

is longer.

2. **DC:** Nonexempt employees must be paid at least twice a month. FLSA-exempt employees must be paid at least monthly.

3. **MA:** Nonexempt employees must be paid at least weekly or biweekly.

- ii. **Lag times:** How soon after the work week must an employee be paid?

1. **CA:** For nonexempt employees, wages earned between the 1st and 15th of the month must be paid between the 16th and the 26th day of the same month. Wages earned between the 16th and the last day of the month must be paid between the 1st and the 10th day of the following month. Other, more frequent payroll periods, such as weekly and biweekly or semimonthly when the earning period is something other than between the 1st and 15th and the 16th and last day of the month, must be paid within seven calendar days of the end of the payroll period within which the wages were earned.

2. **CT:** Payment may be held up to eight days.

3. **MO:** Payment may be held up to sixteen days.

**2. Permitted Methods of Payments:** The FLSA states that pay is paid “in cash or negotiable instrument at par” which historically meant by check but now allows for direct deposit and pay cards. The options for payment include:

**A. Cash:** This is very rarely used and administratively difficult. Historically most restaurants paid out tips in cash, either daily or weekly, but with the vast majority of restaurant purchases paid by card, restaurants hold very little cash on hand. Technology solutions can help distribute digital tip payments to staff without the need to hold cash on site. In some restaurants tips paid to employees in cash may be taken home at the end of each shift.

**B. Physical Paychecks:** These are historically popular, but physical paychecks are nearly extinct due to the administrative burden, cost of management, and slower time for payment to reach the employees’ bank accounts. However, only twenty states (with exemptions and limitations) have the power to make direct deposit mandatory. For the remaining states, employers must issue paper paychecks if the employee chooses not to enroll in direct deposit.

**C. Direct Deposit:** This is the most common form of payment. Employees typically enroll through an on-line payroll portal or by filling out a paper form with their bank account information and the net pay funds are deposited to their accounts on payday. Employees are usually offered the option to deposit to multiple accounts based on dollar amounts or percentages with the option to make changes as needed.

Some states empower employers to mandate that employees enroll in direct deposit:

- i. Alabama: Private sector only
- ii. Indiana
- iii. Iowa with some limitations
- iv. Kansas
- v. Kentucky
- vi. Louisiana
- vii. Maine
- viii. Massachusetts
- ix. Michigan
- x. Minnesota: Private sector only; Public sector at discretion of the Commissioner of Labor & Industry
- xi. Missouri
- xii. New Jersey: Public sector only
- xiii. North Carolina
- xiv. North Dakota
- xv. Oklahoma
- xvi. South Carolina
- xvii. South Dakota
- xviii. Tennessee: Employers with over four employees
- xix. Texas
- xx. Utah with some limitations
- xxi. Washington
- xxii. West Virginia: State institutions of higher education
- xxiii. Wisconsin

**D. Pay Cards:** Paycards are another common pay method permitted in all 50 states. Paycards are popular especially for employees that do not maintain traditional bank accounts like minors. Depending on the card in question, pay cards can be backed by major card companies and act as debit cards. The funds used are deposited on the cards much like direct deposit. Employees may use debit cards, the same as traditional bank cards to make purchases or pay bills as well as to draw cash from an ATM. Pay Cards are also common methods to pay out tips to employees, often as soon as the day following a shift.

**E. Earned wage access (EWA):** Earned wage access enables employees to receive a portion of their paycheck before their scheduled payday. It provides employers the ability to partner with an EWA vendor to offer a “pay-as-you-go” or “on-demand payment” model. Regulations around EWA are evolving rapidly to address concerns around the benefit. Namely, regulations seek to increase transparency and prevent predatory payday loan vendors from posing as EWA providers. For that reason, much of the legislation concerns licensing for EWA providers.

## Outlining EWA Regulations

### Federal Regulations

In 2024, the 118th Congress introduced the Earned Wage Access Consumer Protection Act. If passed, this regulation mandates a no-fee option for EWA along with strengthened consumer and employer disclosure requirements. We expect this regulation will drive more adoption of EWA in the workplace as employees seek to relieve financial stresses.

### State Regulations

As of January 2025, regulations around EWA at the state level have begun to shift with seven states imposing or proposing licensing requirements. Meanwhile, the remaining states have not yet regulated EWA providers. In these states, EWA services operate without state-specific licensing, but providers must comply with federal laws and general state financial regulations.

1. **Nevada:** Nevada became the first state to officially regulate EWA providers, establishing a statutory framework that includes licensing requirements.
2. **Missouri:** Following Nevada, Missouri enacted legislation in August 2023 to regulate EWA services and require licenses for providers.
3. **Wisconsin:** In Wisconsin, EWA providers must obtain a license through the Nationwide Multistate Licensing System & Registry (NMLS).
4. **South Carolina:** Enacted legislation in November 2024 mandating that EWA providers obtain proper licensing to operate within the state.
5. **New York:** New York introduced Assembly Bill 258 in January 2025 with the aim of regulating EWA services. If passed, licensing will be required for EWA providers.
6. **Arizona:** Introduced in January 2024, a Senate bill proposes licensing requirements for EWA providers operating in Arizona.
7. **Florida:** Florida also introduced a Senate bill in January 2024 seeking to establish licensing mandates.

Note that the regulatory environment for EWA services is rapidly evolving. Providers should stay informed about both current laws and pending legislation in each state to ensure compliance.

# Termination and End of Employment

In the US, most employment relationships are “at-will,” meaning that an employer can terminate an employee at any time for any reason or for no reason. Likewise, employees are free to leave a job at any time for any reason, with no legal consequences. Employees with an employment contract are not considered at will. Employers need to take care not to terminate an employee with a discriminatory intent or as retaliation for lawful activities. Upon termination of employment, whether voluntary or involuntary, a series of employee rights come into play, including unemployment eligibility, the final payment of wages, and health care continuation obligations.

**1. Final Pay:** Requirements are governed by the states and cities that have enacted rules and may depend on whether the termination was voluntary or involuntary. There are no federal requirements other than the employee must be paid all the wages they have earned no later than the date of the next regular payroll. For locations that require immediate payment or a quick turn-around, they need to have a method in place to get funds for employees on very short notice. Oftentimes, employers use paycards as a quick method to issue term pay.

Examples of some state and city requirements:

## A. California

- i. **Voluntary:** Payment must be received within 72 hours of the employee’s separation or immediately for employees who give 72 hours’ notice of separation. An employee who quits must be paid at the office or agency of the employer in the county where the employee has been performing work.
- ii. **Involuntary:** Payment must be made immediately upon the employee’s separation or layoff, at the place of discharge.

## B. Minnesota

- i. **Voluntary:** Payment must be made by the next payday or by the second payday if the first payday is fewer than five calendar days after the employee’s last day of work. The employee must be paid in full within 20 days after the employee’s separation.
- ii. **Involuntary:** Payment must be made within 24 hours of the separating employee’s demand.

## C. Pennsylvania

- i. **Voluntary:** Payment must be made by the next regular payday.
- ii. **Involuntary:** Payment must be made by the next regular payday.

**2. Severance Pay:** Most private employers in the US are not obliged to pay out any severance pay upon termination. Employment contracts, company policy, or union contracts may require payment. In addition, some employers may choose to pay severance in select situations.

**3. Payout of Sick, Vacation, PTO:** Again, there is no federal requirement to pay out any accrued sick pay, vacation pay or PTO. Most states have some language in their statutes about the payout of accrued leave, often saying that employers must follow company policy. Some examples include:

## A. California:

- i. **Paid Vacation Time:** An employer that provides paid vacations must pay the value of accrued vacation time to a separated employee.
- ii. **Paid Sick Leave:** An employer is not required to pay employees for accrued unused paid sick leave on termination of employment. However, an employee who is rehired within one year from the date of separation must have all previously accrued and unused paid sick days reinstated. This is unless the employer chose to pay out the time upon separation from employment. The employee is entitled to use the previously accrued, unused paid sick days and to accrue additional paid sick days upon rehiring, subject to the law’s use and accrual limits.

**B. Maryland:** The value of accrued vacation time is not payable to a separated employee if the following criteria are met:

- i. The employer has a written policy limiting accrued leave to current employees
- ii. The employee was notified of the policy when hired
- iii. The employee is not entitled to payment under the terms of the policy
- iv. Under the Maryland Healthy Working Families Act, if an employer allows an employee to use sick and safe leave before it has accrued, the employer may deduct the amount paid for the leave from



the employee's final wages if both:

1. The employer and employee mutually consented to the deduction in a document signed by the employee.
2. The employee terminates before accruing the amount of sick and safe leave used.

**C. Michigan:** The value of accrued vacation time must be paid to a separated employee if a written employment contract or policy requires payment. An employer that is subject to the state paid sick leave law is not required to pay out unused, accrued paid medical leave upon an employee's separation from employment.

#### 4. Cancellation of Employee Benefits and COBRA Continuation

##### A. COBRA<sup>24</sup>

- i. The federal Consolidated Omnibus Budget Reconciliation Act (COBRA) requires group health plans sponsored by covered employers to offer continuation coverage to employees and certain family members upon a qualifying event, such as the loss of a job so long as it was not for gross misconduct. COBRA contains strict rules for:
  1. How and when continuation coverage must be offered and provided to a departing employee.
  2. How employees and their families may elect continuation coverage.
  3. How long coverage lasts.
  4. The circumstances that justify terminating continuation coverage.
- ii. While COBRA establishes the minimum requirements for continued health coverage, an employer may provide longer periods of coverage and states may impose additional requirements for the continuation of coverage.
  1. The typical length for COBRA coverage is 18 months but may be longer in cases of disability or Medicare eligibility.
  2. The employer is obliged to keep the employee on the company plan, but the former employee must pay 100% of the premiums to remain enrolled. Employers may also charge an administrative fee.

##### B. Other Employer Sponsored Plans

- i. Retirement Plans: Employers must provide employees with information regarding how to maintain or transfer vested retirement plans to personal accounts.

- ii. Most non-medical benefits (gym memberships, employee discounts, transportation reimbursements, etc.) will be terminated.

**5. Unemployment Compensation:** All employers must post at the worksite a poster of the Unemployment Benefits available to Employees. Upon termination, employees have the right to contact their state unemployment office and apply for benefits. Each state sets their own requirements for application and determination of benefits. Once an employer is notified of an employee's application, they have a right to appeal the application and the findings of the state.<sup>25</sup>

## Government Reporting Requirements

There is a long list of employer reporting requirements throughout the lifecycle of employment. Many are integrated into HR and payroll processing systems or come from other third-party administrators. The following list includes the most common requirements in the hospitality industry:

**6. Payroll Tax Reporting:** The IRS, state taxing authorities and unemployment offices generally require quarterly and annual reporting and reconciliations that include wages earned by employees and taxes paid.

**7. Affordable Care Act (ACA) Notices:** Employers that are required to provide health benefits to employees are required to report at year end Forms 1094C and 1095C to the IRS and distribute the required forms to all benefit eligible employees.

**8. Equal Employment Opportunity Commission (EEOC) Reports:** The reports must be filed annually with census data of all employees. The reports must include the number of employees in each of these categories:

- A. Gender
- B. Race/Ethnicity
- C. Job Codes (as specified on the EEOC forms)

**9. Occupational Safety and Health Administration (OSHA):** OSHA is the federal agency that assures workers have safe and healthful working conditions. Employers are required to monitor and track any work-related injuries using a specified injury and illness log. All employers must notify OSHA within 8 hours of a workplace fatality or within 24 hours of any work-related inpatient hospitalization, amputation, or loss of an eye.<sup>26</sup>

**10. New Hire Reporting:** See the Onboarding section for more information.

**11. Required Posters in the Workplace:** Depending on the industry and state, there are numerous posters that are required to be displayed in the workplace. Many are updated annually (e.g., minimum wage, new rules), so employers need to be certain that they are always current. The posters are often available from HR or payroll service providers and from federal and state offices.<sup>27</sup>

**“The difficulty with compliance comes from having the right technologies and resources in place to prove compliance.”**

*General Manager of QSR chain in New York City*

# Strategies for Compliance: Leverage Technology

Restaurant operators already have demanding jobs. They must manage their staff, process payroll, develop the business strategy, purchase inventory, and a thousand other tasks. These responsibilities often take priority over compliance efforts and continuing education around evolving regulations. For many restaurant operators, there simply are not enough hours in the day to keep up.

Technology can solve this problem. By adopting technology solutions around scheduling and workforce management, operators can implement compliant policies without a personal understanding of the regulation specifics. These tools also provide other operational efficiencies or benefits to the business beyond compliance.

Here's how:

## Automate Hiring & Onboarding Compliance with an Applicant Tracking System (ATS)

Hiring and onboarding new team members involves not only finding the right talent but also meeting numerous compliance requirements. Restaurants should seek an Applicant Tracking System (ATS) that automates these tasks, including background checks, document management, and I-9 verification, while offering customizable onboarding packages and easy access to compliance tracking.

A strong ATS helps businesses stay compliant, save time, and reduce risk, allowing HR teams to focus on higher-value tasks like candidate engagement and employee development. PeopleMatter, Fourth's ATS, automates these critical processes, ensuring compliance while streamlining workflows, reducing recruitment costs, and allowing businesses to focus on what matters most: building a strong, engaged workforce.

## Simplify Compliance & Reduce Errors with Scheduling Tools

Automated scheduling tools help operators create, finalize, distribute, and modify shift schedules while ensuring compliance with labor laws. These tools come with built-in compliance guardrails that prevent operators from creating non-compliant schedules or violating Fair Workweek laws. The software is configured to adhere to relevant state, local, and federal regulations during deployment.

For example, Fair Workweek laws require employees to have a set number of hours of rest between shifts. If an operator attempts to schedule a shift that violates this requirement, the system alerts them and prevents the schedule from being finalized until the issue is resolved. Additionally, the system ensures compliance with Child Labor laws by restricting scheduling for minors in accordance with legal guidelines.

In addition to ensuring compliance, automated scheduling tools offer other significant benefits. AI-powered demand forecasting helps improve scheduling accuracy, reducing overstaffing and saving businesses on labor costs. Businesses using scheduling tools like HotSchedules have reported saving up to 5% on labor costs and cutting scheduling time by up to 50%.

## Ensure Compliance with Real-Time Monitoring

Real-time monitoring tools help operators track hours, breaks, and overtime to ensure compliance with labor laws, reducing the need for manual reviews of time sheets. These tools integrate with payroll systems to automate the tracking of overtime and wages, ensuring employees are paid accurately and in full compliance with local, state, and federal regulations.

Additionally, real-time alerts notify operators if employees miss meal breaks, giving them the opportunity to address issues before the end of the shift. Centralized interfaces simplify time and attendance management, allowing managers to compare scheduled versus actual hours, ensuring payroll accuracy and optimal labor utilization.

## Prove Compliance with Detailed Reporting

Reporting capabilities within scheduling software provide operators with the data they need to demonstrate compliance with labor laws. These tools generate detailed reports that track employee hours, breaks, shift patterns, and overtime to create transparency in scheduling practices. By reviewing these reports, restaurants can ensure they are adhering to regulations such as Fair Workweek laws, Child Labor laws, and meal/rest break requirements. Automated reports also help businesses spot trends and potential issues, allowing them to take proactive steps to stay compliant. With easy access to comprehensive data, operators can quickly respond to audits or compliance inquiries and ensure they have the documentation to prove adherence to labor regulations. This documentation is critical to avoiding costly fines or legal challenges should the business face an audit.

## Streamline HR & Payroll Compliance with an HR Expert

Managing HR and payroll processes can be complex but partnering with a trusted HR & Payroll provider can offload the burden to experts. A Professional Employer Organization (PEO) simplifies these tasks, ensuring compliance while allowing you to focus on business growth and the guest experience. PEOs handle critical functions, such as payroll, benefits administration, recruitment, and compliance, ensuring your business remains up to date with labor laws and regulations.

By leveraging PEO services, businesses can attract and retain top talent with competitive benefits and streamlined recruitment processes. PEOs also offer

worry-free compliance by reducing legal risks and ensuring accurate adherence to employment laws. As your business expands, PEOs make it easier to navigate local regulations and compliance requirements as well, allowing you to grow without the administrative headache.

Fourth offers multiple levels of HR & Payroll Managed Services to provide restaurants with the right level of compliance support. Each tier grants access to expert HR services, which can handle payroll, benefits, and compliance complexities. Meanwhile, you can focus on growth. Regardless of your business size or support needs, Fourth ensures compliance is always within reach, giving you the confidence to manage your workforce effectively.

**“HotSchedules and LogBook’s automated time stamping and detailed reporting captures every employee cut and early departure, easily tracking compliance. These features have saved me thousands in legal fees and fines.”**

**Grant Krueger**  
Owner,  
Union Hospitality Group



# What's Next in Restaurant Compliance?

Regulation may be thought of as slow, but it is never static. Across the 50 states in the Union as well as the federal government, there are always new regulations on the horizon. 2025 will be no different. Already there are new laws taking effect that impact restaurant operators and demand adjustments to policies and procedures.

Notable examples of recent and upcoming regulatory changes include:

- **Overtime Exemption Salary Threshold:** The Department of Labor changed the salary threshold at which employees qualify for overtime pay. Effective January 1, 2025, the threshold was set at \$1,128 per week. Employees earning less than this amount must be awarded overtime pay for hours worked in excess of 40 in one week.<sup>28</sup> However, this was blocked from taking effect by the U.S. District Court for the Eastern District of Texas on November 15. This rolled back the salary threshold to 2020 levels, but it could face appeals in 2025.<sup>29</sup>
- **80/20 Tip Credit Rule Overturned:** The 80/20 rule previously dictated how much non-tipped work a tipped employee could perform while still being paid the tipped minimum wage. This rule was overturned by the Fifth Circuit Court of Appeals.<sup>30</sup>
- **Illinois Minimum Wage Increase:** The minimum wage in Illinois was raised to \$14 per hour for non-tipped workers and \$8.40 per hour for tipped workers effective January 1, 2025.<sup>31</sup>
- **California Minimum Wage for Fast Food Workers:** Fast food workers in California now have a minimum wage of \$20 as of April 2024.<sup>32</sup>
- **Florida Minimum Wage Increase:** The minimum wage in Florida has increased to \$13 as of September 30, 2024. The minimum wage will increase again September 30, 2025 to \$14.<sup>33</sup>
- **Michigan Minimum Wage:** The minimum wage in Michigan will increase to \$12.48 per hour on February 21, 2025.<sup>34</sup>

In addition to these known changes to state and federal labor laws, there are regulatory trends emerging that restaurant operators should monitor. Stories around avian flu and other foodborne illness outbreaks may prompt regulators to enhance food safety measures. Meanwhile the expansion of digital ordering and delivery systems as well as integration of AI and other technology solutions raise concerns around data privacy and cybersecurity that may move regulators to take action.

Finally, Fair Work Week regulations are growing in popularity as more cities pass local ordinances. In Illinois for example, Evanston, a small city in Cook County, has passed a predictive scheduling ordinance. This is significant, because Evanston is a much smaller community than other cities who have passed Fair Work Week laws like Chicago, Los Angeles, and New York City.<sup>35</sup> Industry leaders are optimistic about the impact FWW will have.

“We’ve been fortunate to have a multi-year partnership with Fourth that supports us in compliance across all our 400+ locations.”

*David Lehn*  
Director of Ops Services at  
Noodles & Company



## Staying Compliant Over Time: Guidance for National Brands

Small restaurant chains and national enterprise brands face different challenges when it comes to compliance. While a small chain or individual location often lacks the resources for a robust legal team or compliance support, national brands must contend with a complex tapestry of overlapping and overriding regulations. The regulatory landscape is always changing, and it requires continued vigilance to remain compliant from year to year. Whether you're already a national brand or aspiring to be such one day, technology is critical to expansion without encountering fines or litigation. We encourage enterprise organizations to adopt the following practices:

- **Technology Solutions:** Adopt tools that aid in compliance, such as smart scheduling, payroll, and applicant tracking systems. Select tools that have

built-in compliance guardrails that can prevent violations.

- **Monitor Regulatory Changes:** Assign the HR or legal team the duty of monitoring, tracking, and reporting changes to state, federal, and local laws relevant to the business. This team should provide periodic reports on upcoming or anticipated changes.
- **Staff Training:** Conduct regular training with restaurant staff around compliance-related topics. This is particularly important for restaurant operators to align with wage laws, anti-discrimination, and other regulations. Update these training policies each year to stay current with regulatory changes.
- **Internal Audits:** Periodically audit payroll records and operational policies to ensure continued compliance.

# From Complexity to Compliance:

Compliance is a challenging topic. Regulations touch nearly every aspect of the business and determine how operations must be conducted, and the stakes are high. Failure to remain compliant could result in serious penalties and fines that threaten the health or even sustainability of the business. Whether a national brand or a single location, the burden is on the business owner and their management teams to ensure compliance in every area. It is essential that owners and operators take time to familiarize themselves with regulatory requirements or leverage technology solutions that protect the business from compliance errors.

This guide can only provide so much insight, and the particular steps that a business must take to establish or restore compliance will be different for each business. Use the information in this report to inform your compliance efforts and perform more effective workforce management.

## Fourth is here to help.

Compliance is complex, but your tech doesn't have to be.

Get a free demo with Fourth and see how we simplify compliance.

[Get a free demo](#)



# Appendices

## Federal Resources

[Affordable Care Act Information](#)

[Americans with Disabilities Act \(ADA\)](#)

[Continuation of Health Coverage \(COBRA\)](#)

[DOL Child Labor Laws](#)

[E-Verify+ Program](#)

[Employee Benefits Security Administration](#)

[Fair Credit Reporting Act](#)

[Fair Labor Standards Act \(FLSA\)](#)

[FLSA Digital Reference Guide](#)

[Family and Medical Leave Act \(FMLA\)](#)

[Federal Bankruptcy Reform Act of 1978](#)

[Form I-9, Employment Eligibility Verification](#)

[Internal Revenue Service \(IRS\)](#)

[Occupational Safety and Health Administration \(OSHA\)](#)

[Office of Child Support Services: New Hire Reporting](#)

[U.S. Department of Homeland Security](#)

[U.S. Department of Labor \(DOL\)](#)

[U.S. Equal Employment Opportunity Commission \(EEOC\)](#)

[U.S. Small Business Administration \(SBA\) – Labor Laws Overview](#)

[Unemployment Benefits Information](#)

## State Resources

[California Department of Industrial Relations \(DIR\)](#)

[Federation of Tax Administrators: State Tax Forms](#)

[Florida Department of Economic Opportunity \(DEO\)](#)

[Illinois Department of Employment Security \(IDES\)](#)

[Massachusetts Executive Office of Labor and Workforce Development](#)

[Michigan Department of Labor and Economic Opportunity](#)

[New York State Department of Labor](#)

[Pennsylvania Department of Labor & Industry](#)

[State Labor Law Websites \(General Portal\)](#)

[Texas Workforce Commission \(TWC\)](#)

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