

# The Rise of Wage-and-Hour Disputes for the Hospitality Industry

By Dave Tardif

We're seeing more employees across the country taking employers to court over wage violations, particularly those in the hospitality industry/accommodation and food services industry. In fact, the number of wage-violation lawsuits nationwide has doubled over the last 10 years due to a successful worker-organization movement, an active Department of Labor's (DOL) Wage & Hour Division (WHD) in conducting investigations and audits, increased attention by plaintiffs' attorneys, and increasingly complicated labor laws that leave some employers confused. Since 1985, the hospitality industry ranks #1 in volume of FLSA wage and hour prosecutions and 29,402 cases investigated. Nearly a quarter of the 120,000+ cases pursued by the DOL since 1985 have been within the accommodation and food services industry, and, over the past 30 years, thousands of hotels, restaurants, and bars have been required to pay nearly \$280 million in total fines and back wages, with an average payout of \$9.5k — excluding legal fees. In 2015, the DOL's Wage and Hour Division investigated 981 cases in the Hotel/Motel industry involving 6,675 employees, resulting in \$3,610,343 in Back Wages and \$325,523 in Civil Monetary Penalties.

Claims include overtime violations, cash payments that do not withhold proper taxes to the government, meal and rest period violations, and workers that are misclassified as independent contractors or as exempt employees.

Moreover, employers should expect wage-and-hour disputes to continue to rise along with heightened scrutiny and enforcement from the DOL and private litigation. It's imperative therefore those employers are fully aware of employment-related regulations pertaining to wage violations, and remain in compliance with the various laws. It's also critical that employers understand the extent of their coverage under a Management Liability policy and how responsive it will be in the event of a suit.

## Recent Examples of Wage Violations

Let's take a look at the type of lawsuits filed in the recent past:

- The Westin Long Beach Hotel is the subject of a class action lawsuit filed on behalf of housekeepers, restaurant workers, and banquet servers, alleging that their employer committed wage-and-hour violations related to missed rest breaks, missed meal breaks, and off-the-clock work. Filed in August 2015, that lawsuit remains the subject of continuing litigation.
- Interstate Hotels and Resorts Inc. and Today's IV Inc. agreed to pay over \$1.4 million into a settlement fund to resolve employee claims alleging various violations of California Break laws. Most of the fund is to be distributed among 1,450 employees. Interstate manages the Westin Bonaventure Hotel & Suites in Los Angeles on behalf of its owner Today's.
- A Florida based golf course company allegedly manipulated employees; hours and wages. The company agreed to settle the class action overtime lawsuit for \$130,000.
- Five Houston-based restaurants agreed to pay more than \$334,000 in back pay to 154 current and former employees after the Department of Labor found minimum wage and overtime violations of the Fair Labor Standards Act (FLSA). According to the WHD, non-exempt employees entitled to "time-and-a-half" pay for overtime under the FLSA "were being paid straight time for all

hours worked, including those who worked over 40 in a work week.” The federal agency also claimed the companies did not maintain the required records.

- Workers at an upscale Manhattan restaurant filed a suit claiming the restaurant’s owners violated the FLSA by not paying overtime, withholding tips, and falsifying records.
- Owners of five restaurants in western Michigan were ordered to pay more than \$2 million in minimum wage and overtime pay owed to 129 employees after an investigation by the DOL.

### **How to Minimize Exposure to Claims**

Given the complexity of wage-and-hour laws, it is easy for most employers to be non-compliant in one area or another in paying their employees. There are steps employers should take to minimize the potential for wage violation claims, including:

- **Maintaining current job descriptions.** Job descriptions are roadmaps of the detailed responsibilities of each position in the operation.
- **Classifying workers properly.** All too often employers think that all salaried employees are automatically considered “exempt” employees. There are positions that are questionable, and this should be reviewed carefully.
- **Implementing consistent policies when classifying employees as independent contractors.** It’s best to seek counsel if there is any doubt.
- **Training managers and human resources personnel on the FLSA.** Be sure HR knows how to deal with issues they may come across including unauthorized overtime, breaks and travel time. When the staff is trained to handle all sorts of wage problems, they’ll be better able to resolve situations before attorneys get involved.
- **Not paying cash.** There are too many issues that can arise in paying cash, and the risks are never worth the benefit.
- **Maintaining accurate time records.** Make sure there is a solid time tracking system. Have employees “punch out” for lunch.
- **Ensuring paystubs contain the required detail.** The following information should be included in a paystub: the dates of work covered by the paystub; employee name; employer name; address and phone number of the employer; rate or rates of pay; whether the employee is paid by the hour, shift, day, week, salary, commission or other; gross wages; deductions; allowances (if any); and net wages.
- **Conducting a wage-and-hour audit.** Have a law firm audit pay practices both to employees and to individual independent contractors. A confidential audit is an inexpensive way to review current practices, pinpoint any deficiencies, and take steps to become fully compliant.
- **Obtaining solid preventive legal advice.** Trusted counsel can save an organization thousands of dollars in legal fees and unnecessary settlements.

## **What can I do to protect my organization and employees?**

In addition to having strong procedures in place, it's imperative that your risk management includes a well-designed Management Liability Insurance policy. We have created and negotiated a very broad management liability policy with a reputable insurance carrier specifically for our members. Our policy provides coverage for Employment Practices Liability (with a sublimit for Wage & Hour violations), Directors and Officers, Fiduciary Liability, and Crime insurance. Our negotiated coverage includes 100% allocation of defense costs, favorable settlement wording, non-rescindable policy language, favorable insured versus insured language, broad notice of claim language, Immigration Coverage, Crisis Management and many, many more.

## **How can I learn more about this policy and obtain a quote?**

Please contact Melanie DuPriest.

Melanie D. DuPriest  
Director of Business Development  
2100 East Cary Street, Suite 3  
Richmond, VA 23223  
[melanie@rhainsure.com](mailto:melanie@rhainsure.com)  
O: 804.525.2029 C: 804.615.4278

## **Works Cited**

United States Department of Labor, Wage and Hour Division (WHD)  
Wage and Hour Prosecutions Have Cost the Hospitality Industry \$280 Million – Myranda Mondry  
Chicago Overtime Law Center

i

---

<sup>i</sup>Dave Tardif is an Area Vice President in Risk Placement Services Executive Lines Practice. This practice focuses on providing insurance and risk management consulting services related to management and professional liabilities. Important Note: This paper is not intended to offer legal advice. Any descriptions of insurance provided herein are not intended as interpretations of coverage. An actual insurance policy must be consulted for full coverage details.