



Reducing Labor Law Risks in the **Hospitality Industry**

- The Department of Labor is targeting the hospitality industry — ramping up increased government enforcement of labor law.
- Hospitality organizations face a variety of labor mandates including the Fair Labor Standards Act (FLSA), the Family Medical Leave Act (FMLA), and laws relating to seasonal labor and H-2B employees.
- This paper provides a concise overview of the laws impacting the hospitality workforce and lists best practices for risk reduction.



Laws Impacting Hospitality Labor

Regulators are becoming more aggressive in enforcing federal employment laws related to employee pay and medical leave. American Hospitality and Lodging expert Jon Simons cautions: “the U.S. Department of Labor (DOL) is planning an initiative that specifically targets every hotel, motel and resort in the United States for audits by the department’s Wage and Hour Division.”

Employers with employees designated at-risk by the federal government, like temporary, immigrant, or low-paid workers, are under increased scrutiny. That means that if your organization has not yet been pressured to attend to compliance risks, you could be in for an unpleasant surprise. In fact, in 2010 alone, 250 new Wage & Hour inspectors will be hired.

Lawsuits have already hit lodging institutions like the Park Avenue Waldorf-Astoria, the Los Angeles Airport Hilton, and Chicago’s Blackstone Hotel — hard.

Fair Labor Standards Act (FLSA)

The FLSA requires that non-exempt employees, typically hourly or non-management workers, be paid time and a half (overtime) for hours worked over 40 in a week. This becomes critical to hotels that use contract labor because those 40 hours also apply when they are worked at two separate locations owned by the same organization. Thus, if an employee works for two separate hotels under two separate contractors, overtime is due. FLSA also mandates blended-rate overtime. This means that if an employee works more than one type of job, he/she is paid overtime on the weighted average of the hourly rate. FLSA also includes regulations related to the employment of minors who may also work in the hotel industry.

Family Medical Leave Act (FMLA)

The FMLA applies to organizations with over 50 employees within a 75 mile radius. Under the FMLA, employees are eligible for 480 hours of unpaid leave (a) after working 1250 hours in the previous 12-month rolling period, and (b) if seriously ill, pregnant, home with a newborn, or caring for a family member who is ill.

Employee Free Choice Act (EFCA)

The Employee Free Choice Act (EFCA) may be in the future of the hospitality industry. The EFCA, if passed, will strengthen unions by allowing a vote to unionize to pass at a hotel with a simple majority. Employees may feel more comfortable voicing issues related to unfair labor practices, may enjoy improved wages and benefits, and could be more protected in the case of labor disputes or other employee-employer conflict.

- Waitstaff at the Waldorf-Astoria filed a \$5 million dollar complaint that tip funds were improperly dispersed to staff.
- The Hilton at LAX was recently accused of defying California Living Wage regulations by hiring contract labor.
- The Blackstone Hotel was recently ordered to re-hire laid-off employees that claim to have been fired for their union affiliation.

These suits are just the beginning. Failure to understand and comply with labor regulation may result in costly litigation and fines. In fact, the Department of Labor (DOL)’s Wage and Hour Division warns employers in the hospitality industry to assess their compliance with federal laws, including those related to minimum wages, overtime, and salary exemptions.

Major federal laws impacting hospitality are the **Fair Labor Standards Act**, the **Family Medical Leave Act**, and the **Employee Free Choice Act**. State laws of note include the California Living Wage regulations and the hotly-discussed Arizona immigration policies. Is your organization prepared to face an onslaught of legislation?

Compliance Challenges

Labor law is commonly misunderstood, to the detriment of employers. Employers who fail to correctly classify employees as exempt or non-exempt for FLSA overtime open themselves up to serious legal complications and fines. Employers should verify the employee classification if there is any question about exempt status

Under FLSA, employees are owed overtime compensation calculated using a blended rate. This means that when employees are paid different rates for different jobs, any overtime paid to the employee is paid at 1.5 times the weighted average of all hourly rates the employee was paid during the week.

Many hospitality employers are not prepared to comply with FLSA overtime mandates. Lawsuits are on the rise claiming inadequate tracking of overtime. In the decade ahead, industry analysts expect a slew of new cases to be filed related to contested overtime pay, tips and other areas relevant to the hospitality industry.

It is also a challenge for administrators to track FMLA usage, qualification, or paperwork submission periods. Attendance on Demand hospitality consultant, Jason McGovern, cites numerous cases where organizations struggle to manage employees who have simultaneous claims for FMLA for conditions including elder care, migraines, back pain, and depression.

Employers must not terminate or otherwise take retribution against employees for taking their federally-mandated FMLA leave, making disciplinary procedures complicated when legitimate leave abuse is uncovered.

Another compliance hot button, the Employee Free Choice Act (EFCA) could complicate the application and tracking of wages in the hospitality industry. If passed, the EFCA will require multiple sets of rules relating to employees based on additional characteristics like union membership.

Recommendations for Reducing Risk

An automated time and attendance system solves compliance challenges by:

- Automatically calculating FLSA blended-rate overtime;
- Defining employees as exempt or nonexempt for FLSA overtime;
- Tracking 12-month rolling period worked hours to easily indicate FMLA leave eligibility;
- Flagging employees with need for HR approval of FMLA hours;
- Managing intermittent leave hours for multiple FMLA claims

It is critical that the hospitality industry keep track of the hours, pay, and status of employees, regardless of whether they are directly hired or contract workers. Wage and hour recordkeeping is one of the basic tenants of the FLSA.



Automated recordkeeping helps organizations to verify that they are paying the federally mandated minimum wage, facilitates the payment of daily and/or weekly overtime under FLSA, and keeps detailed records that can prove that any denied FMLA claims were denied fairly.

Best Practices in Action

A privately held hospitality management company that owns and operates 10 motels in several Midwestern states serves as a best-practice approach. The time and attendance system calculates FLSA-compliant overtime wages, tracks employee FMLA eligibility and usage, and helps the company comply with union bargaining agreements.

The company also schedules employees using the time and attendance system in order to minimize overtime while staffing locations based on occupancy estimates. Comprehensive coverage budget features calculate the hours required to fill staffing metrics. The company adjusts staffing as necessary without incurring excessive overtime.

“We now comply with labor laws and better control labor costs.”

Management has total access to wages, hours worked, and schedules of housekeeping, guest relations, maintenance, and other hospitality workers.

Buddy punching is also more in control. At the start of each shift, employees place their hand upon the biometric data collection device located in a common area at each hotel, recording employee start and end times. Biometric punching eliminates the potential for falsified timekeeping that exists with traditional time clocks.

All told, the payroll office cut the time it takes to prepare payroll data for nearly 400 employees to fewer than three hours each pay period—instead of the previous 16 hours. Compliance-related exposure is reduced and recordkeeping is fair and transparent across the organization.

Notes the hospitality company, “This approach gives us the ability to comply with labor laws and better control labor costs—a significant achievement given that cost of labor is the largest expense faced by our company.”



Action List

Taking time to evaluate and reduce compliance risk is becoming critical for the lodging industry. These easy steps can help you get started.

- Ask your time and attendance provider how the service can reduce compliance risk. Organizations not using time and attendance should strongly consider monthly services delivered through the web, like Attendance on Demand.
- Automate tracking and hour coding to reduce manual errors.
- Determine appropriate FLSA policies and procedures.
 - Verify that your payroll department is accurately calculating FLSA overtime.
 - Check that appropriate historical records and archived time cards are available for employees as stipulated in the FLSA.
- Determine appropriate FMLA policies and procedures.
 - Verify that your organization is correctly granting FMLA leave.
 - Assure that your HR department can easily handle FMLA intermittent leave tracking.
- Document company policies in an employee handbook that is easily available to employees.
- Stay abreast of labor law by subscribing to newsletters that cover compliance news.

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