



Avoiding Compliance Issues Challenges in Today's Hospitality Industry

Summary

For the past few years, the Department of Labor's Wage and Hour Division has targeted the hospitality industry as a potential source of federal law violations. These violations include minimum wage, overtime, and recordkeeping provisions under the Fair Labor Standards Act (FLSA) and medical leave approval and tracking under the Family Medical Leave Act (FMLA). But another compliance obligation will hit the industry's plate in 2015 when the Patient Protection and Affordable Care Act (PPACA) goes into full effect. So, with an even bigger target on their backs, how can hospitality employers avoid non-compliance allegations with the help of a time and attendance system?

Challenges Facing Hospitality Labor

Several significant challenges face today's hospitality employers, making a tough industry even tougher. Let's look at each challenge individually.

Fair Labor Standards Act

The FLSA establishes minimum wage, overtime, recordkeeping and youth employment provisions. FLSA requirements include:

- Non-exempt employees must be paid time and a half (overtime) for hours worked in excess of 40 per week. This rule also applies to employees that work at two (or more) separate locations owned by the same business, making this a potential FLSA pitfall for organizations with multiple locations.
- Non-exempt employees must receive blended-rate overtime. This means if an employee works more than one type of job, the employee's overtime rate is the weighted average of the employee's multiple hourly rates.
- Employers must keep certain records for every non-exempt worker, including total hours worked each week, regular hourly pay rate, total overtime earnings per workweek, and more.¹

Family Medical Leave Act

The FMLA applies to organizations with more than 50 employees in 20 or more workweeks in the current or previous calendar year. Under FMLA, eligible employees are entitled to take unpaid, job-protected leave for specific family and/or medical reasons. To be eligible, employees must:

- Have worked for their current employer for at least 12 months
- Have worked at least 1,250 hours for the employer in the 12 months preceding the leave
- Work at a location employing at least 50 employees within a 75-mile radius

Eligible employees may take up to 12 workweeks of leave in a 12-month period for specific family or medical-related leave or up to 26 workweeks of leave to care for an injured or ill family member.²

Affordable Care Act

The ACA mandates that qualifying employers (those that employ at least 50 full-time—or full-time equivalent—employees during business days during the previous calendar year) provide affordable health coverage to full-time employees. Under ACA:

- An employee working more than 30 hours per week is considered full-time
- Full-time equivalency is determined by dividing the aggregate hours of all part-time employees in a given month by 120
- Businesses can employ a three-stage safe harbor determination process to calculate if they are subject to ACA provisions



An important part of ACA for the hospitality industry is its provisions for seasonal workers. Seasonal workers are defined as those that perform services on a seasonal basis, such as resort workers employed only during the peak season. A business is **not** subject to ACA obligations if it employs 50 or more full-time employees for 120 days or less during the calendar year, and the workers in excess of 50 during those 120 days (or fewer) are considered seasonal workers.³

24/7 Operations

Because a 24/7 operation has no downtime, it must determine when one workday ends and the next begins, making pay issues one of its biggest challenges. While determining pay periods and shifts, overtime pay, and holiday pay for a business with a “standard schedule” can be straightforward, it becomes a unique challenge for the 24/7 operation.

English as a Second Language

As the hospitality industry grows, its labor pool becomes more and more diverse. “Language barriers” need to be overcome by employers to ensure workers understand their rights and responsibilities.

Recommendations for Reducing Risk

A reliable time and attendance system providing the right mix of features and tools can help solve many of the challenges discussed above:

- FLSA, FMLA, and ACA-focused features to help streamline compliance, such as automatically calculating FLSA blended-rate overtime, tracking FMLA leave eligibility, and determining full-time employee status
- Reporting functionality such as predefined and custom reporting provide accurate summaries of time and attendance data for seasonal employers
- System updates handled by your time and attendance vendor (to save your organization the headache of managing such updates internally)
- Cloud-based, real-time data for access to the most accurate, up-to-date time and attendance information
- Configurable pay rules to automate hourly and overtime pay rates for different shifts and positions
- Flexible time definitions that allow 24/7 operations to customize their workday, pay period, and overtime designations
- Compatibility with multi-language time clocks, removing the language barrier to accurate time capture

With the right time and attendance system as a part of your administrative toolbox, industry challenges can be handled quickly, capably, and accurately.



About Attendance on Demand, Inc.

Attendance on Demand supports the labor management needs of thousands of companies and more than a half million employees across North America. Launched in 2006, Attendance on Demand is a rapidly deployed, cloud-based solution that minimizes a company's risk and technology investment while providing advanced features for securely managing labor data—calculating pay rules, scheduling employees, budgeting labor, and automating recordkeeping for labor law compliance. With standard uptime over the industry average of 99.995% and above average customer retention rates, Attendance on Demand removes the worry of maintaining expensive infrastructure. An extensive North American distribution network helps organizations use Attendance on Demand to reduce labor expenses and improve decision-making.

This document simplifies a complex Act as it is understood by Attendance on Demand, Inc. It is not to be taken as legal advice. For further information about PPACA compliance, please contact the U.S. Department of Labor at www.dol.gov or 1-866-4-USA-DOL.

References

- 1 U.S. Department of Labor: Wage and Hour Division. "Fact Sheet #21: Recordkeeping Requirements under the Fair Labor Standards Act (FLSA)." DOL.gov. Revised Jul 2008. Web. Accessed 2 Jun 2014. <http://www.dol.gov/whd/regs/compliance/whdfs21.pdf>
- 2 U.S. Department of Labor: Wage and Hour Division. "Fact Sheet #28: The Family and Medical Leave Act." DOL.gov. Revised 2012. Web. Accessed 2 Jun 2014. <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>
- 3 Internal Revenue Service. "Shared Responsibility for Employers Regarding Health Coverage; Proposed Rule: Notice 2012-58." IRS.gov. Aug 2012. Web. Accessed 2 Jun 2014. <http://www.gpo.gov/fdsys/pkg/FR-2013-01-02/pdf/2012-31269.pdf>



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