

LABOR & EMPLOYMENT LAW LEGAL ALERT

FLSA Flapjack Flop: Michigan Pancake House to Pay \$245K for Noncompliance

By Lindsay J. Raymond, Attorney

Last month, a Michigan pancake house with restaurants in Kalamazoo and Benton Harbor was ordered to pay \$245,000 in back wages and damages to 118 employees and retrain all of its managers to comply with the Fair Labor Standards Act (the FLSA). The court order was entered after the Department of Labor investigators found that the owners were violating the FLSA by requiring servers to pay \$2 an hour from their tips, failing to pay overtime, and making employees pay for missed orders and uniforms. The Grand Rapids District Director of the Wage and Hour Division stated that this order “should serve as a wake-up call” to other restaurants.

Unless otherwise exempt, the FLSA generally requires that employees be paid minimum wage and overtime for all hours worked over forty (40) in a workweek. Employers in the restaurant industry and other predominately-tipped industries often rely on tips to offset their minimum wage obligations to tipped employees. However, in order to lawfully credit tips received toward the minimum wage obligation (and pay employees at a rate less than Michigan’s minimum wage of \$8.50), employers must strictly comply with the FLSA and Michigan tip-credit notice and calculation requirements. Additionally, if tipped employees are participating in tip pools, the tip-pooling arrangements must be valid and include only tipped workers.

Failing to strictly comply with the FLSA and Michigan requirements related to tipped employees can be extremely costly for employers. First, the FLSA permits employees to recover two (2) years of back wages, or three (3) years in the event of willful violations. Further, when proper notice of tip credit is not provided, the back wages are calculated using the higher minimum wage and not the lower wage for tipped employees, which could result in a difference of up to \$5.27 an hour per tipped employee for every hour worked for the past two to three years. Finally, any tips received by the tipped employees during that time period are property of the tipped employee and cannot be deducted from the back wages amount.

To avoid their own “FLSA Flapjack Flops,” employers with tipped employees should consult legal counsel to review tip-pooling arrangements and prepare sufficient tip credit notices.



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