

Virtual Cashiers Can Help Cut Wage Costs But Risk Liability

By **Max Kutner**

Law360 (April 16, 2024, 8:12 PM EDT) -- Virtual cashiers from overseas who are appearing on screens in a handful of New York-area restaurants can help employers reduce labor costs, but attorneys warn that the practice could lead to issues such as wage claims by in-store workers.



The virtual cashier set-up at Sansan Chicken in Manhattan. While virtual cashiers from other countries can potentially cut employers' labor costs, attorneys caution that their use could lead to wage and discrimination claims by in-store workers. (Max Kutner | Law360)

The company Happy Cashier, whose founder says a pilot program is operating in six locations in New York City and one in New Jersey, made headlines after a person tweeted April 6 that their "cashier is literally zooming into nyc from the philippines."

At these restaurants, a "virtual cashier" appears on a screen with a webcam and interacts with customers via Zoom. Besides assisting with transactions, these workers handle tasks such as going through a restaurant's reviews and aiding with marketing, according to the company.

Happy Cashier pays its virtual cashiers the equivalent of at least \$3 an hour, its founder, Chi Zhang, told Law360. By contrast, the New York City minimum wage is \$16 an hour.

Despite the potential for saving on labor costs, other issues could arise that employers should be careful about, such as wage and discrimination claims and just-cause allegations if in-store workers are fired, attorneys said.

"There's really almost an infinite list of questions that this type of service could pose," said Eli Freedberg of Littler Mendelson PC, who represents restaurants and other hospitality employers.

Here, Law360 explores the virtual cashiers issue.

"Not a Replacement"

Happy Cashier launched around six months ago and plans to expand, according to Zhang. He said the company is based in New York and has an office and around a dozen workers, who are independent contractors, in the Philippines.

A Delaware Division of Corporations filing says Happy Cashier was formally incorporated April 10. Zhang said the company was previously operating under a different name.

"I want to create something that can be helpful and a great assistance to small-business owners, especially people who own restaurants and need some help in dealing with some time-consuming tasks," he said.

Zhang, who previously was involved in a restaurant company after attending Columbia University's Weatherhead East Asian Institute, chose to hire Filipino workers because English is an official language in the Philippines and the country is known for hospitality.

The company pays workers higher than the minimum wage in the Philippines for food cashiers and does not intend to take the place of workers on-location, according to Zhang.

"It's not a replacement and never an intention to replace any in-store cashier," he said.

During a recent visit to Sansan Chicken in Manhattan, one of the restaurants participating in the pilot program, a manager behind the counter communicated with the virtual worker and helped with the cash transaction.

The manager, Rosy Tang, sees the service as a way to save costs, including labor costs, among other advantages, even if the company says the virtual cashiers won't replace workers.

"It's very convenient for the small business," Tang said. Tang added that the service is a way to "save more energy, more time and also control a little bit [of the] cost for the small business."

Beyond U.S. Law

The virtual cashier experiment indicates how difficult the wage and hour landscape has become for businesses, management-side attorneys said.

"It's a sad state of affairs," said Amanda Fugazy of Ellenoff Grossman & Schole LLP. "The government has squeezed restaurateurs, particularly in places like New York and California, such that they have to look for other viable alternatives to local employees."

Besides facing a \$16 minimum wage, fast food restaurants in New York City with 30 or more locations must comply with a predictive scheduling law, which requires employers provide certain notice of schedules and schedule changes, and added just-cause protections that a Second Circuit panel **backed in January**.

Restaurants have additional requirements on the other coast, too. In California, for example, a \$20 hourly fast food worker minimum wage **took effect** April 1.

But with someone "working in a foreign jurisdiction, according to U.S. and state law, you are free of your labor and employment responsibilities," Fugazy said. The direct employer of virtual workers would still need to follow the law of the country where the workers are based, she added.

Littler's Freedberg said it makes sense that restaurants would seek to cut costs.

"A lot of my clients talk to me all the time about prices and costs going up, whether it's real estate, cost of goods, all costs of operation, and they're looking for ways to not pass on those costs to their customers and guests," Freedberg said.

"Cutting labor, if you do it in a feasible way that doesn't affect service, is always a challenge," he said. "But they're always looking for good, creative ideas, and this certainly could possibly be one."

Morale Threat

While employers might outsource work to help with costs, virtual cashiers might put them at risk for other issues, attorneys said.

Such outsourcing could impact morale among in-store workers, and those workers might then approach a lawyer, who could end up bringing wage and hour claims, Ellenoff Grossman & Schole's Fugazy said.

"When employees feel displaced and threatened, they often look to outside sources to give them help ... whether that's a union or whether that's a lawyer," she said.

"Then they explore every other aspect of the wage and hour law with the individual, and most often they come up with some aspect that they feel they can seize upon to bring a lawsuit, probably totally unrelated to the outsourcing," she

said.

Another potential issue is discrimination. Though labor and employment requirements apply only locally, discrimination laws apply abroad for U.S. citizens working for an American company, Fugazy said. This could come up if a U.S. worker goes abroad to train virtual workers, for example, she said.

New York City's law requiring just cause for termination of fast food workers can also present a problem, if an employer replaces in-store workers with virtual ones, Freedberg said.

"Fast food employers in New York would have a very hard time adopting this because of legal and regulatory issues," he said.

Worker Concerns

Worker advocates see virtual cashiers as the latest in a trend of outsourcing jobs, and Happy Cashier is not the first company to supply virtual cashiers to restaurants.

The Canadian fast food chain Freshii received media attention in 2022 for using such workers through the company Percy, which Freshii's founder and chief executive officer co-founded. Freshii said in 2023 it was discontinuing the use of those cashiers, citing its sale to another company, and Percy's website is no longer active.

There is concern not just for what outsourcing means for U.S. workers, but also for the virtual workers, said Kathleen Mulligan, interim executive director of the Worker Institute at Cornell University's School of Industrial and Labor Relations.

"Capital is looking for any workers it can exploit," Mulligan said. "Because in New York City now we have higher minimum wage protections for workers, capital will find other workers that can be exploited."

She pointed out that the Happy Cashier workers are independent contractors. Such workers, at least in the U.S., typically lack the benefits and protections of employees.

Given that these virtual workers are in the food industry, Mulligan also questioned whether the cashiers are eligible to receive tips. Zhang said Happy Cashier does not set or influence restaurants' tipping policies and that many have discontinued the option to tip at checkout.

Zhang's previous company, the New York-based Yaso Hospitality Group, faced at least two proposed wage and hour collective actions in New York federal court. Both alleged the company failed to pay cooks overtime and spread of hour pay — extra pay when a shift exceeds 10 hours — and they settled with no admission of wrongdoing.

Zhang declined to comment on the cases.

Happy Cashier is set to expand. Zhang said the company plans to transition out of the pilot program in June and that he has heard from more restaurants about participating.

But Cornell's Mulligan expressed skepticism that the virtual cashiers are not meant to replace local workers.

"If you need more workers in New York, you hire more New York workers to do the work," she said. "If you're not doing that, there's clearly a strategy in place to shift the work to places where we don't have labor protections in place."

--Editing by Bruce Goldman and Nick Petruncio.