

Creating A Strategy To Comply With NY's Paystub Mandates

Today, without assistance, it's practically impossible for a restaurant to be in full compliance with all legal regulations. There are an exorbitant number of laws, mandates, and requirements being imposed on restaurant owners. The best way to avoid liabilities is to be aware of the ever-changing legislation. It's imperative for restaurant owners and managers to be proactive and current regarding operational regulations and requirements. Paystub compliance is certainly an area that is having a tremendous impact on New York State's restaurant industry.

There is a lot of information restaurant owners should be aware of regarding paystub compliance. In 2010, the state of New York effected additional requirements in an effort to ensure that employees were being paid properly. These requirements included the Wage Theft Prevention Act form, new recordkeeping requirements, and a mandate that all employees receive a very detailed paystub. The paystub must reflect the hours the employee worked, whether the hours were regular or overtime, the rates of pay, and any allowances taken against wages (for example, a meal allowance). The pay stub must reflect the proper formula for rate of pay. Most employers are surprised to learn that the rate an employee is being paid must be reflected as at least minimum wage and then the tip credit must be itemized and claimed as an allowance. Many

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employees are being paid the right amount, but the employers are in violation simply because the math is not reflected accurately on the paystub.

Unfortunately, I've found countless times that employers believe that they are in compliance, by default, because they have a payroll company. However, all too frequently, payroll companies don't have an updated understanding of the regulations or simply don't pay attention to the requirement's unique application to restaurants. For example, because liability for pay violations run for six years, it is imperative that employers keep copies of each employee's paystub for at least six years. The paystub copy can be paper or electronic, but it must be compliant and accessible. Employers assume their payroll companies have and maintain these records, but all too often, we find that the payroll company does not maintain the copies. Considering that payroll is run electronically and many employees are paid by direct deposit, maintaining copies of the pay stubs is not a difficult requirement—but it is incumbent upon the employer to make sure

it is actually done. Employers should not assume that their payroll company is maintaining their required records unless they have a specific agreement for these services with the payroll company.

There are a variety of steps an employer can take to ensure that he or she is in compliance with paystub requirements. The NYS Department of Labor maintains a relatively comprehensive website with information readily available for employers. Employers should also communicate with their payroll company to get assurance regarding the payroll company's level of compliance and to fully understand their payroll company's commitment to maintain the employer's records. In addition, restaurant owners can reach out to me for a consultation, and together we can assess whether or not they are in compliance. If a restaurant owner finds that he or she is in violation, we can make the necessary adjustments to bring them into compliance.

Unfortunately, New York does not offer any sort of amnesty program for proactive business owners that find



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that they are in violation. At this point, the best defense against paystub violation is a good offense - working with qualified counsel, double-checking the compliance of your payroll company, and maintaining an up to date understanding of the requirements.

We are here to help and welcome your questions. In future months, we will discuss issues surrounding website accessibility for disabled people, harassment and discrimination, and wage violations.