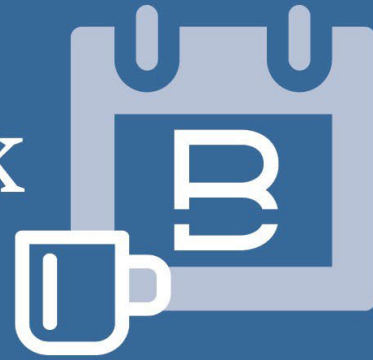


The Work Week

Bassford Remele Employment Practice Group



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Welcome to another edition of *The Work Week with Bassford Remele*. Each Monday morning, we will publish and send a new article to your inbox to hopefully assist you in jumpstarting your work week.

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Cautionary Tales on Federal Employment

[Benjamin H. Formell](#)

With the huge variety of updated labor laws promulgated recently at the state level, it is important for employers to keep in mind federal labor laws that form an overarching set of employment requirements and implicate additional enforcement mechanisms. As new state-level standards come into effect with the new year, employers are well-advised to maintain a robust and proactive understanding of overarching federal labor laws.

One Minnesota business recently came up against the U.S. Department of Labor for violations of the Fair Labor Standards Act (“FLSA”), in the Department’s recent initiative to investigate common food service industry violations by Midwest employers. Four popular restaurants under shared ownership, Boludo Holding Co., were recently fined a total of \$105,874, which fines included back wages for employees, damages, and penalties. Reported violations included deprivation of earned overtime wages, improper treatment of tip pools, inaccurate recordkeeping of employee work times, permitting an underage worker to work outside permitted hours, and terminating an employee who cooperated with Department of Labor investigators. In a public statement, Wage and Hour Division District Director Kristin Tout stressed the “unfair and illegal competitive advantage” and harm to workers which such violations could cause. These efforts are part of a much larger initiative which has resulted in the recovery of more than \$35 million in back wages nationwide in 2024 by food industry employers.

Here, we address a few of the potential problem areas for employers which are raised by this example. First, the FLSA generally applies to employer-employee relationships, even if an employer inadvertently misclassifies an employee as an independent contractor.

With respect to overtime pay, employers are likely aware that the FLSA sets forth a general standard overtime pay requirement for non-exempt employees of “time and a half” for hours over 40 in a week. Employers must be aware that an employee is not permitted to waive overtime pay for overtime worked and that policies restricting overtime work are no defense to overtime actually worked by an employee.

Also, largely unique to the food services industry, tipped workers present another risk area for FLSA violations. Tipped employees include workers who regularly receive more than \$30 per month in tips. Employers who take advantage of the FLSA tip credit must still pay tipped workers not less than \$2.13 per hour. Crucially, employers relying on tips for their workers must keep meticulous records to demonstrate that tipped workers actually receive at least the full federal minimum wage of \$7.25 per hour. Managers and supervisors are strictly prohibited from keeping any portion of employee tips for any purpose, unless those tips are received directly from a customer for services they directly and solely provided. Commonly-used tip pools may provide an easy method to keep track of tips, but must be carefully quarantined from management personnel to avoid being invalidated under federal law. Additionally, many state laws, including Minnesota, have strict requirements for tip pools. Thus, employers must be sure to comply with both state and federal law regarding tips.

Finally, particularly in the food industry, employers may be faced with young potential workers looking for short-term employment, for any number of reasons. Well-meaning employers may wish to provide employment opportunities, but should be aware of FLSA requirements. Under the FLSA, non-agricultural jobs are subject to a minimum age of 14 at the federal level (which age also generally applies at the state level) and are limited to work outside school hours, three hours on school days, 18 hours in a school week, 8 hours on a non-school day, 40 hours on a non-school week, and generally must be between the hours of 7 a.m. and 7 p.m. Additional requirements may apply to employers in more specialized fields, and employers should be acutely aware of the particularities which may arise in their given fields.

At Bassford Remele, we regularly counsel employers on evolving compliance issues at both the federal and state level. Feel free to reach out if you need assistance in this continually evolving landscape!

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